

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

MARY QUEEN,

Appellant,

v.

Case No. 5D21-474

STATE OF FLORIDA,

Appellee.

Opinion filed July 16, 2021

3.850 Appeal from the Circuit Court
for Orange County,
Elaine A. Barbour, Judge.

Mary Queen, Ocala, pro se.

Ashley Moody, Attorney General,
Tallahassee, and Douglas T. Squire,
Assistant Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

Mary Helen Queen appeals from the summary denial of her amended Florida Rule of Criminal Procedure 3.850 motion for postconviction relief. As to the initial motion, the postconviction court found that all grounds were facially insufficient,

and provided Appellant one opportunity to replead in an amended motion. We find that the trial court correctly denied grounds 1, 4, 5, 6, 7, and 8 as facially insufficient; thus, we affirm as to those.

We find that Grounds 2 and 3 were facially sufficient. In its order denying them, the trial court failed to attach documents conclusively refuting the allegations therein.¹ Ground 9 was a cumulative error claim which cannot be ruled on until Grounds 2 and 3 have been properly resolved. Accordingly, we reverse and remand for an evidentiary hearing or attachment of the portions of the record conclusively refuting Grounds 2 and 3 and for subsequent consideration of and a ruling on Ground 9.

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

EVANDER, EDWARDS and SASSO, JJ., concur.

¹ The defendant bears the burden of establishing a prima facie case based upon a legally valid claim. Mere conclusory allegations are not sufficient to meet this burden. *See Kennedy v. State*, 547 So. 2d 912 (Fla. 1989). However, in cases where there has been no evidentiary hearing, we must accept the factual allegations made by the defendant to the extent that they are not refuted by the record. *See Peede v. State*, 748 So. 2d 253 (Fla. 1999); *Valle v. State*, 705 So. 2d 1331 (Fla. 1997). We must examine each claim to determine if it is legally sufficient, and, if so, determine whether or not the claim is refuted by the record.

Freeman v. State, 761 So. 2d 1055, 1061 (Fla. 2000).