

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JULY TERM, A.D. 2002

NESTOR A. GARCIA,	**	
Appellant,	**	
vs.	**	CASE NO. 3D02-695
THE STATE OF FLORIDA,	**	LOWER
Appellee.	**	TRIBUNAL NO. 97-10882

Opinion filed July 24, 2002.

An Appeal under Florida Rule of Appellate Procedure 9.141(b)(2) from the Circuit Court for Miami-Dade County, Manuel A. Crespo, Judge.

Nestor A. Garcia, in proper person.

Robert A. Butterworth, Attorney General, and John Barker, Assistant Attorney General, for appellee.

Before FLETCHER, SHEVIN and SORONDO, JJ.

PER CURIAM.

We affirm the order denying defendant's Florida Rule of Criminal Procedure 3.800 motion. However, the trial court erred in treating the motion as having been filed under Rule 3.850. This affirmance is without prejudice to defendant filing his first Rule 3.850 motion.

Affirmed.