

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

SHEDRICK ANTWAN RUSSELL,)	
)	
Appellant,)	
)	
v.)	Case No. 2D09-4380
)	
STATE OF FLORIDA,)	
)	
Appellee.)	
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Opinion filed February 26, 2010.

Appeal pursuant to Fla. R. App. P.
9.141(b)(2) from the Circuit Court for
Pasco County; Susan L. Gardner, Judge.

Shedrick Antwan Russell, pro se.

ALTENBERND, Judge.

Shedrick Antwan Russell appeals an order denying his petition for writ of habeas corpus that was filed with the circuit court in the circuit where he was convicted.

"After careful review," the trial court denied the motion without any explanation or attachment. We reverse.

Mr. Russell is serving a life sentence for robbery. His direct appeal was affirmed in June 2009. Russell v. State, 11 So. 3d 364 (Fla. 2d DCA 2009) (table decision). It is obvious that this petition for writ of habeas corpus is his first

postconviction proceeding challenging the robbery conviction. He claims, in part, that a witness recanted her testimony shortly after the trial.

The trial court should not have denied this motion on its merits. It should have treated the filing as a motion for postconviction relief under Florida Rule of Criminal Procedure 3.850. See Valdez-Garcia v. State, 965 So. 2d 318, 322 (Fla. 2d DCA 2007). As such, it may have been facially insufficient and subject to an order of dismissal without prejudice—preferably with leave to amend so as to avoid an appeal from an order that did not reach the merits. See Spera v. State, 971 So. 2d 754, 755 (Fla. 2007). In any event, it should not have been denied in this manner.

Reversed and remanded.

DAVIS and WALLACE, JJ., Concur.