

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D18-5093

MICHAEL JOSEPH NILIO,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Duval County.
Linda F. McCallum, Judge.

February 18, 2020

PER CURIAM.

Michael Joseph Nilio appeals an order summarily dismissing his third motion for postconviction relief challenging his 2017 convictions for aggravated assault, false imprisonment, and possession of a firearm by a convicted felon. The postconviction court found that it lacked jurisdiction to rule on the motion because Nilio had two postconviction appeals pending in this Court. We reverse.

We have held that where a defendant files a postconviction motion while another postconviction appeal is still pending, the trial court still has jurisdiction to consider the motion “so long as the issues raised in the two cases are unrelated.” *Cannie v. State*, 277 So. 3d 754, 755 (Fla. 1st DCA 2019) (quoting *Bates v. State*,

704 So. 2d 562, 562 (Fla. 1st DCA 1997)) (emphasis omitted); *see Kimmel v. State*, 629 So. 2d 1110, 1110–1111 (Fla. 1st DCA 1994) (setting out and explaining this principle); *accord Bryant v. State*, 102 So. 3d 660, 663 (Fla. 2d DCA 2012) (en banc); *Jackman v. State*, 88 So. 3d 325, 327 (Fla. 4th DCA 2012) (en banc); *Siskos v. State*, 163 So. 3d 739, 740 (Fla. 5th DCA 2015); *but see Rua-Torbizco v. State*, 237 So. 3d 1065, 1066 (Fla. 3d DCA 2017) (“[O]nce the notice of appeal of the order denying the first motion for postconviction relief has been filed, the trial court is without jurisdiction to consider the second motion for postconviction relief while that appeal remains pending.”). Nilio’s third postconviction motion did not present any issues related to his previous motions. Thus, the trial court did not lack jurisdiction to rule on Nilio’s motion.

REVERSED and REMANDED.

RAY, C.J., and ROWE and TANENBAUM, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Michael Joseph Nilio, pro se, Appellant.

Ashley Moody, Attorney General, and Heather Flanagan Ross, Assistant Attorney General, Tallahassee, for Appellee.