

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

BILLY CABALLERO-RAYES,)

Appellant,)

v.)

STATE OF FLORIDA,)

Appellee.)

Case No. 2D12-5541

Opinion filed September 20, 2013.

Appeal pursuant to Fla. R. App. P.
9.141(b)(2) from the Circuit Court for Pasco
County; Mary M. Handsel, Judge.

KHOUZAM, Judge.

Billy Caballero-Rayes appeals the summary denial of his motion filed pursuant to Florida Rule of Criminal Procedure 3.850. We reverse.

In summarily denying Caballero-Rayes's motion as untimely, the postconviction court incorrectly relied on the date the judge signed the judgment and sentence—April 26, 2010—rather than the date it was filed with the clerk of the court—May 3, 2010. See Fla. R. App. P. 9.020(i); Boyd v. State, 106 So. 3d 11, 12 (Fla. 2d DCA 2013) ("The relevant date for finality of a sentencing order is the date the written

order is filed."). The record indicates that Caballero-Rayes did not appeal his judgment and sentence, which thus became final on June 2, 2010, thirty days after rendition. See Ramos v. State, 658 So. 2d 169, 170 (Fla. 3d DCA 1995). Caballero-Rayes filed his original motion on May 30, 2012, which was within two years of his judgment and sentence becoming final. See Fla. R. Crim. P. 3.850(b). Accordingly, we reverse and remand for consideration of Caballero-Rayes's allegations on their merits.

Reversed and remanded with instructions.

KELLY and SLEET, JJ., Concur.