

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

AMBER MALTESE,

Appellant,

v.

Case No. 5D21-927
LT Case No. 05-2015-CF-025866

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed October 1, 2021

3.850 Appeal from the Circuit
Court for Brevard County,
Tessa Ballou, Judge.

Amber Maltese, Ocala, pro se.

No Appearance for Appellee.

HARRIS, J.

Amber Maltese appeals an order summarily denying her pro se motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850. Maltese raised six claims for postconviction relief, including a claim of cumulative error. We affirm without further discussion the summary denial of

all claims, with the exception of claim three. As to that claim, because we find it insufficiently pled, we reverse the order in part and remand to allow Maltese to amend.

In claim three, Maltese argued that her trial counsel was ineffective for failing to present a viable defense but did not indicate the specific defense that counsel could have raised. While Maltese's claim as drafted is legally insufficient, it is not apparent from the record that the defect cannot be corrected. Because she has not previously sought or been given leave to amend her motion, and because the pleading deficiency in claim three is correctable, Maltese should have been given at least one opportunity to amend her claim. Lamb v. State, 202 So. 3d 118 (Fla. 5th DCA 2016).

We therefore reverse the summary denial of claim three and remand with directions that the postconviction court provide Maltese with sixty days to amend this claim if, in good faith, she can do so.

AFFIRMED in part; REVERSED in part; REMANDED.

EISNAUGLE and WOZNIAK, JJ., concur.