

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

JANUARY TERM 2011

DARIN CHRISTOPHER,

Appellant,

v.

CASE NO. 5D10-4273

STATE OF FLORIDA,

Appellee.

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Opinion filed April 8, 2011

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

Bernard F. Daley, Jr., of The Daley Law
Office, P.A., Tallahassee, for Appellant.

Pamela Jo Bondi, Attorney General,
Tallahassee, and Douglas T. Squire,
Assistant Attorney General, Daytona
Beach, for Appellee.

ON CONFESSION OF ERROR

PER CURIAM.

Darin Christopher appeals from an order denying his *pro se* Florida Rule of Criminal Procedure 3.850 motion for postconviction relief as successive. The denial order states that the 3.850 motion improperly raises the same issue that Christopher previously raised in a motion to withdraw plea, filed pursuant to Florida Rule of Criminal Procedure 3.170(l). Christopher's 3.850 motion alleges "newly discovered evidence" in

the form of recanted testimony from a State's witness. The State concedes that this issue was not raised in the prior 3.170(l) motion, and that the 3.850 motion should have been considered on the merits.

Accordingly, we reverse and remand for consideration of the 3.850 motion on the merits.

MONACO, C.J., LAWSON, and EVANDER, JJ., concur.