

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

ELIUD MARTIR MONTALVO,

Appellant,

v.

Case No. 5D17-39

STATE OF FLORIDA,

Appellee.

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Opinion filed June 23, 2017

3.850 Appeal from the Circuit Court  
for Orange County,  
Christi L. Underwood, Judge.

Eliud Martir Montalvo, Milton, pro se.

Pamela Jo Bondi, Attorney General,  
Tallahassee, and Kristen L. Davenport,  
Assistant Attorney General, Daytona  
Beach, for Appellee.

PER CURIAM.

Eliud Martir Montalvo appeals the summary denial of his motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850. Because the trial court erroneously denied Montalvo's timely filed amended motion, we reverse and remand.

Montalvo filed a timely rule 3.850 motion asserting numerous claims. The trial court struck the motion, giving him leave to amend within sixty days, because he failed to allege how he was prejudiced. Montalvo timely moved for an extension of time to file his

amended motion. The trial court granted the motion and gave Montalvo until September 12, 2016, to file his amended motion. Pursuant to the mailbox rule in Florida Rule of Appellate Procedure 9.420, as evidenced by the prison mail stamp, Montalvo filed his amended postconviction motion on July 29, 2016. However, for reasons not apparent from the record, the motion was not docketed by the clerk of court until December 8, 2016. That same day, apparently unaware that an amended motion had been filed, the trial court entered an order denying the original motion, concluding that Montalvo had “failed to amend his motion for postconviction relief.”

Based on the prison mail stamp, the amended motion was timely. Therefore, we reverse and remand for the trial court to consider the timely filed amended rule 3.850 motion.

REVERSED and REMANDED.

COHEN, C.J., ORFINGER and EDWARDS, JJ., concur.