

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

JANUARY TERM 2011

HECTOR L. RIVERA,

Appellant,

v.

Case No. 5D10-4394

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed March 18, 2011

3.850 Appeal from the Circuit Court
for Marion County,
Edward L. Scott, Judge.

Hector L. Rivera, Raiford, pro se.

Pamela Jo Bondi, Attorney General,
Tallahassee, and Megan Saillant,
Assistant Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

The trial court summarily denied Appellant's motion without attaching records or providing reasons. Perhaps the trial court believed the motion was successive because of the way Appellant labeled his motion. It is neither successive nor untimely. It is facially insufficient, however, but Appellant should have been given an opportunity to amend the motion. *Spera v. State*, 971 So. 2d 754 (Fla. 2007). The State properly concedes error.

REVERSED AND REMANDED.

SAWAYA, TORPY and LAWSON, JJ., concur.