

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

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

FRED WYKME BROWN,	)	
	)	
Appellant,	)	
	)	
v.	)	Case No. 2D09-954
	)	
STATE OF FLORIDA,	)	
	)	
Appellee.	)	
_____	)	

Opinion filed June 11, 2010.

Appeal pursuant to Fla. R. App. P.  
9.141(b)(2) from the Circuit Court for  
Lee County; Mark A. Steinbeck,  
Judge.

Fred Wykme Brown, pro se.

ORDER DISMISSING APPEAL

SILBERMAN, Judge.

Frederick Wykme Brown appeals the circuit court's order dismissing his motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850. The circuit court found that all of Mr. Brown's claims were facially insufficient for failure to specifically demonstrate how his counsel's alleged deficiencies affected the outcome of the proceedings. The court therefore dismissed the motion without

prejudice, noting that time remained under the two-year limitation of rule 3.850 for Mr. Brown to file a facially sufficient motion. Because the dismissal was without prejudice, the order is not a final order, and the circuit court appropriately did not admonish Mr. Brown to appeal within thirty days. Nevertheless, Mr. Brown did so.

We dismiss this appeal for lack of jurisdiction. However, we note that this court has expressed concern as to the practice of dismissing a postconviction motion for facial insufficiency without specifying a reasonable time limit within which to amend. See Moreland v. State, No. 2D09-315, 2010 WL 1728853 (Fla. 2d DCA Apr. 30, 2010) (highlighting "the procedural difficulties that can arise when a postconviction court denies or dismisses a motion as facially insufficient without giving the movant at least one opportunity to amend within a specified amount of time"). Here, Mr. Brown's two-year time limit under rule 3.850 will have expired by the time that this opinion issues. Therefore, this dismissal is without prejudice for Mr. Brown to file an amended motion in the circuit court within thirty days of the date of this opinion.

ALTENBERND and WHATLEY, JJ., Concur.