

IN THE SUPREME COURT OF FLORIDA

JASON PAUL BOUDREAUX,  
Petitioner,

PROVIDED TO  
SOUTH BAY CORRECTIONAL FACILITY  
ON 10-14-10 JPB FOR MAILING

v.

S.C. NO.: \_\_\_\_\_  
CASE NO.: 1D10-2367

STATE OF FLORIDA,  
Respondent,

**FILED**  
THOMAS D. HALL  
2010 OCT 18 PM 3:21  
CLERK, SUPREME COURT  
BY \_\_\_\_\_

**BRIEF FOR JURISDICTION**

COMES NOW, Petitioner, JASON BOUDREAUX, pro se, to this Court and ask that this Court except jurisdiction and review the decision of the First District Court of Appeal, filed August 12, 2010, Rehearing denied September 28, 2010.

The opinion that was given in the instant case is in direct conflict with decisions of other District Court of Appeal. This gives the Florida Supreme Court jurisdiction to review the decision in the instant case. Fla.R.App.P., 9.030(a)(2)(A)(iv); Art. V. § 3(b)(3) Fla. Const. The Florida Star v. B.J.F., 530 So.2d 286 (Fla. 1988) (The Supreme Court has discretionary jurisdiction to review a decision of a District Court of Appeal that expressly and directly conflicts with a decision of the Supreme Court or another District Court of Appeal.)

(I)

The first conflict is that the First District Court of Appeal will not rescue a premature appeal from its jurisdictional problem. It states that I caused further

delay by appealing to the District Court when I did not amend my postconviction motion 3.850, that the postconviction court found two of my claims were facially insufficient and, pursuant to Spera v. State, 971 So.2d 754 (Fla. 2007), permitted me to file an amended motion within 60 days.

However, the Second District Court of Appeal has adopted a procedure for appeals such as mine that are brought prematurely to that court, after they confirm the appellant has not submitted an amended claim within the time allotted by the postconviction court.

This procedure would have rescued my appeal from its jurisdictional shortcoming, therefore causing the untimely 3.850 motion I had to go back and file. See Christner v. State, 984 So.2d 561, 33 Fla. L. Weekly D1333 (Fla. 2<sup>nd</sup> DCA 5/16/08)

## (II)

The second conflict is that the First District Court of Appeal states in its opinion that I waived my arguments concerning my nine claims, which were originally timely filed because I failed to specifically address, these claims in my initial brief.


In my case, the postconviction court did not attach portions of the record conclusively refuting my claims nor did it hold an evidentiary hearing.

Therefore, I'm not even required to file a brief in my appeal. Fla.R.App.P., 9.141 (b)(2).

The Fifth District Court of Appeal holds that if a trial court denies a claim without an evidentiary hearing and without attaching any record, movant does not wave issue by failing to plead it in initial brief. See Web v. State, 757 So.2d 608 (Fla. App. 5<sup>th</sup> Dist. 2000). Factual allegations in a 3.850 motion must be accepted as true when the trial court denies a claim without an evidentiary hearing and without attaching any records. Foster v. State, 810 So.2d 910 (Fla. 2002), Travaglia v. State, 864 So.2d 1221 (5<sup>th</sup> DCA 2004).


I express a belief based on the above conflicts, that this appeal requires immediate resolution by the Supreme Court and will have a great effect on the administration of justice throughout the State.

I SWEAR that I have read the foregoing motion and that the facts alleged in it, are true.

  
\_\_\_\_\_  
Jason P. Boudreaux  
DC #P21402  
South Bay Correctional Facility  
P.O. Box 7171  
South Bay, Florida 33493-7171

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief has been furnished via U.S. Mail to: The Office of the Attorney General, The Capitol, Suite PL-01, Tallahassee, Florida 32399-1050 on this 14 day of October 2010.

  
Jason P. Boudreaux  
DC #P21402  
South Bay Correctional Facility  
P.O. Box 7171  
South Bay, Florida 33493-7171

IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT, STATE OF FLORIDA

JASON PAUL BOUDREAUX,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

CASE NO. 1D10-2367

\_\_\_\_\_/

Opinion filed August 12, 2010.

An appeal from the Circuit Court for Escambia County.  
Frank L. Bell, Judge.

Jason Paul Boudreaux, pro se, Appellant.

Bill McCollum, Attorney General, and Anne C. Conley, Assistant Attorney  
General, Tallahassee, for Appellee.

THOMAS, J.

We affirm the order dismissing Appellant's motion for postconviction relief and amended motion for postconviction relief as untimely. Appellant filed a timely eleven-claim motion pursuant to Florida Rule of Criminal Procedure 3.850. The

postconviction court found that two of Appellant's claims were facially insufficient and, pursuant to Spera v. State, 971 So. 2d 754 (Fla. 2007), permitted Appellant to file an amended motion within 60 days. Spera requires that a movant be given a "reasonable opportunity to amend insufficient claims" and implies that the period not exceed 30 days. In the instant case, instead of filing a timely amended motion, Appellant moved for an extension of time to file his amendment, which was denied, and caused further delay by appealing to this court. When Appellant did file his amended motion, both the two-year window for rule 3.850 motions and the 60-day period given to amend his motion had passed, and the amended motion was therefore untimely filed. Furthermore, Appellant waived his arguments concerning his nine claims which were originally timely filed because he failed to specifically address these claims in his Initial Brief.

AFFIRMED.

ROBERTS and MARSTILLER, JJ., CONCUR.

DISTRICT COURT OF APPEAL, FIRST DISTRICT  
301 S. Martin Luther King, Jr. Blvd.  
Tallahassee, Florida 32399-1850  
Telephone No. (850) 488-6151

September 28, 2010

CASE NO.: 1D10-2367  
L.T. No. : 1705-CF-002770

Jason Paul Boudreaux

v.

State Of Florida

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Appellant / Petitioner(s),

Appellee / Respondent(s).

**BY ORDER OF THE COURT:**

Appellant's motion filed August 30, 2010, for rehearing is denied.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

Served:

Jason Paul Boudreaux

Anne C. Conley, A.A.G

Hon. Bill Mc Collum, A.G.

jm

  
\_\_\_\_\_  
JON S. WHEELER, CLERK

