

Third District Court of Appeal

State of Florida

Opinion filed October 2, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-1610
Lower Tribunal No. 16-487-A-K

Craig A. Moore,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal under Florida Rule of Appellate Procedure 9.141(b)(2) from the Circuit Court for Monroe County, Mark H. Jones, Judge.

Craig A. Moore, in proper person.

Ashley Moody, Attorney General, for appellee.

Before EMAS, C.J., and FERNANDEZ and MILLER, JJ.

EMAS, C.J.

Craig A. Moore filed a pro se motion for postconviction relief, pursuant to Florida Rule of Criminal Procedure 3.850. The trial court determined that the motion was timely but insufficient on its face and, based on this determination, entered an order granting Moore sixty days to amend his motion. In doing so, the trial court followed the procedure mandated by rule 3.850(f)(2):

If the motion is insufficient on its face, and the motion is timely filed under this rule, the court shall enter a nonfinal, nonappealable order allowing the defendant 60 days to amend the motion. If the amended motion is still insufficient or if the defendant fails to file an amended motion within the time allowed for such amendment, the court, in its discretion, may permit the defendant an additional opportunity to amend the motion or may enter a final, appealable order summarily denying the motion with prejudice.

Instead of amending his motion, Moore appealed the order three weeks later. However, and as provided by rule 3.850(k), an appeal from a nonfinal order granting leave to amend a facially insufficient postconviction motion is not authorized:

An appeal may be taken to the appropriate appellate court only from the final order disposing of the motion. All final orders denying motions for postconviction relief shall include a statement that the defendant has the right to appeal within 30 days of the rendition of the order. All nonfinal, nonappealable orders entered pursuant to subdivision (f) should include a statement that the defendant has no right to appeal the order until entry of the final order.

We therefore dismiss the appeal for lack of jurisdiction. In doing so, however, we note that the trial court's order failed to include the statement (as recommended by rule 3.850(k) above) that "the defendant has no right to appeal the order until entry of the final order." Including a statement of non-appealability reduces the risk

of an unauthorized appeal (such as this one), thereby preventing a situation in which our dismissal of the appeal would inadvertently leave a defendant time-barred and unable to amend his original motion (because the sixty-day period for the defendant to amend his motion has since passed). We have, under analogous circumstances, taken appropriate steps to avoid such an unintended procedural default. See, e.g., Rua-Torbizco v. State, 237 So. 3d 1065, 1067 (Fla. 3d DCA 2017) (quoting Tompkins v. State, 894 So. 2d 857, 859-80 (Fla. 2005)).

We therefore dismiss this appeal without prejudice to the filing of an amended motion for postconviction relief within sixty days of the date of the issuance of this opinion. If filed within that time period, the amended motion shall be deemed timely. The trial court shall proceed thereafter consistent with this opinion and rule 3.850.

Dismissed without prejudice and remanded with directions.