

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

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

DAVID PRESTANO,

Appellant,

v.

Case No. 5D14-4117

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed October 30, 2015

3.850 Appeal from the Circuit
Court for Brevard County,
Morgan Laur Reinman, Judge.

David Prestano, Wewahitchka, pro se.

Pamela Jo Bondi, Attorney General,
Tallahassee, and Ann Phillips and Allison
Leigh Morris, Assistants Attorney General,
Daytona Beach, for Appellee.

PER CURIAM.

David Prestano appeals the summary denial of his rule 3.850 motion for postconviction relief over a last-minute request for additional time to supplement the motion. The State properly concedes that remand is appropriate.

Prestano filed a timely motion for postconviction relief. Before the lower court ruled on that motion, Prestano filed another motion requesting a ninety-day extension of time to supplement the first motion. The trial court did not see the second motion prior to

its ruling denying the rule 3.850 motion. Subsequently, the trial court denied Prestano's motion for enlargement of time as moot. We reverse.

"A rule 3.850 motion may be amended at any time prior to the trial court's ruling as long as the amended motion is filed within the two-year limitations period prescribed by rule 3.850(b)." Kline v. State, 858 So. 2d 1257, 1257 (Fla. 1st DCA 2003) (citing Gaskin v. State, 737 So. 2d 509, 518 (Fla. 1999)). "Similarly, when a defendant files a motion requesting leave to amend before the trial court rules and before the limitations period expires, the trial court must allow the amendment prior to ruling on the motion." Id. (citing Beard v. State, 827 So. 2d 1021 (Fla. 2d DCA 2002)).

On remand, Prestano should be allowed to amend his original motion within a reasonable time, and the trial court should rule on the amended motion without regard to its earlier order. We express no opinion on the merits of Prestano's claims.

REVERSED and REMANDED.

LAWSON, C.J., COHEN and WALLIS, JJ., concur.