

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

JULY TERM 2008

THOMAS L. MIELE,

Appellant,

v.

Case No. 5D07-3864

STATE OF FLORIDA,

Appellee.

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Opinion filed September 26, 2008

3.850 Appeal from the Circuit Court
for Brevard County,
Meryl L. Allawas, Judge.

James S. Purdy, Public Defender, and
Rebecca M. Becker, Assistant Public
Defender, Daytona Beach, for Appellant.

Bill McCollum, Attorney General,
Tallahassee, and Carmen F. Corrente,
Assistant Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

Thomas L. Miele appeals the denial of his motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850. We affirm without discussion the trial court's denial of Miele's second claim. However, we reverse the trial court's summary denial of Miele's claims one and three. Although we agree that the claims are

facially insufficient, under Spera v. State, 971 So. 2d 754 (Fla. 2007), Miele should have been given the opportunity to amend the insufficient claims.

AFFIRMED IN PART; REVERSED IN PART and REMANDED.

PLEUS, ORFINGER and TORPY, JJ., concur.