

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

JANUARY TERM 2011

EZRA FOWLER, JR.,

Appellant,

v.

Case No. 5D10-4490

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed May 20, 2011

3.850 Appeal from the Circuit Court
for Citrus County,
Richard A. Howard, Judge.

Ezra Fowler, Jr., Malone, pro se.

Pamela Jo Bondi, Attorney
General, Tallahassee and
Carmen F. Corrente, Assistant
Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

On September 8, 2010, the trial court rendered an order denying Fowler's motion for postconviction relief, filed pursuant to Florida Rule of Criminal Procedure 3.850. Subsequently, on September 15, 2010, Fowler moved for leave to amend his motion, as provided in Spera v. State, 971 So. 2d 754 (Fla. 2007). Although leave to amend was granted, Fowler filed a notice of appeal from the September 8 order on October 6, 2010.¹ He then filed his amended rule 3.850 motion seven days later. Fowler

¹ That appeal is currently pending.

subsequently moved for an extension of time to file a second amended rule 3.850 motion. The circuit court's November 29, 2010, order partially granted the motion and also denied the additional ground raised in the first amended motion.² Fowler filed a notice of appeal from that order on December 16, 2010. This appeal deals only with those rulings.

A notice of appeal filed from an order denying a motion for postconviction relief deprives the circuit court of jurisdiction to consider an amended motion or any other motion pertaining to that postconviction proceeding. See Tellas v. State, 811 So. 2d 756, 756 (Fla. 1st DCA 2002). Likewise, after filing a notice of appeal from a final order in a postconviction proceeding, a defendant abandons any pending motions in the circuit court relating to that case. See Lopez-Merced v. State, 949 So. 2d 362, 363 (Fla. 5th DCA 2007); Moore v. State, 789 So. 2d 551, 552 (Fla. 5th DCA 2001). Because Fowler appealed the order denying relief rendered on September 8, 2010, the order entered on November 29, 2010, was a nullity. It is, therefore, vacated and the appeal therefrom is dismissed. See Meintzer v. State, 943 So. 2d 966, 968 (Fla. 5th DCA 2006).

ORDER VACATED; APPEAL DISMISSED.

TORPY, LAWSON, and COHEN JJ., concur.

² While Fowler labels the first amendment an addendum/supplement to the original rule 3.850 motion, it is effectively an amended motion which raised an additional ground.