

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

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

JASON C. LEMAY,	)	
	)	
Appellant,	)	
	)	
v.	)	Case No. 2D05-4388
	)	
STATE OF FLORIDA,	)	
	)	
Appellee.	)	
	)	
_____	)	

Opinion filed March 3, 2006.

Appeal pursuant to Fla. R. App. P.  
9.141(b)(2) from the Circuit Court for  
Polk County; Dick Prince, Judge.

KELLY, Judge

Jason C. Lemay challenges the postconviction court's order summarily denying as untimely his motion for postconviction DNA testing filed pursuant to Florida Rule of Criminal Procedure 3.853. Although we conclude Lemay's motion was timely filed,<sup>1</sup> we affirm the postconviction court's order because Lemay's motion is facially insufficient. See Fla. R. Crim. P. 3.853(b)(1). This affirmance is without prejudice to

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<sup>1</sup> See In re: Amendments to Florida Rule of Criminal Procedure 3.853(d), No. SC05-1702 (Fla. Sept. 29, 2005) (extending the deadline for filing a motion for postconviction DNA testing in rule 3.853(d)(1)(A) from October 1, 2005, to July 1, 2006).

Lemay's right to file a timely, facially sufficient rule 3.853 motion. Any such motion should not be considered successive.

Affirmed.

WHATLEY and SILBERMAN, JJ., Concur.