

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

JIMMY ESPINO,

Appellant,

v.

Case No. 5D19-3361

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed July 2, 2020

3.850 Appeal from the Circuit
Court for Osceola County,
Greg A. Tynan, Judge.

Jimmy Espino, Miami, pro se.

Ashley Moody, Attorney General,
Tallahassee, and Marjorie Vincent-Tripp,
Assistant Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

Jimmy Espino appeals the postconviction court's denial of his Florida Rule of Criminal Procedure 3.850 motion for postconviction relief. The court summarily denied grounds one, two, four, and six of Espino's motion and denied grounds three and five, as well as Espino's cumulative error claim raised in ground seven, following an evidentiary hearing.

We affirm, without further discussion, the court's denial of Espino's motion, except as to ground four. We accept the State's concession¹ that the court erred in not providing Espino with an opportunity to amend this ground to assert that his trial counsel was ineffective for failing to file a motion to suppress certain evidence. Accordingly, we reverse on ground four. See Fla. R. Crim. P. 3.850(f)(3); *Spera v. State*, 971 So. 2d 754, 762 (Fla. 2007). Espino shall have sixty days following the issuance of our mandate to amend this claim, if he can do so in good faith. The postconviction court shall treat the amended motion as having been timely filed under rule 3.850(b)(2).

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

LAMBERT, EDWARDS, and EISNAUGLE, JJ., concur.

¹ We note that the State also suggested in its brief that remand was appropriate on grounds one and six. We disagree, and thus do not accept the State's concessions.