

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

KEVIN TERRELL THOMAS,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D2026-0195

[June 3, 2026]

Appeal of order denying rule 3.850 motion from the Circuit Court for the Nineteenth Judicial Circuit, St. Lucie County; Lawrence Michael Mirman, Judge; L.T. Case No. 562016CF000966AXXXXX.

Kevin Terrell Thomas, Milton, pro se.

James Uthmeier, Attorney General, Tallahassee, and Heidi Lynn Bettendorf, Senior Assistant Attorney General, West Palm Beach, for appellee.

On Confession of Error

PER CURIAM.

Kevin Terrell Thomas appeals an order that disposed of his rule 3.850 motion for postconviction relief. The state concedes the trial court lacked jurisdiction to rule on appellant's premature motion, filed while appellant awaited resentencing pursuant to this Court's 2021 appellate mandate. *Thomas v. State*, 324 So. 3d 518 (Fla. 4th DCA 2021).

We accept the state's concession of error and reverse and remand with directions for the trial court to dismiss the motion as premature, as finality for purposes of filing a rule 3.850 motion occurs after resentencing when resentencing flows from a direct appeal. *See State v. Gomez*, 247 So. 3d 592, 594 (Fla. 3d DCA 2018) ("As this Court has previously held, a conviction and sentence become final for the purposes of rule 3.850 when this Court affirms following resentencing."); *see also Ross v. State*, 947 So. 2d 699, 701 (Fla. 4th DCA 2007) (holding that rule 3.850 motion was

timely filed where the motion was filed within two years of both the conviction and sentence becoming final).

Reversed and remanded with directions.

LEVINE, SHEPHERD and SHAW, JJ., concur.

* * *

Not final until disposition of timely-filed motion for rehearing.