

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

JANUARY TERM 2008

TRAVIS D. SMITH,

Appellant,

v.

Case No. 5D08-682

STATE OF FLORIDA,

Appellee.

/

Opinion filed June 20, 2008.

3.850 Appeal from the Circuit
Court for Marion County,
David B. Eddy, Judge.

Travis Smith, Blountstown, pro se.

No Appearance for Appellee.

PER CURIAM.

Travis Smith appeals the denial of his rule 3.850 motion for postconviction relief. We affirm in part, but reverse and remand for reconsideration of two claims raised in Smith's January 8, 2008 amended motion. The trial court denied Smith's motion to amend as part of its order denying relief. However, Smith's motion to amend was timely because it was filed before the trial court ruled on the original motion, and within two years from the date the mandate in his direct appeal was issued, May 25, 2007. Postconviction motions under rule 3.850 may be amended or supplemented at any time within the two-year time limit as long as the trial court has not yet ruled on the merits of

the motion. Gaskin v. State, 737 So. 2d 509, 517-18 (Fla. 1999); Oxendine v. State, 824 So. 2d 1022, 1023 (Fla. 5th DCA 2002); Samuels v. State, 973 So. 2d 662, 662 (Fla. 4th DCA 2008).

AFFIRMED in part, REVERSED in part, and REMANDED.

ORFINGER, TORPY, and COHEN, JJ., concur.