

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

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

JULIUS E. BLACK,

Appellant,

v.

Case No. 5D16-3695

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed April 13, 2017

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

Julius E. Black, Wewahitchka, pro se.

No Appearance for Appellee.

PER CURIAM.

Julius E. Black appeals the denial of two motions for leave to amend his original motion filed pursuant to Florida Rule of Criminal Procedure 3.850. Because the trial court ruled on the merits of the amendments to the claims included in the motions, we treat the motions as amended motions under rule 3.850. Thus, we consider the orders denying the motions as final appealable orders. However, the appeal of the order denying the first motion was untimely, and this court lacks jurisdiction to review it. The appeal of the order dated September 27, 2016, which denied the second motion to amend, was timely filed.

Nevertheless, the trial court lacked jurisdiction to enter that order because the amendment related to a claim in the original rule 3.850 motion that was being reviewed on appeal by this court (case number 5D16-1952) at the time the trial court entered the order. We therefore reverse the order dated September 27, 2016, and remand this case so the trial court may rule upon the second motion to amend when jurisdiction returns to the trial court following the conclusion of the appeal in case number 5D16-4327.

REVERSED; REMANDED.

SAWAYA and PALMER, JJ., and JACOBUS, B.W., Senior Judge, concur.