

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2009

MARTIN VOLEK,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D08-1903

[November 12, 2009]

PER CURIAM.

Martin Volek seeks review of orders that denied his motion for postconviction relief. We reverse and remand for further proceedings on one issue.

Volek alleged below that his counsel was ineffective for failing to inform him of the possible defenses of insanity and involuntary intoxication based on his use of prescription antipsychotic medication. However, Volek did not allege any facts demonstrating how mere use of the medication entitled him to either of those defenses. Thus, the circuit court found the claim legally insufficient.

Consequently, Volek should be given at least one opportunity to amend his claim on this issue. *Spera v. State*, 971 So. 2d 754 (Fla. 2007). Pursuant to *Spera*, we reverse the circuit court's summary denial on this issue only and remand for the court to permit the amendment. We affirm the denial of all other claims.

Affirmed in part, reversed in part, and remanded.

POLEN, GERBER and LEVINE, JJ., concur.

* * *

Appeal from the Circuit Court for the Nineteenth Judicial Circuit, Indian River County; Dan L. Vaughn, Judge; L.T. Case Nos. 03-255 CF and 03-812 CF.

Martin Volek, Avon Park, pro se.

Bill McCollum, Attorney General, Tallahassee, and Laura Fisher Zibura, Assistant Attorney General, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing.