

# **Third District Court of Appeal**

## **State of Florida**

Opinion filed August 7, 2019.  
Not final until disposition of timely filed motion for rehearing.

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No. 3D19-0076  
Lower Tribunal No. 14-6604

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**Leon McCray,**  
Appellant,

vs.

**The State of Florida,**  
Appellee.

An Appeal under Florida Rule of Appellate Procedure 9.141(b)(2) from the Circuit Court for Miami-Dade County, Veronica A. Diaz, Judge.

Leon McCray, in proper person.

Ashley Moody, Attorney General, and Magaly Rodriguez, Assistant Attorney General, for appellee.

Before SCALES, LINDSEY and LOBREE, JJ.

PER CURIAM.

Leon McCray appeals the summary denial of his initial Florida Rule of Criminal Procedure 3.850 postconviction motion alleging ineffective assistance of

trial counsel. McCray argues that the trial court erred in not giving him leave to amend his initial rule 3.850 motion after the trial court denied the motion as facially insufficient. We agree. Where, as here, the trial court denies a timely rule 3.850 motion as facially insufficient, “the court shall enter a nonfinal, nonappealable order allowing the defendant 60 days to amend the motion.” Fla. R. Crim. P. 3.850(f)(2); see also Spera v. State, 971 So. 2d 754, 761 (Fla. 2007) (“[W]hen 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.”). Accordingly, we reverse the order under review to allow McCray to file a facially sufficient rule 3.850 motion<sup>1</sup> within sixty days of the issuance of this Court’s mandate.

Reversed and remanded for further proceedings.

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<sup>1</sup> The trial court docket reflects that McCray attempted to amend his initial rule 3.850 motion to assert additional grounds for ineffective assistance of trial counsel, but that the trial court entered the subject order on review prior to McCray’s motion to supplement being forwarded to the circuit court and docketed in the record. On remand, McCray may include these additional grounds in his amended motion, provided they are facially sufficient.