

FIFTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA

Case No. 5D23-2819
LT Case No. 2019-CF-000325

TONDA IHETU ROYAL,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

3.850 appeal from the Circuit Court for Flagler County.
Terence R. Perkins, Judge.

Tonda Ihetu Royal, Milton, pro se.

No Appearance for Appellee.

March 1, 2024

PER CURIAM.

Appellant moved for postconviction relief under Florida Rule of Criminal Procedure 3.850. He filed his motion on July 12, 2023. The trial court denied the motion as untimely because in the court's view, Appellant filed it "more than two years after his judgment and sentence became final." Appellant moved for rehearing, arguing that his motion was timely based on the date of the mandate in his direct appeal. The trial court denied rehearing, reasoning that the Fifth District's decision "was finalized on April

20, 2021, which would be the starting point for Defendant’s 2-year time limitation pursuant to rule 3.850(b).”

This court affirmed Appellant’s judgment and sentence on April 20, 2021. *Royal v. State*, 320 So. 3d 755 (Fla. 5th DCA 2021) (Table). However, this court did not issue the mandate until July 13, 2021. The date of the mandate starts the two-year filing window under rule 3.850. *See Beaty v. State*, 701 So. 2d 856, 857 (Fla. 1997) (“[T]he two-year period for filing a motion for postconviction relief began to run upon the issuance of [the district court’s] mandate.”); *Cave v. State*, 289 So. 3d 980, 981 (Fla. 1st DCA 2020) (“For purposes of [rule 3.850], the two-year period begins to run when appellate proceedings have concluded and the court issues a mandate . . .”). Thus, Appellant’s motion, filed on July 12, 2023, was timely.

Accordingly, we reverse and remand for the trial court to consider the merits of Appellant’s motion.

REVERSED and REMANDED.

WALLIS, JAY, and MACIVER, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.
