

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

DANNY J. CLARK,)	
)	
Appellant,)	
)	
v.)	Case No. 2D06-2997
)	
STATE OF FLORIDA,)	
)	
Appellee.)	
)	
_____)	

Opinion filed November 3, 2006.

Appeal pursuant to Fla. R. App. P.
9.141(b)(2) from the Circuit Court for
Manatee County; Peter A. Dubensky,
Judge.

LaROSE, Judge.

Danny J. Clark challenges the postconviction court's summary denial of his motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850. Addressing the merits, the postconviction court determined that the record conclusively refuted Mr. Clark's rule 3.850 motion. We affirm. In doing so, we note that the motion was untimely and successive. See Fla. R. Crim. P. 3.850(b) & (f); Jones v. State, 591 So. 2d 911, 913 (Fla. 1991) (holding that untimely or successive rule 3.850

motions must assert why the claim was not known or ascertainable prior to the expiration of the two-year time bar or when the prior rule 3.850 motion was filed); see also Jacobs v. State, 880 So. 2d 548, 550-51 (Fla. 2004) (opining that the postconviction court should determine whether the motion is facially sufficient before addressing its merits). Accordingly, Mr. Clark's motion was subject to denial without the need for a merits review by the postconviction court.

Affirmed.

NORTHCUTT and KELLY, JJ., Concur.