

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

ANTHONY RIOS,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D09-340

[August 19, 2009]

PER CURIAM.

We reverse the summary denial of one point in Anthony Rios's rule 3.850 motion and remand for further review following Rios's amendment of his motion. Rios pled to charges of attempted armed robbery. Rios alleges affirmative misadvice of counsel with respect to counsel's representation that there was insufficient evidence to impeach the victim's anticipated testimony that she was able to identify Rios as the perpetrator. He claims that had he known of the weakness of the state's case, he would not have pled to the crime. While he references conflict between the victim's two pretrial statements, his motion failed to detail the substance of the first statement, the 911 call and the identification given.

Consequently, Rios should have the opportunity to file an amended motion to cure this defect. *See Spera v. State*, 971 So. 2d 754 (Fla. 2007). Thereafter, the trial court can revisit the claim. *Lynch v. State*, 2 So. 3d 47, 57 (Fla. 2008); *Grosvenor v. State*, 874 So. 2d 1176 (Fla. 2004); *see also Hill v. Lockhart*, 474 U.S. 52 (1985). We affirm the summary denial of the remaining claims.

Affirmed in Part; Reversed in Part and Remanded.

WARNER, STEVENSON and HAZOURI, JJ., concur.

* * *

Appeal of order denying rule 3.850 motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Martin J. Bidwill, Judge; L.T. Case No. 06-16974 CF10.

Anthony Rios, Miami, pro se.

Bill McCollum, Attorney General, Tallahassee, and Myra J. Fried, Assistant Attorney General, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing.