

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2008

WAYNE MYERS,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D08-1139

September 17, 2008

PER CURIAM.

Wayne Myers appeals the trial court's order summarily denying his motion for post-conviction relief, raising four claims of ineffective assistance of trial counsel. We reverse and remand for further proceedings as to ground three, and affirm without discussion as to the other three grounds for relief.

The trial court recognized that ground three was facially insufficient. In it, Myers claimed his counsel was ineffective for failing to investigate, depose, or subpoena four named witnesses who, he alleged, were available to testify in corroboration of his version of events surrounding the charged offense. He alleged he requested that counsel depose, investigate, and subpoena them, and claimed their testimony would have conflicted with that of the state's witnesses. However, he failed to state with particularity the substance of the expected testimony.

We reverse the trial court's summary denial of ground three only and remand to the trial court to permit Myers to re-allege this ground in a facially sufficient motion, pursuant to *Spera v. State*, 971 So. 2d 754 (Fla. 2007).

Affirmed in part; reversed in part and remanded.

STONE, POLEN and MAY, JJ., concur.

* * *

Appeal of order denying rule 3.850 motion from the Circuit Court for the Nineteenth Judicial Circuit, Martin County; Robert E. Belanger, Judge; L.T. Case No. 432002CF000918A.

Wayne Myers, Malone, pro se.

Bill McCollum, Attorney General, Tallahassee, and Katherine Y. McIntire, Assistant Attorney General, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing.