

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JULY TERM 2008

JARRAD D. WHITAKER,

Appellant,

v.

Case No. 5D08-3276

STATE OF FLORIDA,

Appellee.

/

Opinion filed October 24, 2008

3.850 Appeal from the Circuit
Court for Orange County,
Bob Leblanc, Judge.

Jarrad D. Whitaker, Jasper, Pro Se.

No Appearance for Appellee.

ORFINGER, J.

Jarrad D. Whitaker appeals the trial court's denial of his "Motion for Post Conviction Relief." We reverse and remand.

In his one-paragraph motion, Whitaker only alleges that "no appeal was filed do [sic] to counsel['s] premature withdrawal." He then sought a "belated direct appeal with appointment of counsel." The trial court treated the motion as one filed pursuant to Florida Rule of Criminal Procedure 3.850 and summarily denied the motion.

Whitaker's motion is so vague that we, like the trial court, cannot discern the relief requested or the basis for such relief. If Whitaker is attempting to obtain a belated

appeal and is not seeking relief based on an allegation of ineffective assistance of counsel, he should follow the procedure set forth in Florida Rule of Appellate Procedure 9.141(c). If Whitaker intended to seek postconviction relief based on ineffective assistance of counsel, his motion was facially inadequate. However, under Spera v. State, 971 So. 2d 754 (Fla. 2007), he should have been given a reasonable opportunity to amend his motion to state all rule 3.850 claims that he may have, so as not to run afoul of the proscription against successiveness.

We reverse and remand with instructions that the motion be stricken in accordance with Spera and that Whitaker be given leave to amend if he can do so. We do so without prejudice so that Whitaker can file a proper petition for belated appeal in this Court if he so chooses.

REVERSED and REMANDED.

PALMER, C.J. and SAWAYA, J., concur.