



In ground 3(a) of his motion Philip alleged that his counsel was ineffective for failing to depose the State's witnesses to find out what they would say at trial, in order to better prepare for trial. He contended that if his attorney had deposed the State's witnesses, he may have found some impeachment information and would have known how the witnesses would have responded to questions at trial. The trial court denied this claim because it "failed to allege specific omissions due to counsel's failure to depose State's witnesses." We find no error in the postconviction court's summary denial of ground 3(a) because it was facially insufficient. However, under Spera the court should have given Philip an opportunity to amend his motion to state a facially sufficient claim.<sup>1</sup> 971 So. 2d at 761 (holding that "when a defendant's initial rule 3.850 motion for postconviction relief is determined to be legally insufficient for failure to meet either the rule's or other pleading requirements, the trial court abuses its discretion when it fails to allow the defendant at least one opportunity to amend the motion" within a reasonable period of time not to exceed thirty days). Accordingly, we reverse the denial of ground 3(a) and remand for the court to strike the claim with leave to amend within a specific period of time not to exceed thirty days, if Philip can do so in good faith. If Philip files an amended motion on this ground, the postconviction court may again summarily deny the claim if it is once again facially insufficient or if the court attaches portions of the record conclusively refuting his allegations.

Affirmed in part, reversed in part, and remanded with directions.

ALTENBERND and FULMER, JJ., Concur.

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<sup>1</sup>We recognize that the postconviction court did not have the benefit of the Spera decision when it issued the order denying this claim on June 22, 2007.