FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D2026-0332

SHAKEEL CHARLES,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Bay County.
Timothy Allen Register, Judge.

November 4, 2026

PER CURIAM.

AFFIRMED. *Daise v. State*, 379 So. 3d 603 (Fla. 1st DCA 2024).

NORDBY and LONG, JJ., concur; Winokur, J., concurs with opinion.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

WINOKUR, J., concurring.

Application of *Daise v. State*, 370 So. 3d 603 (Fla. 1st DCA 2024), leads to affirmance of the order below. However, as I indicated in *Owens v. State*, *Daise* interprets the current Florida Rules of Criminal Procedure 3.850(g) and (h)(2) in a manner that unjustifiably cuts off a postconviction movant's right to file a timely amended rule 3.850 motion. 401 So. 3d 585 (Fla. 1st DCA 2025) (Winokur, J., concurring). When a postconviction movant has been given sixty days to amend a legally insufficient motion pursuant to rules 3.850(g) and (h)(2) and fails to file an amended motion in that time, the court is free to enter a final, appealable order summarily denying the motion with prejudice, and any amended motion after that time would have to meet the standards of rule 3.850(j) for successive motions. But if the court has *not* entered a final, appealable order summarily denying the motion with prejudice at the time the movant files an amended motion, the amended motion should be considered if it is otherwise timely. *Daise*, as well as *Ivory v. State*, 159 So. 3d 197 (Fla. 4th DCA 2015), on which it is based, prematurely cuts off the two-year period in which a defendant may file a rule 3.850 motion. Rule 3.850 should be amended to clarify this well-settled rule.

Shakeel Charles, pro se, Appellant.

James Uthmeier, Attorney General, and Daren L. Shippy, Assistant Attorney General, Tallahassee, for Appellee.