

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

JANUARY TERM 2011

NICHOLAS DROST,

Appellant,

v.

Case No. 5D10-2604

STATE OF FLORIDA,

Appellee.

Opinion filed January 21, 2011

3.850 Appeal from the Circuit
Court for Marion County,
Hale R. Stancil, Judge.

Nicholas L. Drost, Raiford, pro se.

Pamela Jo Bondi, Attorney General,
Tallahassee, and Kristen Davenport,
Assistant Attorney General,
Daytona Beach, for Appellee.

PER CURIAM.

Nicholas Drost appeals the trial court's order summarily denying his motion for post-conviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850. Because the order was entered by a judge who had previously recused himself from the probation revocation proceeding which was the subject of Drost's rule 3.850 motion, said order is void. See Goolsby v. State, 914 So. 2d 494 (Fla. 5th DCA 2005). Following the procedure utilized in Goolsby, we deem Drost's notice of appeal as being a petition for writ of mandamus, grant the petition, and remand this matter to the trial court with directions that the post-conviction motion be considered de novo by a different judge.

PETITION GRANTED; CAUSE REMANDED.

GRIFFIN, PALMER and ORFINGER, JJ., concur.