

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

BENJAMIN COMBS,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D07-4573

[June 18, 2008]

MAY, J.

The defendant appeals from an order summarily denying his motion for post-conviction relief, pursuant to Florida Rule of Criminal Procedure 3.850. We affirm in all respects, but one.

In ground 10, the defendant argues that his attorney provided ineffective assistance by failing to call certain witnesses. To allege a viable claim on this basis, the defendant must allege: 1) the identity of the witness; 2) the substance of the testimony; 3) an explanation of how the omission caused prejudice; and 4) an assertion that the witness was available to testify. *Nelson v. State*, 875 So. 2d 579, 582-84 (Fla. 2004). In his motion, the defendant alleged two of the four requirements. While this rendered the motion insufficient, the defendant must be given an opportunity to correct this insufficiency. *See Spera v. State*, 971 So. 2d 754, 761 (Fla. 2007).

We therefore reverse and remand with directions that the order denying the motion be without prejudice to allow the defendant to amend ground 10.

Affirmed in part; Reversed in part and Remanded.

POLEN, J., concurs.

FARMER, J., dissents without opinion.

* * *

Appeal of order denying rule 3.850 motion from the Circuit Court for

the Seventeenth Judicial Circuit, Broward County; Joel T. Lazarus, Judge; L.T. Case No. 03-7132 CF10A.

Benjamin Combs, Florida City, pro se.

Bill McCollum, Attorney General, Tallahassee, and Sue-Ellen Kenny, Assistant Attorney General, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing