

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2011

JEFFERY HAYES,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D10-1033

[May 4, 2011]

PER CURIAM.

Jeffery Hayes appeals a trial court order dismissing his amended motion for post-conviction relief as untimely filed. We reverse because the trial court had earlier entered an order dismissing his original motion without prejudice to refile an amended motion on certain of the twenty-nine grounds raised, and that order contained no time limit for compliance. *See Armstrong v. State*, 989 So. 2d 1291 (Fla. 4th DCA 2008); *Woods v. State*, 963 So. 2d 348 (Fla. 4th DCA 2007).

The only issue remaining is whether the trial court must entertain Hayes's original motion as well as his amended motion, which did include all twenty-nine grounds as originally raised, but which was amended in part in compliance with the trial court's order of dismissal without prejudice. We conclude that the trial court's review should be confined to the amended motion only and not the original motion. The amended motion superseded the original one. Accordingly, we reverse the trial court's order of dismissal, and remand for the trial court to consider the amended motion on the merits.

Reversed and Remanded.

POLEN, HAZOURI and GERBER, JJ., concur.

* * *

Appeal of order dismissing rule 3.850 motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Jeffrey R. Levenson, Judge; L.T. Case No. 02-3957 CF10A.

Jeffery Hayes, Lake City, pro se.

Pamela Jo Bondi, Attorney General, Tallahassee, and Mitchell A. Egber, Assistant Attorney General, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing.