

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

DONYEAL McCRAE a/k/a)
DONYEAL McCRAY,)
)
 Appellant,)
)
v.)
)
STATE OF FLORIDA,)
)
 Appellee.)
_____)

CASE NO. 2D01-1659

Opinion filed October 31, 2001.

Appeal pursuant to Fla. R. App. P.
9.141(b)(2) from the Circuit Court
for Pinellas County;
Brandt C. Downey, III, Judge.

CASANUEVA, Judge.

Donyeal McCrae timely appeals the order dismissing his motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850. The trial court dismissed McCrae's motion because it believed an appeal of a prior postconviction motion was pending with this court. However, McCrae's appeal was voluntarily dismissed

several months prior to his filing this new motion for postconviction relief. Therefore, this court reverses the trial court's order dismissing McCrae's motion and remands the case to the trial court for further proceedings.

Reversed and remanded.

PARKER, A.C.J., and WHATLEY, J., Concur.