

# Third District Court of Appeal

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

Opinion filed June 18, 2008.

Not final until disposition of timely filed motion for rehearing.

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No. 3D08-280

Lower Tribunal No. 93-674B

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**Antonio Green,**  
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, Lawrence A. Schwartz, Judge.

Antonio Green, in proper person.

Bill McCollum, Attorney General, and Richard L. Polin, Assistant Attorney General, for appellee.

Before GREEN, SUAREZ, and CORTIÑAS, JJ.

PER CURIAM.

We reverse the order denying defendant's Florida Rule of Criminal Procedure 3.850 motion because the record does not conclusively demonstrate that

the defendant's motion was untimely. See Fla. R. Crim. P. 3.850(d); Fla. R. App. P. 9.141(b)(2)(D). On remand, the court shall either attach those portions of the record conclusively demonstrating that it was untimely filed, or shall rule on the merits of the motion.

Reversed and remanded.