IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT JANUARY TERM 2009

LANCE T. HARTWELL,

Appellant,

v. Case No. 5D09-1161

STATE OF FLORIDA,

Appellee.

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Opinion filed June 26, 2009.

3.850 Appeal from the Circuit Court
for Putnam County,
Edward Hedstrom, Judge.

Lance T. Hartwell, Bonifay, pro se.

Bill McCollum, Attorney General,
Tallahassee, and Rebecca Rock
McGuigan, Assistant Attorney General,
Daytona Beach, for Appellee.

COBB, W., Senior Judge.

Appellant, Lance T. Hartwell, was convicted and sentenced in four separate cases after all were consolidated for a single jury trial. Hartwell makes several claims for postconviction relief. All but two of them are procedurally barred because they could or should have been raised on direct appeal. *See Smith v. State*, 445 So. 2d 323 (Fla. 1983). Hartwell's claims that the State did not provide notice of its intent to habitualize him or proper proof of his predicate offenses to support habitualization require reversal.

To refute Hartwell's claim regarding the lack of notice of habitualization, the trial court attached to its order a notice of intent to habitualize in a different case than the one in which Hartwell was habitualized. The State concedes that this does not conclusively refute Hartwell's claim. While lack of written notice of habitualization can be harmless error if the defendant had actual notice, whether Hartwell had actual notice would have to be determined in an evidentiary hearing. *See Massey v. State*, 609 So. 2d 598, 600 (Fla. 1992). Therefore, we reverse and remand for either attachment of those portions of the record conclusively refuting Hartwell's claim or an evidentiary hearing.

Hartwell also alleges that the State did not provide certified copies of his predicate convictions to prove that he qualified to be sentenced as a habitual offender. Hartwell's claim that the State did not prove his prior convictions at sentencing is facially insufficient because Hartwell does not deny that he qualifies to be sentenced as a habitual offender. *See Sampson v. State*, 832 So. 2d 251 (Fla. 5th DCA 2002). Instead of striking the claim and allowing an amendment as is required by *Spera v. State*, 971 So. 2d 754 (Fla. 2007), the trial court held that Hartwell's reply to the State's response *was* his amendment to that claim and denied it. The trial court's denial without affording Hartwell an opportunity to amend was error under *Spera*. We therefore reverse and remand to allow Hartwell to amend this facially insufficient claim within a reasonable time set by the trial court.

We affirm the denial of postconviction relief in all other respects.

AFFIRMED in part; REVERSED in part; and REMANDED

ORFINGER and LAWSON, JJ., concur.