

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2008

LAURENT AJUSTE,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D07-3223

[February 6, 2008]

ON MOTION FOR REHEARING

PER CURIAM.

Laurent Ajuste appeals the summary denial of his rule 3.850 motion for postconviction relief. Within the pleading, Ajuste raised five grounds for relief. We summarily affirm the denial of grounds one, three, four, and five, as they are wholly without merit or conclusively refuted by the record. Further, we affirm the denial of subparts (c) and (d) in ground two for the same reason. We write to explain why the appellant is entitled to amend portions of ground two, in light of the supreme court's ruling in *Spera v. State*, 32 Fla. L. Weekly S680 (Fla. Nov. 1, 2007), *rehearing denied*, 2007 WL 4624016 (Fla. Dec. 26, 2007).

In ground two, subparts (a) and (b), Ajuste claims his attorney failed to adequately investigate an alibi witness. As written, the allegation of error is legally insufficient as it fails to allege the content of the alibi witness's testimony or specifically how this testimony would have aided the defense. While the lower court properly determined these allegations were legally insufficient, and likely relied upon our prior holding in *Spera v. State*, 923 So. 2d 543 (Fla. 4th DCA 2006) (en banc), *quashed by* 32 Fla. L. Weekly S680 (Fla. Nov. 1, 2007), *rehearing denied*, 2007 WL 4624016 (Fla. Dec. 26, 2007), it is now clear that the supreme court has determined the proper method of disposition is to strike these legally insufficient claims to allow for an amendment, if possible.

As such, we reverse, in part, the lower court's order denying relief. In the instant case, the denial on the merits effectively prevented any

amendment by Ajuste. Thus, we reverse and remand for the lower court to strike those portions of the motion with leave to amend within a specific period of time, as described in *Spera*.

Reversed and remanded with instructions.

SHAHOOD, C.J., WARNER and GROSS, 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. 02-10982 CF10A.

Laurent Ajuste, Doral, pro se.

Bill McCollum, Attorney General, Tallahassee, and Melanie Dale Surber, Assistant Attorney General, West Palm Beach, for appellee.