NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

| REYNALDO MILLETTE, |) |
|--------------------|---|
| Appellant, |) |
| V. |) |
| STATE OF FLORIDA, |) |
| Appellee. |) |

Case No. 2D14-1440

Opinion filed October 10, 2014.

Appeal pursuant to Fla. R. App. P. 9.141(b)(2) from the Circuit Court for Sarasota County; Donna Padar Berlin, Judge.

Reynaldo Millette, pro se.

CASANUEVA, Judge.

Reynaldo Millette appeals the postconviction court order summarily denying his motion filed under Florida Rule of Criminal Procedure 3.850(b)(3), wherein Mr. Millette sought leave to file a belated postconviction motion on the basis that his privately retained counsel failed to timely file the motion. Because counsel did in fact file a timely motion for postconviction relief on August 22, 2012, and timely amended that motion on May 23, 2013, we affirm the postconviction court's order. However, we note that the postconviction court erroneously dismissed the amended motion as untimely. <u>See Rosier v. State</u>, 144 So. 3d 604 (Fla. 2d DCA 2014). It also appears Mr. Millette was not adequately informed of his right to seek appellate review of the postconviction court's determination that the motion was untimely. Therefore, our affirmance is without prejudice to any right Mr. Millette may have to file a petition for belated appeal of the postconviction court order rendered July 23, 2013, dismissing as untimely his previous rule 3.850 motion filed by counsel; he has until July 23, 2015, to file a timely petition. <u>See</u> Fla. R. App. P. 9.141(c). Mr. Millette should reference this opinion in his petition for belated appeal.

Affirmed.

SILBERMAN and BLACK, JJ., Concur.