

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

JAMES MARK BRANHAM,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D19-744

[October 23, 2019]

Appeal from the Circuit Court for the Nineteenth Judicial Circuit, Indian River County; Cynthia L. Cox and Dan L. Vaughn, Judges; L.T. Case No. 312011CF001411A.

Mark H. Klein of MHK Legal, PLLC, Coral Springs, for appellant.

No appearance required for appellee.

PER CURIAM.

The order dismissing Appellant's amended motion for postconviction relief as untimely is affirmed. Appellant's argument that the untimely filing should be excused because he retained an attorney who failed to timely file the amendment was not raised below and is not preserved for appeal. The proper avenue for presenting such a claim is through a sworn filing in the trial court, which can conduct an evidentiary hearing on the issue if necessary. *See Fla. R. Crim. P. 3.850(b)(3); Steele v. Kehoe*, 747 So. 2d 931 (Fla. 1999). Within the time remaining under the rule, Appellant may file a properly sworn motion in the trial court seeking leave to belatedly file the amended motion pursuant to rule 3.850(b)(3) and *Steele*.

Affirmed without prejudice.

LEVINE, C.J., FORST and KUNTZ, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.