

IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT, STATE OF FLORIDA

KYLE RAY HIMES,

Appellant,

v.

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

CASE NO. 1D10-3769

STATE OF FLORIDA,

Appellee.

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Opinion filed February 11, 2011.

An appeal from the Circuit Court for Nassau County.  
Robert M. Foster, Judge.

Frank J. Tassone, Jacksonville, for Appellant.

Pamela Jo Bondi, Attorney General, and Michael T. Kennett, Assistant Attorney  
General, Tallahassee, for Appellee.

PER CURIAM.

The appellant has appealed an order denying his first Florida Rule of Criminal Procedure 3.850 motion without consideration of his timely-filed amended motion. The appellant argued in his motion for rehearing that the amended motion had been timely filed and therefore the trial court should have

considered and ruled on it in its final order. However, the trial court denied the motion for rehearing and did not rule on the amended motion. A defendant may amend a timely filed rule 3.850 motion as long as the amended motion is also within the two-year rule 3.850 filing window. See Harris v. State, 826 So. 2d 340 (Fla. 2d DCA 2002); Beard v. State, 827 So. 2d 1021 (Fla. 2d DCA 2002); Bradford v. State, 701 So. 2d 899, 900 (Fla. 4th DCA 1997). The amended motion was filed within the two-year rule 3.850 filing window. The state has conceded that the trial court should have considered and ruled on the appellant's amended motion in its order denying relief of the original postconviction motion. We therefore reverse and remand for the lower court to consider and rule on the appellant's second, amended motion.

REVERSED AND REMANDED.

BENTON, C.J., DAVIS, and THOMAS, JJ., CONCUR.