

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JANUARY TERM 2009

EUGENE JOHNSON, JR.,

Appellant,

v.

Case No. 5D08-3449

STATE OF FLORIDA,

Appellee.

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Opinion filed February 13, 2009

Appeal from the Circuit Court
for Putnam County,
Edward Hedstrom, Judge.

Eugene Johnson, Jr., Jasper, pro se.

Bill McCollum, Attorney General,
Tallahassee, and Allison Leigh Morris,
Assistant Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

Appellant filed a petition for writ of habeas corpus in the lower court. Although not a model of clarity, it appears that Appellant's petition is a collateral attack on his judgment and sentence based upon ineffective assistance of counsel. The trial court dismissed the petition because it was not filed in the county where Appellant is incarcerated. This was error. *Batista v. State*, 993 So. 2d 93 (Fla. 5th DCA 2008). Because we are unable to determine from the limited record whether Appellant's

petition was successive or time barred under rule 3.850, we remand this cause to the lower court for disposition.

REVERSED and REMANDED.

PALMER, C.J., TORPY and EVANDER, JJ., concur.