

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

EMMANUEL JOEL BREADON,

Appellant,

v.

Case No. 5D16-931

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed July 22, 2016

3.850 Appeal from the Circuit
Court for Marion County,
Jonathan D. Ohlman, Judge.

Patrick Michael Megaro, of Appeals Law
Group, P.A., Orlando, for Appellant.

No Appearance for Appellee.

PER CURIAM.

Emmanuel Breadon appeals the summary denial of his Florida Rule of Criminal Procedure 3.850 motion for post-conviction relief. We affirm, except as to the claim that trial counsel was ineffective by failing to explore and/or raise an insanity defense. The trial court correctly found that Breadon had failed to allege that he was, in fact, insane at the time of the offense. See *Luckey v. State*, 979 So. 2d 353, 354 (Fla. 5th DCA 2008).

However, rather than summarily denying the claim because of its facial insufficiency, the trial court should have afforded Breadon the opportunity to amend. *Id.* at 355; see also *Spera v. State*, 971 So. 2d 754 (Fla. 2007).

AFFIRMED, in part; REVERSED, in part; and REMANDED.

TORPY, EVANDER and WALLIS, JJ., concur.