

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

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

ALBERT STEVENS, JR., )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 STATE OF FLORIDA, )  
 )  
 Appellee. )  
 \_\_\_\_\_ )

Case No. 2D10-3978

Opinion filed March 30, 2011.

Appeal pursuant to Fla. R. App. P.  
9.141(b)(2) from the Circuit Court for  
Highlands County; Peter F. Estrada,  
Judge.

KELLY, Judge.

Albert Stevens, Jr., appeals from the order denying his motion for an extension of time to file his motion for postconviction relief under Florida Rule of Criminal Procedure 3.850. Because the order is not a final, appealable order, we dismiss the appeal. Stevens shall have sixty days after the date this opinion becomes final to file his rule 3.850 motion. The trial court can then determine the issue of timeliness and dispose of the motion on the merits, if appropriate. See Manning v.

State, 28 So. 3d 971, 973 (Fla. 2d DCA 2010) (holding that "when a motion for extension to file a postconviction motion is denied, the defendant should not appeal that order, but should instead file the intended motion as soon as possible, alleging the grounds for the motion to the best of the defendant's ability and further alleging the reason why the motion is untimely"; the trial court then has discretion to dispose of the motion on the issue of timeliness or on any other dispositive issue); see also Ham v. State, 36 So. 3d 189, 190 (Fla. 2d DCA 2010) (noting that the trial court's order denying a motion for extension of time erroneously advised Ham that he could appeal that order within thirty days).

Dismissed.

DAVIS and LaROSE, JJ., Concur.