

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

JULY TERM 2003

MICHAEL KAILING,

Appellant,

v.

CASE NO. 5D03-2660

STATE OF FLORIDA,

Appellee.

_____ /

Decision filed October 3, 2003

**3.800 Appeal from the Circuit
Court for Volusia County,
S. James Foxman, Judge.**

Michael Kailing, Avon Park, Pro se.

No Appearance for Appellee.

PER CURIAM.

AFFIRMED.

SAWAYA, C.J., and TORPY, J., concur.

SHARP, W., J., concurs and concurs specially, with opinion.

SHARP, W., concurring and concurring specially.

I concur with the majority that this case should be affirmed, but I would add that it should be affirmed without prejudice to raise the issues in a Rule 3.850 motion.¹ See *Paul v. State*, 830 So. 2d 953 (Fla. 5th DCA 2002).

¹ Fla. R. Crim. P. 3.850.