

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

DEWEY WILSON,
Appellant,

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

v.

CASE NO. 1D03-1102

STATE OF FLORIDA,
Appellee.

_____ /

Opinion filed November 13, 2003.

An appeal from the Circuit Court for Columbia County.
Honorable Paul S. Bryan, Judge.

Appellant, Pro se.

Charlie Crist, Attorney General; Elizabeth Fletcher Duffy, Assistant Attorney
General, Office of the Attorney General, Tallahassee, for Appellee.

PER CURIAM.

Appellant, Dewey Wilson, appeals the dismissal of his motion for postconviction relief pursuant to Florida Rule of Criminal Procedure 3.850. Appellant was convicted of burglary of a dwelling, petit theft, possession of marijuana, and possession of drug paraphernalia. Appellant appealed and his convictions were

affirmed by this Court. Wilson v. State, 827 So. 2d 984 (Fla. 1st DCA 2002). Appellant then filed a motion for postconviction relief that the circuit court “dismissed/denied.” Appellant filed a second motion for postconviction relief that the circuit court “dismissed/denied” as successive or an abuse of process. Appellant raises three claims in this appeal. We address only Appellant’s first claim. The other two claims are rejected without further comment.

Appellant contends the circuit court erred by dismissing his second motion as successive when the court denied his first motion in part as legally insufficient and did not adjudicate his motion on the merits. We agree. Florida Rule of Criminal Procedure 3.850(f) provides that “[a] second or successive motion may be dismissed if the judge finds that it fails to allege new or different grounds for relief and the prior determination was on the merits . . .” (Emphasis added). This Court has repeatedly held that a motion for postconviction relief cannot be dismissed or denied as successive when the previous motion was dismissed or denied as legally insufficient and the grounds raised were not previously adjudicated on their merits. See Nunez-Medina v. State, 817 So. 2d 937 (Fla. 1st DCA 2002); Browning v. State, 687 So. 2d 950 (Fla. 1st DCA 1997).

Although the circuit court erred in dismissing Appellant’s second postconviction motion as successive, we affirm because Appellant’s claims are facially

insufficient to warrant relief. See Parker v. State, 603 So. 2d 616 (Fla. 1st DCA 1992)(affirming the order denying postconviction relief on grounds other than those relied on by the trial court); Freeman v. State, 589 So. 2d 368 (Fla. 1st DCA 1991)(same).

AFFIRMED.

WOLF, C.J.; LEWIS and POLSTON, JJ. CONCUR.