

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

JEFFREY SMITH,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D15-2566

[May 4, 2016]

Appeal of order denying rule 3.850 motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Paul L. Backman, Judge; L.T. Case Nos. 10-8311 CF10A and 11-8351 CF10A.

Jeffrey Smith, Okeechobee, pro se.

Pamela Jo Bondi, Attorney General, Tallahassee, and Nancy Jack, Assistant Attorney General, West Palm Beach, for appellee.

PER CURIAM.

Jeffrey Smith seeks review of orders denying his motion filed pursuant to Florida Rule of Criminal Procedure 3.850 and the related motion for rehearing, as well as an order prohibiting him from filing future pro se pleadings pursuant to *State v. Spencer*, 751 So. 2d 47 (Fla. 1999). We reverse in part.

Spencer permits a court to prohibit a litigant, who has filed repetitious and frivolous pleadings and papers, from filing further attacks on his or her conviction and sentence, after notice and opportunity to be heard. *Id.* at 48. Smith's filing was his fourth amendment to his first rule 3.850 motion. However, it reached the trial court after the court had ruled on the pending motion. It was treated and denied as an untimely successive motion. At the State's urging, the trial court issued a *Spencer* order to show cause and then issued the sanction order. We affirm the order that denied the amended motion, but reverse the sanction order. *Jimenez-Jimenez v. State*, 142 So. 3d 901 (Fla. 4th DCA 2014); *Wilson v. State*, 57 So. 3d 1000 (Fla. 4th DCA 2011). While we reverse, we caution Smith

that, should he abuse the process by continually filing additional pleadings, he may face the same prohibition again.

Affirmed in part, reversed in part.

WARNER, DAMOORGIAN and LEVINE, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.