

# Third District Court of Appeal

State of Florida, July Term, A.D. 2009

Opinion filed September 23, 2009.  
Not final until disposition of timely filed motion for rehearing.

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No. 3D09-1879  
Lower Tribunal No. 91-37997-B

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**John M. Fitzgerald,**  
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, Richard Feder, Judge.

John M. Fitzgerald, in proper person.

Bill McCollum, Attorney General, for appellee.

Before WELLS, SHEPHERD, and SUAREZ, JJ.

SHEPHERD, J.

John M. Fitzgerald appeals from the denial of his Florida Rule of Criminal Procedure 3.850 motion and from the trial court's May 3, 2007 order prohibiting

him from filing further pro se post-conviction motions. We affirm the denial of his Rule 3.850 motion because the motion is time barred. We are compelled to reverse the order prohibiting Fitzgerald from filing further pro se pleadings, however, as there is no indication in the record the trial court entered a show cause order before entering its order barring Fitzgerald from filing further pro se motions. On the contrary, the trial court sua sponte issued the order at the behest of the State, pursuant to its May 3, 2007 motion.

Because the trial court was required to provide Fitzgerald with notice of the intended sanction and an opportunity to respond thereto, we reverse the order prohibiting Fitzgerald from filing further pro se pleadings. See State v. Spencer, 751 So. 2d 47 (Fla. 1999); Morgan v. State, 983 So. 2d 1230 (Fla. 5th DCA 2008); Epps v. State, 941 So. 2d 1206 (Fla. 4th DCA 2006). On remand, should the trial court choose to pursue this sanction again, it first must provide Fitzgerald notice and an opportunity to show cause why the sanction should not be imposed. See Jordan v. State, 760 So. 2d 973 (Fla. 2d DCA 2000).

Affirmed in part, reversed in part, and case remanded with instructions.