

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

EMMITT EUGENE BUNKLEY,)	
)	
Appellant,)	
)	
v.)	CASE NO. 2D01-2677
)	
STATE OF FLORIDA,)	
)	
Appellee.)	
_____)	

Opinion filed November 7, 2001.

Appeal pursuant to Fla. R. App. P.
9.141(b)(2) from the Circuit Court
for Hillsborough County;
Jack Espinosa, Jr., Judge.

NORTHCUTT, Judge.

Emmitt Eugene Bunkley appeals the summary denial of his motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850. Bunkley's direct appeal is currently pending; therefore, the trial court was without jurisdiction to rule on Bunkley's motion for postconviction relief. See Daniels v. State, 712 So. 2d 765 (Fla. 1998). A prematurely filed motion for postconviction relief should be dismissed by a trial court and may be refiled after the direct appeal is final. Ortiz v. State, 768 So. 2d 1177

(Fla. 2d DCA 2000). We, thus, reverse the order of the trial court and remand with instructions to dismiss Bunkley's motion for postconviction relief without prejudice to Bunkley's right to refile after his direct appeal is final.

Reversed and remanded.

THREADGILL, A.C.J., and GREEN, J., Concur.