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

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

| | | |
|---|---|---|
| ERIC LEVAN MARTIN,<br><br>Appellant,<br><br>v.<br><br>STATE OF FLORIDA,<br><br>Appellee. | ) | Case No. 2D10-3102 |

Opinion filed December 22, 2010.

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

LaROSE, Judge.

Eric Levan Martin appeals an order dismissing his motion for postconviction DNA testing. See Fla. R. Crim P. 3.853. The postconviction court properly found the motion facially insufficient. Accordingly, the postconviction court dismissed the motion with leave to file a facially sufficient motion within sixty days. This is not an appealable order. See Christner v. State, 984 So. 2d 561, 562 (Fla. 2d DCA 2008) (noting that order dismissing rule 3.850 motion with leave to amend is nonfinal); Williams v. State, 884 So. 2d 374, 375 (Fla. 2d DCA 2004) (explaining that the

procedure of dismissing a pleading with leave to amend "renders the order nonfinal and nonappealable").

Unfortunately, the postconviction court advised Mr. Martin that he could appeal the order to this court within thirty days. Mr. Martin did so.

We must dismiss this appeal because it stems from a nonappealable order. On remand, the postconviction court should amend its order to provide that it is not appealable at this time. The postconviction court should also give Mr. Martin sixty days in which to file a facially sufficient motion. See Herron v. State, 34 So. 3d 206, 206-07 (Fla. 2d DCA 2010).

Dismissed and remanded.

KHOUZAM and BLACK, JJ., Concur.