

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

LLOYD A. NEAL,)
)
 Appellant,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Appellee.)
_____)

Case No. 2D12-6273

Opinion filed October 9, 2013.

Appeal pursuant to Fla. R. App. P.
9.141(b)(2) from the Circuit Court for
Pinellas County; Richard A. Luce,
Judge.

Deana K. Marshall of Law Office of
Deana K. Marshall, P.A., Riverview,
for Appellant.

PER CURIAM.

Lloyd A. Neal appeals the summary denial of his motion filed under Florida Rule of Criminal Procedure 3.850. The postconviction court denied the motion on the merits when Mr. Neal failed to timely amend his motion to conform to the page limitations in rule 3.850(c). The court was within its discretion to deny the motion on this basis, and we affirm the postconviction court's order. See Herron v. State, 34 So. 3d

206, 206-07 (Fla. 2d DCA 2010) (directing the postconviction court to enter a final order disposing of defendant's claims if defendant failed to file an amended rule 3.850 motion); cf. Adams v. State, 104 So. 3d 1141, 1142 (Fla. 2d DCA 2012) (excluding attached exhibits from the trial record in calculating rule 3.850(c)'s page limit).

However, this appeal was filed after Neal's postconviction attorney filed a petition for belated appeal in this court. The same circumstances that excused the timely filing of the appeal appear to have affected Mr. Neal's ability to amend his motion in a timely manner, and those circumstances were never brought to the postconviction court's attention by Mr. Neal's counsel. Therefore, our affirmance is without prejudice to permit Mr. Neal to file an amended motion in conformance with rule 3.850(c) within thirty days of the date that this opinion becomes final. The amended motion shall not be considered untimely or successive.

Affirmed.

KELLY, CRENSHAW, and BLACK, JJ., Concur.