

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

HECTOR LUIS CAMERON OSORIO,)	
)	
Appellant,)	
)	
v.)	Case No. 2D16-5023
)	
STATE OF FLORIDA,)	
)	
Appellee.)	
_____)	

Opinion filed December 27, 2017.

Appeal pursuant to Fla. R. App. P.
9.141(b)(2) from the Circuit Court for Lee
County; Ramiro Manalich, Judge.

Hector Osorio, pro se.

MORRIS, Judge.

Hector Luis Cameron Osorio appeals an order denying his amended motion for postconviction relief, which he filed under Florida Rule of Criminal Procedure 3.850. Because the postconviction court erred in summarily denying ground two as facially insufficient without first giving Mr. Osorio an opportunity to amend, we reverse as to that ground and remand for the court to strike it with leave to amend. We also reverse the denial of ground seven, which alleges a claim of cumulative error, for the court to reconsider after it resolves ground two. We affirm in all other respects.

Mr. Osorio filed a timely motion for postconviction relief, raising six claims of ineffective assistance of trial counsel and one claim of cumulative error. The postconviction court initially struck grounds one and three as facially insufficient with leave to file an amended motion alleging facially sufficient claims. The court's order warned that "the failure to timely amend the claims stricken in this order will may [sic] result in denial of these claims with prejudice." Thereafter, Mr. Osorio filed an amended motion for postconviction relief. After receiving a response from the State, the postconviction court entered a final order denying Mr. Osorio's motion.

In denying relief on ground two, the postconviction court found it to be facially insufficient. Noting that it had already given Mr. Osorio leave to amend, the court denied relief on claim two. However, the court did not find ground two to be facially insufficient when it directed Mr. Osorio to file an amended motion as to grounds one and three. Thus when the court issued its prior order, it did not give Mr. Osorio a meaningful opportunity to amend ground two to state a facially sufficient claim because Mr. Osorio was not on notice that the claim was facially insufficient.

If [a] motion [for postconviction relief] sufficiently states one or more claims for relief and it also attempts but fails to state additional claims, and the motion is timely filed under this rule, the court shall enter a nonappealable order granting the defendant 60 days to amend the motion to sufficiently state additional claims for relief. Any claim for which the insufficiency has not been cured within the time allowed for such amendment shall be summarily denied in an order that is a nonfinal, nonappealable order, which may be reviewed when a final, appealable order is entered.

Fla. R. Crim. P. 3.850(f)(3). Nothing in the postconviction record demonstrates that Mr. Osorio could not in good faith amend ground two to allege a facially sufficient claim for relief. See Leonardi v. State, 199 So. 3d 1075, 1076 (Fla. 5th DCA 2016) ("A defendant

who has filed a legally insufficient rule 3.850 motion must be given at least one opportunity to correct the deficiency, unless it is apparent that the defect cannot be corrected."). Accordingly, we reverse the summary denial of ground two and remand for the postconviction court to strike it with leave to amend to state a facially sufficient claim.

In ground seven, Mr. Osorio argued that he was entitled to postconviction relief based upon the cumulative effect of trial counsel's errors. Because we are reversing and remanding ground two for further proceedings, we also reverse ground seven. The postconviction court must reconsider Mr. Osorio's cumulative error claim after it has resolved ground two. See Flint v. State, 84 So. 3d 469, 471 (Fla. 2d DCA 2012).

Because the postconviction court erred in summarily denying ground two as facially insufficient without first giving Mr. Osorio an opportunity to amend, we reverse the order on review as to that ground and remand for the court to strike it with leave to amend. In addition, because ground seven alleged a claim of cumulative error, we reverse as to that ground and remand for the court to reconsider it after it resolves ground two. We affirm in all other respects.

Affirmed in part, reversed in part, and remanded.

NORTHCUTT and KHOUZAM, JJ., Concur.