

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2011

ROSHAN RAMKHALAWAN,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D09-4765

[January 26, 2011]

PER CURIAM.

Appellant appeals a circuit court order summarily denying his motion for post-conviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850 for lack of a valid oath. This was error because the unnotarized oath did comport with the requirements of rule 3.850 and the model form of rule 3.987, Florida Rule of Criminal Procedure.

The trial court did not consider appellant's five claims of ineffective assistance of trial counsel on their merit. We find that ground four, ineffective assistance of trial counsel for failure to object to and preserve for appeal the issue of the trial court's interruption of defense counsel's closing arguments on reasonable doubt, to be largely repetitive of one of the claims he raised and which was rejected on direct appeal. Also, we conclude that the claim is without merit as a matter of law. We therefore affirm the trial court's summary denial of that claim under the tipsy coachman rule. *See S&I Invs. v. Payless Flea Mkt., Inc.*, 36 So. 3d 909, 913-14 n.3 (Fla. 4th DCA 2010).

As for the remaining claims, the state conceded that appellant had the right to have leave to amend claim one under *Spera v. State*, 971 So. 2d 754 (Fla. 2007). We find this to be the case for claims two, three and five as well. Therefore, we reverse and remand to the trial court for further proceedings consistent with this opinion as to claims one, two, three and five, and affirm the circuit court's summary denial of claim four.

Affirmed in part, reversed in part and remanded.

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

* * *

Appeal of order denying rule 3.850 motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Carlos A. Rodriguez, Judge; L.T. Case No. 04-8222 CF10A.

Roshan Ramkhalawan, Belle Glade, pro se.

Pamela Jo Bondi, 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.