

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JANUARY TERM 2009

DEMETRIS ENGLISH,

Appellant,

v.

Case No. 5D09-419

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed April 17, 2009

3.850 Appeal from the Circuit
Court for Volusia County,
James R. Clayton, Judge.

Demetris English, Jasper, pro se.

No Appearance for Appellee.

PER CURIAM.

Demetris English appeals the dismissal of his motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850. The trial court correctly dismissed the motion because it failed to include the required oath, see Anderson v. State, 627 So. 2d 1170 (Fla. 1993), but failed to allow English at least one opportunity to amend the pleading. Under most circumstances, this failure to allow an opportunity to amend would constitute a reversible abuse of discretion. Spera v. State, 971 So. 2d 754, 755 (Fla. 2007). However, English's own pleadings demonstrate the futility of amendment. English entered a plea and was sentenced on October 5, 2006. Thus, his judgment and sentence necessarily were final for rule 3.850 purposes on November 4,

2006. Because English did not file his motion until December 15, 2008,¹ the trial court properly dismissed the motion without leave to amend.

AFFIRMED.

SAWAYA, EVANDER and COHEN, JJ., concur.

¹ The certificate of service on the motion for postconviction relief is dated November 13, 2008. Even if that earlier date were utilized, the motion was untimely.