

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

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

DARRYL DEMETRIUS DIXON,

Appellant,

v.

Case No. 5D20-1544

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed October 16, 2020

3.850 Appeal from the Circuit Court
for Orange County,
Bob Leblanc, Judge.

Darryl Demetrius Dixon, Wewahitchka, pro
se.

Ashley Moody, Attorney General,
Tallahassee, and Rebecca Rock
McGuigan, Assistant Attorney General,
Daytona Beach, for Appellee.

PER CURIAM.

Darryl Demetrius Dixon appeals the postconviction court's summary denial of his timely-filed Florida Rule of Criminal Procedure 3.850 motion for postconviction relief and accompanying memorandum of law. We affirm, without further discussion, the court's denial of Dixon's claim that it lacked subject matter jurisdiction to accept his negotiated plea to the violation of probation alleged against him.

The postconviction court, however, did not substantively address Dixon's separate claim of ineffective assistance of counsel that he raised in his memorandum of law, indicating, in a footnote in the order, that the memorandum "is not under oath." Because the court apparently determined that this claim was insufficiently pleaded, and as there is no indication in our record that Dixon has abused his right to amend his motion or cannot otherwise sufficiently plead this claim, we conclude that, under *Spera v. State*, 971 So. 2d 754, 761 (Fla. 2007), Dixon should be given at least one opportunity to amend his motion. See also Fla. R. Crim. P. 3.850(f)(2) (providing that if a motion filed under this rule is timely but, on its face, insufficiently pleaded, the court shall enter a nonfinal, nonappealable order allowing the defendant sixty days to amend the motion).

Accordingly, we reverse that portion of the denial order regarding Dixon's claim of ineffective assistance of counsel. We remand with directions that the postconviction court enter an order allowing Dixon sixty days to file a properly-sworn, sufficiently-pleaded amended rule 3.850 motion for postconviction relief regarding this specific claim.

AFFIRMED, in part; REVERSED, in part; REMANDED with directions.

EVANDER, C.J., LAMBERT and HARRIS, JJ., concur.