

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

SHIRLEY ROBINSON,

Appellant,

v.

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

CASE NO. 1D12-0734

STATE OF FLORIDA,

Appellee.

Opinion filed August 3, 2012.

An appeal from the Circuit Court for Suwannee County.
David W. Fina, Judge.

Shirley Robinson, pro se, Appellant.

Pamela Jo Bondi, Attorney General, and Anne C. Conley, Assistant Attorney
General, Tallahassee, for Appellee.

PER CURIAM.

The appellant filed a rule 3.850 motion raising two claims. In claim one she argues that section 893.13, Florida Statutes, is unconstitutional, based upon Shelton v. Secretary, Florida Department of Corrections, 802 F. Supp. 2d 1289

(M.D. Fla. July 27, 2011). We affirm the trial court's denial of this claim. See State v. Adkins, 37 Fla. L. Weekly S449 (Fla. July 12, 2012).

Regarding claim two the appellant argues that she should have been permitted to amend this claim, pursuant to Spera v. State, 971 So. 2d 754 (Fla. 2007), after the trial court found her argument that counsel acted ineffectively to be facially insufficient. In response to this Court's order issued pursuant to Toler v. State, 493 So. 2d 489 (Fla. 1st DCA 1986), the state has conceded that this portion of the order denying the claim due to facial insufficiency should be reversed and remanded to allow the appellant to amend the claim, if she can do so in good faith. See Spera.

We therefore affirm the court's denial of relief on claim one and reverse and remand claim two with direction that the lower court allow the appellant the opportunity to amend this claim to attempt to make it facially sufficient.

AFFIRMED IN PART, REVERSED AND REMANDED IN PART.

WOLF, DAVIS, and ROBERTS, JJ., CONCUR.