

# Third District Court of Appeal

State of Florida, July Term, A.D. 2011

Opinion filed November 16, 2011.  
Not final until disposition of timely filed motion for rehearing.

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No. 3D11-2687  
Lower Tribunal No. 03-28869B

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**Carlos Montesinos,**  
Appellant,

vs.

**The State of Florida,**  
Appellee.

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

Carlos Montesinos, in proper person.

Pamela Jo Bondi, Attorney General, for appellee.

Before RAMIREZ, LAGOA, and EMAS, JJ.

RAMIREZ, J.

We treat Carlos Montesinos' petition for belated appeal as an appeal from the summary denial of his postconviction relief under Florida Rule of Criminal Procedure 3.850, and reverse for a determination on the merits.

After a trial, Montesinos was convicted and sentenced to life imprisonment. His appeal from the conviction and sentence was affirmed by this Court and the mandate was issued on January 9, 2008. Montesinos v. State, 972 So. 2d 193 (Fla. 3d DCA 2007). Thereafter, Montesinos filed a motion for postconviction relief under Rule 3.850, which subsequently he attempted to amend. Within the two-year period, Montesinos requested an extension of time to file the amended motion. However, the trial court denied his request and has not ruled on the amended motion which Montesinos nonetheless filed. Under Spera v. State, 971 So. 2d 754 (Fla. 2007), Montesinos was entitled to amend his postconviction motion. Accordingly, we reverse and remand for the trial court to determine the merits of Montesinos' postconviction motion.

Reversed and remanded.