IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT JULY TERM 2009

TERRANCE LAMAR WARD,

Appellant,

v. Case No. 5D09-633

STATE OF FLORIDA,

Appellee.

_____/

Opinion filed October 2, 2009

3.850 Appeal from the Circuit
Court for Orange County,
Marc L. Lubet, Judge.

Terrance L. Ward, Florida City,
pro se.

Bill McCollum, Attorney General,
Tallahassee, and Bonnie Jean Parrish
Assistant Attorney General, Daytona
Beach, for Appellee.

EN BANC

PER CURIAM.

Appellant challenges the summary denial of his Florida Rule of Criminal Procedure 3.850 motion. Although Appellant raised numerous claims of ineffective assistance of trial counsel in his motion, on appeal he only addresses one point in his pro se brief – the alleged failure of the trial court to give him the opportunity to correct his facially deficient motion. Because it is evident that the trial court addressed the

merits of Appellant's claims and did not base its ruling on ostensible pleading deficiencies, we affirm as to Appellant's one point on appeal. We have not reviewed the other issues presented to the trial court, however, because Appellant abandoned these issues by not addressing them in his brief. *Austin v. State*, 968 So. 2d 1049, 1049 (Fla. 5th DCA 2007). We are aware of the intra-district conflict between *Austin* and *Webb v. State*, 757 So. 2d 608 (Fla. 5th DCA 2000), on this point. We approve *Austin* and recede from *Webb* to the extent of such conflict.

AFFIRMED.

MONACO, C.J., GRIFFIN, SAWAYA, PALMER, ORFINGER, LAWSON, COHEN and JACOBUS, JJ. concur.

TORPY, J., concurs, and concurs specially in part and dissents in part, with opinion, in which EVANDER, J., concurs.

TORPY, J., concurring in part and dissenting in part.

I agree with the majority that Appellant's motion was disposed of on the merits. Therefore, his reliance upon *Spera v. State*, 971 So. 2d 754 (Fla. 2007), for the proposition that he should have been given leave to amend his motion is misplaced.

I disagree with the conclusion that Appellant abandoned all other issues by filing his pro se brief addressing only one point. As we observed in *Webb,* in appeals of this nature, Florida Rule of Appellate Procedure 9.141(b)(2)(C) expressly contemplates that briefs are unnecessary.[1] I cannot agree that the filing of a superfluous document should be deemed an implied abandonment of anything. Our panel decision in *Austin* erroneously based its conclusion on *Marshall v. State,* 854 So. 2d 1235 (Fla. 2003). In *Marshall,* the appellant challenged the denial of a rule 3.850 motion **after an evidentiary hearing** was conducted on some of the claims. Thus, the appeal did not proceed under rule 9.141(b)(2)(C), and an appellate brief in proper form was required to obtain review.

Although some of the "briefs" in these cases are well-done, most are prepared without legal help and are difficult to decipher. In many cases, it will be impossible to discern which issues are preserved and which have been "abandoned." In these cases, although we have customarily accepted submissions that do not conform to rules of

[1] Florida Rule of Appellate Procedure 9.141(b)(2)(C), pertaining to appeals from summary post conviction proceedings, states in pertinent part: "No briefs or oral argument shall be required, but any appellant's brief shall be filed within 15 days of the filing of the notice of appeal."

procedure and treated them as “briefs,” after today’s decision, perhaps the fair thing to do is to strike non-conforming submissions and proceed as if there is no brief.

EVANDER, J., concurs.