

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

JANUARY TERM 2009

SCOTT RAY ZABRISKIE,

Appellant,

v.

Case No. 5D08-3954

STATE OF FLORIDA,

Appellee.

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Opinion filed April 9, 2009

3.850 Appeal from the Circuit
Court for Orange County,
Bob Leblanc, Judge.

Scott Zabriskie, Kissimmee, pro se.

Bill McCollum, Attorney General,
Tallahassee, and Anthony J. Golden,
Assistant Attorney General, Daytona
Beach, for Appellee.

COHEN, J.

Scott Zabriskie appeals from the summary denial of his motion for postconviction relief, filed pursuant to Florida Rule of Criminal Procedure 3.850. The motion was initially set for a hearing, but the trial judge summarily denied the motion when neither Zabriskie nor his lawyer appeared at the appointed time. The judge indicated a willingness to rehear the matter if Zabriskie appeared within a relatively short period of time. He did not.

Zabriskie filed a motion for rehearing, explaining his failure to appear in a timely fashion. The trial court, despite apparently accepting Zabriskie's explanation as true, found it less than compelling and denied the motion for rehearing. We find no abuse of discretion in the denial. Unlike in Ey v. State, 960 So. 2d 853 (Fla. 2d DCA 2007), there was no factual dispute necessitating an evidentiary hearing.

Because the merits of the motion, which warranted an evidentiary hearing, were not reached, the denial and this affirmance are without prejudice to Zabriskie timely re-filing a motion for postconviction relief.

AFFIRMED.

PALMER, C.J., and LAWSON, J., concur.