

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

ANTHONY MILLER,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D19-2347

[March 25, 2020]

Appeal of order denying rule 3.850 motion from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; John S. Kastrenakes, Judge; L.T. Case No. 502015CF011094BXXXMB.

Anthony Miller, Perry, pro se.

Ashley Moody, Attorney General, Tallahassee, and Deborah Koenig, Assistant Attorney General, West Palm Beach, for appellee.

PER CURIAM.

Anthony Miller timely appeals the summary denial of his amended motion seeking relief under Florida Rule of Criminal Procedure 3.850. After Miller filed his motion, the court gave him 60 days to amend his oath and certificate of service. Miller allegedly did not receive the court's order in time but, once he did receive it, he moved to reinstate the 60 days to amend. Months later, while his motion for more time was pending and before the two-year time limit of rule 3.850(b) expired, Miller filed an amended motion. The court denied the amended motion as untimely but did not rule on the motion for more time.

Miller argues the court erred when it denied his rule 3.850 motion as untimely without addressing his pending motion for more time. He argues that it was reasonable for him to delay filing the amended motion pending a ruling on his motion for more time.

In *Ivory v. State*, we affirmed a court's denial of a rule 3.850 motion and noted that the defendant "did not seek an extension of the 60-day time limit [or] . . . argue[] any circumstances that prevented him from

timely complying with the trial court's order." 159 So. 3d 197, 199 (Fla. 4th DCA 2015). Here, Miller sought more time to amend his motion and waited to file the amended motion pending a ruling that never came. Based on the unique circumstances of this case, we find the delay in filing the amended motion was not unreasonable because Miller's request for more time remained pending.

We reverse the circuit court's order and remand with instructions to consider the amended rule 3.850 motion on the merits.

Reversed and remanded for further proceedings.

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

* * *

Not final until disposition of timely filed motion for rehearing.