

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

JANUARY TERM 2011

MARK ELLIOTT,

Appellant,

v.

CASE NO. 5D10-3195

STATE OF FLORIDA,

Appellee.

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Opinion filed January 21, 2011

3.850 Appeal from the Circuit  
Court for Hernando County,  
Daniel B. Merritt, Sr., Judge.

Mark Elliott, Bristol, pro se.

Pamela Jo Bondi, Attorney General,  
Tallahassee, and Anthony J. Golden,  
Assistant Attorney General, Daytona  
Beach, for Appellee.

PER CURIAM.

Mark Elliott timely appeals an order summarily denying his Florida Rule of Criminal Procedure 3.850 motion for post-conviction relief and a second order denying his motion for rehearing. We reverse because the original denial order was entered by a judge who had previously entered an order recusing himself from Elliott's case. See, e.g., *Collado v. Collado*, 858 So. 2d 1255 (Fla. 5th DCA 2003). Although a successor judge denied the motion for rehearing, he did so on grounds that the motion improperly

reargued matters considered and rejected in the original denial order. Instead, the successor judge should have set aside the original denial order and considered Elliott's post-conviction motion anew. *Id.* Accordingly, we reverse both orders and remand with instructions that the successor judge give Elliott a new hearing on his 3.850 motion. We have not considered the merits of Elliott's motion, and our remand does not preclude another summary denial of Elliott's motion, if the successor judge independently determines that summary denial is legally warranted.

REVERSED and REMANDED.

GRIFFIN, PALMER, and LAWSON, JJ., concur.