

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

ROBERT GREENBERG,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D09-216

[November 4, 2009]

PER CURIAM.

Robert Greenberg appeals the summary denial of his rule 3.850 motion for post-conviction relief. In his motion, Greenberg alleged several claims of ineffective assistance of counsel. He also alleged that his plea was involuntary because he was suffering from depression and he was under the influence of psychiatric and pain medications that prevented him from understanding the plea and the defenses available if he proceeded to trial. The trial court denied Greenberg's motion without ordering a response from the state, attaching any records, or providing any explanation. *See, e.g., McClendon v. State*, 862 So. 2d 945 (Fla. 4th DCA 2004).

On appeal, the state argues that the claims are facially insufficient or refuted by the record, citing documents and portions of the plea transcript which are not part of the record on appeal in this case. Fla. R. App. P. 9.141(b)(2)(A).

There are no records attached to the trial court's order to refute the claims, and the trial court failed to give Greenberg an opportunity to amend facially insufficient claims pursuant to *Spera v. State*, 971 So. 2d 754 (Fla. 2007). Because the trial court's order does not comply with the procedure in rule 3.850(d) or *Spera*, we reverse and remand for further proceedings.

Reversed and Remanded for further proceedings.

GROSS, C.J., POLEN and TAYLOR, JJ., concur.

* * *

Appeal of order denying rule 3.850 motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Andrew L. Siegel, Judge; L.T. Case No. 03-10623 CF10A.

Robert Greenberg, Sneads, 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.