

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

BARRY JOHNS,
Appellant,

v.

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

CASE NO. 1D09-6379

STATE OF FLORIDA,
Appellee.

/

Opinion filed May 6, 2010.

An appeal from the Circuit Court for Duval County.
Elizabeth A. Senterfitt, Judge.

Barry Johns, pro se, Appellant.

Bill McCollum, Assistant Attorney General, and Joshua R. Heller, Assistant Attorney General, Tallahassee, for Appellee.

PER CURIAM.

The appellant appeals the denial, on timeliness grounds, of his motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850. We reverse and remand for further proceedings.

A defendant must file a motion for postconviction relief within two years of the judgment and sentence becoming final. See Fla. R. Crim. P. 3.850(b). When a defendant does not appeal his or her conviction it becomes final when the 30-day period for filing an appeal expires. Gust v. State, 535 So. 2d 642, 643 (Fla. 1st DCA 1998). Here, the appellant's conviction became final on or about October 27, 2007. The appellant filed his motion, pursuant to the mailbox rule,* on October 22, 2009, within two years of his judgment and sentence becoming final. Thus, the motion is timely. Accordingly, we reverse and remand for the trial court to address the merits of the motion.

KAHN, ROWE, and MARSTILLER, JJ., CONCUR.

* Under the mailbox rule, a motion filed by a pro se inmate is deemed filed when it is handed over to the correctional institution for mailing. See Haag v. State, 591 So. 2d 614 (Fla. 1992).