

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

KRISTIAN HARRIS,)	
)	
Appellant,)	
)	
v.)	Case No. 2D08-643
)	
STATE OF FLORIDA,)	
)	
Appellee.)	
_____)	

Opinion filed December 12, 2008.

Appeal pursuant to Fla. R. App. P.
9.141(b)(2) from the Circuit Court for
Polk County; Dennis P. Maloney and
Keith P. Spoto, Judges.

ALTENBERND, Judge.

Kristian Harris appeals an order summarily denying his motion for post-conviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850. Harris's pro se motion provided detailed facts and alleged eight grounds of ineffective assistance of counsel. On the theories he alleged, Harris's eight claims were properly summarily denied. However, it is apparent from his factual allegations that his claim should be alleged as a claim of newly-discovered evidence. See Brantley v. State, 912 So. 2d 342 (Fla. 3d DCA 2005); cf. Totta v. State, 740 So. 2d 57 (Fla. 4th DCA 1999). This was Harris's first motion and he has not yet been provided the opportunity to amend his motion. We therefore affirm the order summarily denying the motion but without

prejudice to Harris filing a motion for postconviction relief alleging newly-discovered evidence, which motion shall not be deemed successive. Harris should file the motion with the circuit court within sixty days of the issuance of this court's mandate.

Affirmed.

NORTHCUTT, C.J., and LaROSE, J., Concur.