

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

**MARCUS GASKIN,**  
Appellant,

v.

**STATE OF FLORIDA,**  
Appellee.

No. 4D07-5102

[April 9, 2008]

PER CURIAM.

Marcus Gaskin appeals the summary denial of his motion for post-conviction relief. We affirm as to ground three, which we conclude cannot be made legally sufficient. *See Sanders v. State*, 946 So. 2d 953 (Fla. 2006). We reverse the summary denial of grounds one and two and direct the trial court on remand to strike those two grounds as legally insufficient and allow Gaskin to refile them, if he can do so in good faith, within a short amount of time. *See Spera v. State*, 971 So. 2d 754 (Fla. 2007).

*Affirmed in part, Reversed in part, and Remanded.*

SHAHOOD, C.J., and STONE, J., concur.  
FARMER, J., concurs specially with opinion.

FARMER, J., concurring specially.

I agree that defendant should be allowed to amend grounds one and two. They are legally insufficient because, as phrased, they do not appear to indicate a probability that the outcome would have been different with the precise testimony the two witnesses were said to have been able to give.

\* \* \*

Appeal of order denying rule 3.850 motion from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Krista Marx, Judge; L.T. Case No. 2003CF014582AXX.

Marcus Gaskin, Moore Haven, 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***