

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

MICHAEL WESLEY KIRKLAND,

Appellant,

v.

Case No. 5D20-1594

STATE OF FLORIDA,

Appellee.

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Decision filed April 9, 2021

Appeal from the Circuit Court  
for Seminole County,  
Marlene M. Alva, Judge.

Benjamin L. Jones, of Longwell  
Lawyers, Orlando, for Appellant.

Ashley Moody, Attorney General,  
Tallahassee, and Whitney Brown  
Hartless, Assistant Attorney General,  
Daytona Beach, for Appellee.

PER CURIAM.

AFFIRMED.

EDWARDS and NARDELLA, JJ., concur.  
COHEN, J., concurs specially, with opinion.

COHEN, J., concurring specially.

This appeal stems from the denial of Michael Kirkland's motion to withdraw plea or in the alternative, to vacate or set aside sentence. Kirkland's motion was unclear, seeming to classify his arguments either as an illegal sentence under Florida Rule of Criminal Procedure 3.800(a)(1) or under the provisions of Florida Rule of Criminal Procedure 3.850(a)(4), (5), and (6). This was due, in large part, because the motion was not filed within the two-year time frame outlined in rule 3.850(b). See Fla. R. Crim. P. 3.850(b).

Although raising only one issue on appeal, Kirkland's motion addressed a number of issues, and it was unclear from that motion whether Kirkland was arguing that the lifetime suspension of his driving privileges was an illegal sentence under rule 3.800(a)(1). However, what is clear is that the postconviction court did not specifically address that issue in denying Kirkland's motion, instead focusing on its untimeliness.<sup>1</sup> Kirkland made no further effort to obtain a ruling on the validity of the driver's license revocation issue.

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<sup>1</sup> As part of that analysis, the trial court correctly addressed a claim raised under rule 3.850(b)(2).

Upon a review of the sentencing transcript, it appears that the trial court was under the impression that a lifetime driver's license revocation was required. While Kirkland is correct that a lifetime revocation was not mandated under the circumstances, see § 322.28(4)(a), Florida Statutes (2015), he did not obtain a ruling on that issue below, rendering it unpreserved for appellate review. See Rose v. State, 787 So. 2d 786, 797 (Fla. 2001) ("As a general rule, the failure of a party to get a timely ruling by a trial court constitutes a waiver of the matter for appellate purposes." (citation omitted)).

Nonetheless, the trial court arguably had discretion to permanently revoke Kirkland's driving privileges under the pertinent statutes. See §§ 316.655(2), 322.28(2)(a)2., .28(4)(a), Fla. Stat. (2015); see also Stoletz v. State, 875 So. 2d 572, 575–77 (Fla. 2004) (explaining that trial court had discretion to permanently revoke defendant's driver's license when statutes provided only mandatory minimums for period of revocation). Accordingly, I concur with the majority that affirmance is warranted.