

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

JOSEPH EVANS,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D15-4351

[June 22, 2016]

Appeal of order denying rule 3.850 motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Barbara McCarthy, Judge; L.T. Case No. 07-5798 CF10A.

Patrick J. Curry, Fort Lauderdale, for appellant.

No appearance required for appellee.

PER CURIAM.

We affirm the summary denial of appellant's untimely rule 3.850 motion. Appellant entered a plea in 2007 and filed this motion in April 2014. The trial judge denied the motion without ordering a State response, without record attachments, and without providing any explanation.

The summary denial of a postconviction motion in this fashion is improper, *see Shea v. State*, 97 So. 3d 861, 862 (Fla. 4th DCA 2012), and we condemn the practice.

However, it is clear from the face of the motion and the documents attached by appellant that his claim was untimely. The motion did not establish any newly discovered fact that could not have been ascertained with the exercise of due diligence. Fla. R. Crim. P. 3.850(b)(1). Furthermore, the motion lacked merit as appellant did not establish that his trial counsel suffered from any actual conflict of interest that adversely impacted counsel's performance. *See Cuyler v. Sullivan*, 446 U.S. 335 (1980).

Affirmed.

CIKLIN, C.J., LEVINE and KLINGENSMITH, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.