

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

MARLON M. BROWN,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

No. 2D2026-0487

July 8, 2026

Appeal pursuant to Fla. R. App. P. 9.141 (b)(2) from the Circuit Court for DeSoto County, Don T. Hall, Judge.

PER CURIAM.

Marlon M. Brown appeals the order transferring his petition for writ of habeas corpus and amended petition for writ of habeas corpus to Okeechobee County, where his sentence was imposed. We reverse the circuit court's order and remand with directions that it dismiss Brown's petitions as unauthorized.

Brown is currently incarcerated at the Desoto Correctional Institution Annex in DeSoto County while serving his sentence imposed in Okeechobee County. Brown asserted in his petitions that his detention is unlawful because the charging instrument in his underlying

case lacks the circuit court clerk's official seal and therefore the court lacked jurisdiction to preside over his case, making his detention and life sentence illegal. He also asserted that because he is detained in DeSoto County, the Twelfth Judicial Circuit Court has jurisdiction to consider his petition. See § 79.09, Fla. Stat. (2025) (stating that petitions for writ of habeas corpus shall be filed in the county where petitioner is detained).

The circuit court correctly ascertained that Brown's petition was a collateral attack on his convictions and sentences and thus should be treated as a Florida Rule of Criminal Procedure 3.850 motion for postconviction relief. However, the court erred when it improperly transferred the petition to Okeechobee County. The rule 3.850 motion was untimely,¹ and no exception to the time bar was alleged. See Fla. R. Crim. P. 3.850(b); *Beaty v. State*, 701 So. 2d 856, 857 (Fla. 1997) (holding that the two-year period for filing a motion for postconviction relief begins to run upon issuance of the direct appeal mandate).

"Generally, when a defendant improperly seeks postconviction relief in a habeas petition, a circuit court may convert the habeas petition to a rule 3.850 motion and transfer it to the sentencing court." *Woods v. State*, 417 So. 3d 499, 502 (Fla. 2d DCA 2025). "But if there would be a procedural bar to a postconviction motion, the circuit court should instead dismiss the habeas petition as unauthorized. Specifically, the petition should be dismissed if it ' . . . would be untimely if considered as a motion for postconviction relief under rule 3.850 ' " *Id.* (quoting *Baker v. State*, 878 So. 2d 1236, 1246 (Fla. 2004)).

¹ Brown's direct appeal of conviction after retrial was affirmed by the Fourth District Court of Appeal by mandate issued on October 26, 2012. See *Brown v. State*, 96 So. 3d 904 (Fla. 4th DCA 2012) (*table decision*).

The circuit court's order reclassifying Brown's petitions as rule 3.850 motions and transferring them to the Okeechobee County circuit court is reversed, and the case is remanded with instructions for the circuit court to dismiss the petitions as unauthorized.

Reversed and remanded with instructions.

LUCAS, C.J., and KELLY and LABRIT, JJ., Concur.

Opinion subject to revision prior to official publication.