

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

TANNIS PHILLIPS)	
)	
Appellant,)	
)	
v.)	Case No. 2D07-3645
)	
STATE OF FLORIDA)	
)	
Appellee.)	
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Opinion filed March 14, 2008.

Appeal pursuant to Fla. R.
App. P. 9.141(b)(2) from the
Circuit Court for Sarasota
County; Frederic A. DeFuria, Judge.

CANADY, Judge.

Tannis Phillips appeals the postconviction court's order summarily denying his motions filed under Florida Rules of Criminal Procedure 3.850 and 3.800(c). We dismiss Mr. Phillips' appeal of the order denying his motion to reduce or mitigate sentence pursuant to rule 3.800(c), an order which is not appealable. See Lancaster v. State, 821 So. 2d 416, 417 (Fla. 2d DCA 2002). We affirm without comment the postconviction court's denial of claims five, six, and seven in Mr. Phillips' rule 3.850 motion.

In summarily denying as facially insufficient claims one through four, however, the postconviction court was without the benefit of Spera v. State, 971 So. 2d 754 (Fla. 2007), in which the Florida Supreme Court held that "in dismissing a first postconviction motion based on a pleading deficiency, a court abuses its discretion in failing to allow the defendant at least one opportunity to correct the deficiency unless it cannot be corrected." Id. at 755; see also Bryant v. State, 901 So. 2d 810, 819 (Fla. 2005) ("[D]ue process demands that some reasonable opportunity be given to defendants who make good faith efforts to file their claims in a timely manner and whose failure to comply with the rule is more a matter of form than substance.").

There is nothing in the limited record before this court to demonstrate that Mr. Phillips could not sufficiently correct the deficiencies in pleading if given the opportunity to amend his claim. Accordingly, we reverse and remand for further proceedings in accordance with Spera.

Dismissed in part, affirmed in part, reversed in part, and remanded.

DAVIS and VILLANTI, JJ., Concur.