

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

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

JOSE OSCAR PEREZ, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 STATE OF FLORIDA, )  
 )  
 Appellee. )  
\_\_\_\_\_ )

Case No. 2D09-5647

Opinion filed March 26, 2010.

Appeal pursuant to Fla. R. App. P.  
9.141(b)(2) from the Circuit Court for  
Lee County; Edward J. Volz, Jr., Judge.

Jose Oscar Perez, pro se.

KHOUZAM, Judge.

Jose Oscar Perez challenges the trial court's order dismissing as untimely his postconviction motion filed pursuant to Florida Rule of Criminal Procedure 3.850.

We reverse.

With exceptions that are not applicable here, rule 3.850(b) provides that in a noncapital case, a motion for postconviction relief is timely if filed within the two-year period following the date on which the judgment and sentence become final. If the

defendant files an appeal, the judgment and sentence become final when the appellate court issues its mandate—not its decision—on the direct appeal. See Anton v. State, 976 So. 2d 6, 8 (Fla. 2d DCA 2008) (citing Ward v. Dugger, 508 So. 2d 778, 779 (Fla. 1st DCA 1987)).

This court affirmed Mr. Perez's direct appeal on August 10, 2007. See Perez v. State, 964 So. 2d 744 (Fla. 2d DCA 2007). The mandate, however, did not issue until October 15, 2007. Thus, Mr. Perez's motion for postconviction relief, which was filed on September 17, 2009, was timely.

Accordingly, we reverse the postconviction court's order and remand for the court to consider the timely-filed motion on its merits.

DAVIS and WALLACE, JJ., Concur.