

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

EDWIN S. ZARR,)	
)	
Appellant,)	
)	
v.)	Case No. 2D09-4240
)	
STATE OF FLORIDA,)	
)	
Appellee.)	
_____)	

Opinion filed February 11, 2011.

Appeal from the Circuit Court for Pinellas
County, Richard Luce and Thane Covert,
Judges.

Edwin S. Zarr, pro se.

Pamela Jo Bondi, Attorney General,
Tallahassee, and Susan M. Shanahan,
Assistant Attorney General, Tampa, for
Appellee.

NORTHCUTT, Judge.

Edwin Zarr challenges the postconviction court's denial of his motion filed pursuant to Florida Rule of Criminal Procedure 3.850. We affirm the court's decision in all respects except one: the denial of Zarr's ground two, in which he claimed his

counsel was ineffective for failing to object to an allegedly improper and nonstandard jury instruction. Relying on State v. Bouchard, 922 So. 2d 424 (Fla. 2d DCA 2006), the court denied the claim because Zarr failed to show the prejudicial effect of the instruction on the outcome at trial; the motion claimed prejudice based only on counsel's failure to preserve the issue for appellate review. Zarr contends he should have been permitted to amend his claim and we agree. See Spera v. State, 971 So. 2d 754 (Fla. 2007). We therefore reverse the denial of ground two of Zarr's motion and remand with directions that he be given an opportunity to amend this claim.

Affirmed in part, reversed in part, and remanded.

SILBERMAN and VILLANTI, JJ., Concur.