

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

CHRISTIAN WHITE, DOC #T73598,)
)
 Appellant,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Appellee.)
 _____)

Case No. 2D19-2009

Opinion filed June 24, 2020.

Appeal pursuant to Fla. R. App. P.
9.141(b)(2) from the Circuit Court for
Hillsborough County, Michelle Sisco,
Judge.

Nicole N. Sanchez of Escobar &
Associates, P.A., Tampa, for Appellant.

SMITH, Judge.

In this summary appeal, Christian White challenges the dismissal of his pro se motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850. Because we find that Mr. White's postconviction motion was timely filed under the "mailbox rule," we vacate the dismissal and reverse for the postconviction court to consider the merits of the motion on remand.

Mr. White was charged with first-degree murder and attempted robbery

with a firearm in case number 2013-CF-08526. Pursuant to a negotiated plea agreement with the State, Mr. White agreed to plead guilty to the charges and was sentenced accordingly. As part of the plea deal, the State agreed to nolle prosequere a separate charge of robbery with a firearm brought against Mr. White in case number 2013-CF-012580.

On February 1, 2019, Mr. White filed his motion for postconviction relief, alleging trial counsel was ineffective for failing to move to suppress a shell casing recovered by law enforcement during the execution of a warrant, which he also alleged was unlawfully obtained. He claimed the probable cause affidavit supporting the warrant was deficient because it omitted material facts. Mr. White averred that he would not have pleaded guilty, and instead would have insisted upon going to trial, had his counsel not rendered ineffective assistance.

In response to Mr. White's motion, the postconviction court, on March 13, 2019, issued an "Order for Defendant to Acknowledge Warnings, Order for Defendant to Respond, and Order Dismissing Motion for Postconviction Relief with Respect to Case 2013-CF-012580." As an initial matter, the order dismissed Mr. White's motion with respect to case number 2013-CF-012580, in which the State nolle prossed the only charge. Mr. White does not appeal the dismissal of his motion as it pertains to case number 2013-CF-012580. The order warned Mr. White of the possible consequences attached to his motion for postconviction relief, which, if granted, would result in the withdrawal of his guilty plea, and possible sanctions under rule 3.850(n)(3), among other things. The order gave Mr. White thirty days to acknowledge in writing that he was aware of the warnings contained in the order and to provide written verification of his

intent to proceed with his motion.

On April 1, 2019, Mr. White responded to the March 13, 2019, order and placed his response into the hands of an employee of the correctional facility for mailing, acknowledging the postconviction court's warnings and advising the court of his intention to proceed with his postconviction motion in case number 2013-CF-08526. On May 1, 2019, the postconviction court issued an order dismissing Mr. White's motion with prejudice, citing Mr. White's failure to provide the written verification as ordered by the March 13, 2019, order.

"Under the mailbox rule, a notice is deemed filed when it is delivered to prison authorities for mailing." See Griffin v. Sistuenck, 816 So. 2d 600, 601 (Fla. 2002); Pagan v. State, 899 So. 2d 1203, 1204 (Fla. 2d DCA 2005). Here, Mr. White placed his response to the March 13, 2019, order in the hands of the correctional facility employee for mailing on April 1, 2019—nineteen days after the order was entered. Therefore, Mr. White's response was timely filed. Accordingly, we reverse and vacate the order of dismissal. On remand the postconviction court is to consider Mr. White's rule 3.850 motion for postconviction relief on its merits.

Dismissal vacated; reversed and remanded.

SILBERMAN and VILLANTI, JJ., Concur.