

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT

JANUARY TERM, A.D. 2003

JOHNNY BRADY,

**

Appellant,

**

vs.

**

CASE NO. 3D02-2529

THE STATE OF FLORIDA,

**

LOWER TRIBUNAL
CASE NO. 90-11516

Appellee.

**

Opinion filed May 14, 2003.

An appeal from the Circuit Court of Miami-Dade County, Ronald C. Dresnick, Judge.

Johnny Brady, in proper person.

Charles J. Crist, Jr. Attorney General, for appellee.

Before SCHWARTZ, C.J., and FLETCHER, J., and NESBITT, Senior Judge.

PER CURIAM.

Because the record does not refute appellant's facially valid claim that he timely requested his attorney to file a post conviction motion, which his attorney failed to do, we reverse the trial court's order denying his petition for writ of habeas corpus to file a belated Rule 3.850 motion. This case is remanded to the trial court for an evidentiary hearing on appellant's petition.

Reversed and remanded.