

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

JANUARY TERM 2010

DAVID R. REIDY,

Appellant,

v.

Case No. 5D10-619

STATE OF FLORIDA,

Appellee.

\_\_\_\_\_ /

Opinion filed March 26, 2010

3.850 Appeal from the Circuit Court  
for Brevard County,  
Robert T. Burger, Judge.

David R. Reidy, Polk City, pro se.

No Appearance for Appellee.

PER CURIAM.

David Reidy appeals the trial court's order dismissing his motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850. The trial court dismissed his motion because Reidy had a pending petition alleging ineffective assistance of appellate counsel in this court.<sup>1</sup> The pendency of an original petition alleging ineffective assistance of appellate counsel in this court does not divest the trial court of jurisdiction to consider a motion for postconviction relief filed pursuant

---

<sup>1</sup> Reidy's petition has since been denied by this court's order dated January 27, 2010.

to rule 3.850. White v. State, 855 So. 2d 723, 724 (Fla. 3d DCA 2003). Accordingly, the order of dismissal is reversed and Reidy's motion is reinstated for consideration by the trial court.

REVERSED AND REMANDED.

MONACO, C.J., GRIFFIN and COHEN, JJ., concur.