

Third District Court of Appeal
State of Florida, July Term, A.D. 2008

Opinion filed January 7, 2009.
Not final until disposition of timely filed motion for rehearing.

No. 3D08-3097
Lower Tribunal No. 06-27546

Phillip Sanders,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal under Florida Rule of Appellate Procedure 9.141(b)(2) from the Circuit Court for Miami-Dade County, Orlando A. Prescott, Judge.

Phillip Sanders, in proper person.

Bill McCollum, Attorney General, for appellee.

Before COPE, RAMIREZ, and SALTER, JJ.

PER CURIAM.

This is an appeal of an order denying a motion for postconviction relief under Florida Rule of Criminal Procedure 3.850. Defendant-appellant Phillip Sanders alleged that his trial counsel was ineffective for advising him to reject a plea offer for a three-year mandatory minimum sentence. That offer was withdrawn and the defendant later accepted an offer for a ten-year mandatory minimum sentence.

After the defendant filed his motion, the Florida Supreme Court announced Morgan v. State, 991 So. 2d 835 (Fla. 2008). We agree with the State that as pled, the defendant's Rule 3.850 motion does not comply with Morgan. However, as defendant did not have the benefit of Morgan at the time he drafted his motion, the defendant may file an amended motion in compliance with Morgan, provided he does so within the ordinary two-year period from the date his judgment and sentence pursuant to the plea became final. See Spera v. State, 971 So. 2d 754 (Fla. 2007). We express no opinion on the possible merit of any such amended motion.

Affirmed.