

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2007

JEVON FERGUSON,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D05-3749

[May 23, 2007]

PER CURIAM.

We affirm the trial court's summary denial of Ferguson's claims for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850, except that affirmance is without prejudice to appellant's right to file an amended motion in the trial court within thirty days of the issuance of this opinion, limited to grounds two and three (labeled four by Ferguson), addressing the requirement of availability of the witnesses, pursuant to *Nelson v. State*, 875 So. 2d 579, 583-584 (Fla. 2004) ("when a defendant fails to allege that a witness would have been available, the defendant should be granted leave to amend the motion within a specified time period").

Affirmed.

GUNTHER, FARMER and MAY, JJ., concur.

* * *

Appeal of order denying rule 3.850 motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Ana I. Gardiner, Judge; L.T. Case No. 01-3886 CF10A.

Richard L. Rosenbaum of the Law Offices of Richard L. Rosenbaum, Fort Lauderdale, for appellant.

No appearance required for appellee.

Not final until disposition of timely filed motion for rehearing