

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

ERIC WILSON,)
)
 Appellant,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Appellee.)
 _____)

Case No. 2D12-3050

Opinion filed August 9, 2013.

Appeal pursuant to Fla. R. App. P.
9.141(b)(2) from the Circuit Court for
Pasco County; Susan Gardner, Judge.

Eric Wilson, pro se.

SLEET, Judge.

Eric Wilson appeals the order summarily denying his motion filed under Florida Rule of Criminal Procedure 3.850. We affirm in all respects except with regard to Wilson's claim that trial counsel was ineffective for failing to investigate and depose James Thompson and Bruce Warren, who were listed in the defense notice of alibi. Wilson's claim was facially insufficient because it failed to allege that these witnesses were available to testify. See Nelson v. State, 875 So. 2d 579, 584 (Fla. 2004) (holding that to establish prejudice from counsel's failure to call a witness, a movant must allege that the witness would have been available to testify).

Accordingly, we reverse the postconviction court's order insofar as it denied this claim and remand with directions for the court to allow Wilson thirty days to amend this claim if he can do so in good faith. See Spera v. State, 971 So. 2d 754, 762 (Fla. 2007). The order is affirmed in all other respects.

Affirmed in part, reversed in part, and remanded.

VILLANTI and WALLACE, JJ., Concur.