

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

| | | |
|-------------------|---|--------------------|
| CLAUDE LEE LYELL, |) | |
| |) | |
| Appellant, |) | |
| |) | |
| v. |) | Case No. 2D01-2747 |
| |) | |
| STATE OF FLORIDA, |) | |
| |) | |
| Appellee. |) | |
| _____ |) | |

Opinion filed May 14, 2004.

Appeal from the Circuit Court for
Hillsborough County; William Fuente,
Judge.

Claude Lee Lyell, pro se.

Charles J. Crist, Jr., Attorney General,
Tallahassee, and Danilo Cruz-Carino,
Assistant Attorney General, Tampa, for
Appellee.

NORTHCUTT, Judge.

On September 16, 1998, the circuit court placed Claude Lyell on thirty-six months' probation based on his guilty plea to two charges of aggravated battery. In April 2001, Lyell admitted violating his probation. The court revoked his probation and

sentenced him to sixty months' imprisonment on April 23, 2001. On May 13, 2001, he filed an unsworn motion to withdraw his plea, in which he attacked the voluntariness of his September 1998 plea, not the voluntariness of his admission that he violated probation. The circuit court correctly found that the unsworn motion was insufficient under Florida Rule of Criminal Procedure 3.850. It treated the motion as one pursuant to rule 3.170(l) and denied it as untimely because it was filed more than thirty days after sentence was imposed on the contested plea.

We affirm the order denying Lyell's motion to withdraw his plea. Our affirmance is without prejudice to his rights, if any, to file a sufficient rule 3.850 motion concerning his probation violation. We note, however, that the time has run to file a rule 3.850 motion attacking the voluntariness of his September 1998 plea. Lyell did not appeal his judgment and sentence based on that plea, so it became final on October 16, 1998. His two-year window to challenge that plea under rule 3.850 expired in October 2000. See Fla. R. Crim. P. 3.850(b).

Affirmed.

ALTENBERND, C.J., and CASANUEVA, J., Concur.