

Third District Court of Appeal

State of Florida, July Term, A.D. 2008

Opinion filed December 17, 2008.
Not final until disposition of timely filed motion for rehearing.

No. 3D07-2992
Lower Tribunal Nos. 02-24646; 02-17953

Derek Paul Hall,
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, Israel Reyes, Judge.

Derek Paul Hall, in proper person.

Bill McCollum, Attorney General, and Lunar C. Alvey, Assistant Attorney General, for appellee.

Before COPE and GREEN, JJ., and SCHWARTZ, Senior Judge.

PER CURIAM.

Affirmed.

COPE, J. (concurring).

Derek Paul Hall filed a motion for postconviction relief under Florida Rule of Criminal Procedure 3.850, which the trial court denied as successive. The State's response here concedes that the trial court was in error in doing so. Defendant-appellant Hall had not previously filed a Rule 3.850 motion. The bar on successive motions applies to successive Rule 3.850 motions, see Fla. R. Crim. P. 3.850(f), and not to the situation here, where the defendant's previous filing was a filing under Florida Rule of Criminal Procedure 3.800(a).

The question is whether the trial court's ruling can be affirmed on other grounds, and in this case it can. The defendant filed the Rule 3.850 motion in two circuit court cases. The State has demonstrated that the motion filed in Miami-Dade County Circuit Court case number 02-17953 was untimely. The State concedes that the motion was timely with respect to Miami-Dade County Circuit Court case number 02-24646. On consideration of the time bar in the former case, and the merits in the latter case, affirmance is in order in both cases.