

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT

**MICHAEL VENABLE,**  
Appellant,

v.

**STATE OF FLORIDA,**  
Appellee.

No. 4D16-4343

[September 27, 2017]

Appeal of order denying rule 3.850 motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Paul L. Backman, Judge; L.T. Case No. 10-001384 CF10A.

Michael Venable, Bristol, pro se.

Pamela Jo Bondi, Attorney General, Tallahassee, and Heidi L. Bettendorf, Assistant Attorney General, West Palm Beach, for appellee.

PER CURIAM.

Michael Venable appeals the denial of an amended rule 3.850 motion as untimely filed. On February 11, 2015, he timely filed his original rule 3.850 motion raising two claims. On May 11, 2015, the trial court denied the original motion without prejudice for appellant to file an amended motion with a proper oath and to correct the date in the certificate of service. The order did not set a specific time for him to refile. Appellant filed his amended motion less than 30 days later, correcting the deficiencies and raising an additional claim. *See Fla. R. Crim. P. 3.850(e)*. The trial court denied the amended motion as time-barred.

The first two claims relate back to the original motion, which was timely filed. In response to this Court's order to show cause, the State agrees that these two claims should be remanded for consideration by the trial court. The third claim does not relate back to the original motion, and it was not timely filed within the two-year time limit for rule 3.850(b) motions.

Accordingly, the trial court's order is reversed in part. Denial of the

third claim is affirmed, and the case is remanded for the trial court to consider the first two claims made in appellant's June 3, 2015 amended motion on the merits. *See Rico v. State*, 71 So. 3d 245 (Fla. 4th DCA 2011).

*Affirmed in Part, Reversed and Remanded in Part.*

GROSS, TAYLOR and FORST, JJ., concur.

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***Not final until disposition of timely filed motion for rehearing.***