

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

DENARD JONES,

Appellant,

v.

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

CASE NO. 1D13-0828

STATE OF FLORIDA,

Appellee.

Opinion filed August 28, 2013.

An appeal from the Circuit Court for Duval County.
Mallory D. Cooper, Judge.

Denard Jones, pro se, Appellant.

Pamela Jo Bondi, Attorney General, and Jay Kubica and Wes Paxson, III,
Assistant Attorneys General, Tallahassee, for Appellee.

PER CURIAM.

The appellant appeals the summary denial of his motion for postconviction relief filed pursuant to rule 3.850. We affirm the denial of all but one of the appellant's claims. In ground three, the appellant alleges that counsel was ineffective for failing to object when the trial court failed to read the "Stand Your Ground" jury instruction stating that there was no duty to retreat. The trial court appears to have denied the claim as facially insufficient. However, the appellant

should have been given an opportunity to amend pursuant to Spera v. State, 971 So. 2d 754 (Fla. 2007) (trial court must give defendant one opportunity to amend facially deficient claims). Accordingly, we reverse and remand the denial of ground three with directions for the trial court to give the appellant a reasonable amount of time to amend the facially insufficient claim. If the appellant files a facially sufficient claim the trial court must attach portions of the record conclusively refuting the claim or hold an evidentiary hearing on the claim.

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

CLARK, ROWE, and SWANSON, JJ., CONCUR.