

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

ROBERT D. FORDHAM,)
)
 Appellant,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Appellee.)
 _____)

Case Nos. 2D03-1102
2D03-2801

CONSOLIDATED

Opinion filed August 1, 2003.

Appeal pursuant to Fla. R. App. P.
9.141(b)(2) from the Circuit Court for
Collier County; Franklin G. Baker, Judge.

FULMER, Judge.

In these consolidated appeals, Robert Fordham challenges the summary denial of his motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850 on September 30, 2002, and the summary dismissal of his second motion for postconviction relief filed on January 27, 2003. Both motions raised the same jail credit issue framed as an ineffective assistance of counsel claim. We affirm one order and reverse the other order.

The trial court denied Fordham's first motion because it failed to meet the pleading requirements of rule 3.850(c). In its order, the trial court advised Fordham that rule 3.987 provides a model form for use in motions for postconviction relief. We agree with the trial court's determination that Fordham's motion lacked the requisite allegations and, therefore, affirm the trial court's order denying Fordham's first motion. See Schofield v. State, 641 So. 2d 172 (Fla. 1st DCA 1994).

Following the advice of the trial court, Fordham utilized the form provided in rule 3.987 and filed a second motion seeking the same relief sought in the first motion. The trial court dismissed the second motion as facially insufficient because it failed to "state the reason the claim in the present motion was not raised in the former motion" as required by rule 3.850(c)(4). The trial court overlooked the fact that the claim raised in the second motion was, in fact, the same claim raised in the first motion. And, Fordham's second motion was not successive because the trial court had not ruled on the merits of the first motion. See Wright v. State, 741 So. 2d 1146 (Fla. 2d DCA 1999). Therefore, we reverse the trial court's order dismissing Fordham's second motion and remand for the trial court to consider the motion on its merits.

Affirmed in part, reversed in part, and remanded with directions.

ALTENBERND, C.J., and VILLANTI, J., Concur.