

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JULY TERM 2010

CARL DAVID MEINTZER, JR.,

Appellant,

v.

Case No. 5D10-2027

STATE OF FLORIDA,

Appellee.

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Opinion filed September 17, 2010

3.850 Appeal from the Circuit
Court for Orange County,
Bob LeBlanc, Judge.

Carl David Meintzer, Jr., Sanford, pro se.

Bill McCollum, Attorney General,
Tallahassee, and Rebecca rock
McGuigan, Assistant Attorney General,
Daytona Beach, for Appellee.

PER CURIAM.

Appellant challenges the summary denial of his rule 3.850 motion for postconviction relief. Because the trial court erroneously determined that the motion was successive and denied it without considering its merits, we reverse.

Appellant filed a rule 3.850 motion on January 21, 2005, which was denied by order dated June 15, 2006. Due to an intervening appeal, however, we vacated the order, concluding that the trial court lacked jurisdiction. *Meintzer v. State*, 943 So. 2d

966 (Fla. 5th DCA 2006). Thereafter, on August 12, 2008, Appellant filed a second rule 3.850 motion asserting additional claims.

On May 3, 2010, the trial court denied both Appellant's January 21, 2005, and August 12, 2008, motions. With respect to the January 2005 motion, the court denied it based on the rationale of its June 15, 2006, order. With respect to Appellant's August 2008 motion, the court denied it as successive. Because the trial court's June 15, 2006, order was vacated, Appellant's August 12, 2008, motion was not successive. Instead, it should be treated as a timely amendment to the original motion and addressed on its merits.

REVERSED AND REMANDED.

PALMER, ORFINGER and TORPY, JJ., concur.