

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CRIMINAL): AC
CASE NO. 50-2019-AP-000005-XXXX-MB
L.T. NO. 50-2018-CT-001608-XXXX-NB

WILDEN ORTIZ MAZARIEGOS,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

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Opinion filed: October 14, 2020

Appeal from the County Court in and for Palm Beach County;
Judge Frank Castor.

For Appellant: Wilden L. Ortiz-Mazariegos, *pro se*
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For Appellee: Samantha Bowen, Esq.
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PER CURIAM.

Appellant, William Ortiz-Mazariegos, appeals the trial court's order summarily denying his motion for postconviction relief pursuant to Florida Rule of Criminal Procedure 3.850. Appellant asserts that the trial court reversibly erred when it denied his motion, which did not comply with the oath and certification requirements of Rule 3.850(c) and (n), without explanation and without attaching any record exhibits that conclusively refute Appellant's postconviction claim. We agree.

To the extent the denial of the motion was based upon the facial insufficiency of the motion, the trial court did not follow the procedure outlined in *Spera v. State*, 971 So. 2d 754, 761 (Fla. 2007) and Rule 3.850(f)(2)(providing that “[i]f the motion is insufficient on its face, and the motion is timely filed under this rule, the court shall enter a non-final, non-appealable order allowing the defendant 60 days to amend the motion. If the amended motion is still insufficient or if the defendant fails to file an amended motion within the time allowed for such amendment, the court, in its discretion, may permit the defendant an additional opportunity to amend the motion or may enter a final, appealable order summarily denying the motion with prejudice”). To the extent the denial of the motion was based upon the record, the court did not attach to its order any portion of the files or record that conclusively shows appellant was not entitled to relief. *See* Fla. R. Crim. P. 3.850(f)(5). *Wheeler v. State*, 297 So. 3d 604, 605 (Fla. 4th DCA 2020) (“When a trial court summarily denies a motion for postconviction relief, ‘it must either explain the rationale for the denial, or attach those portions of the record that conclusively refute the claims.’” (quoting *Morris v. State*, 287 So. 3d 634, 635 (Fla. 4th DCA 2020))). Furthermore, this Court notes that the State’s attempt to supplement the record on appeal is improper and cannot rectify the trial court’s omission. *Dennis v. State*, 16 So. 3d 331, 332 (Fla. 4th DCA 2009) (holding that the trial court “must attach portions of the record conclusively refuting the claim; [and] the [S]tate’s attempt to provide them for the first time on appeal is improper.”).

We therefore **REVERSE** the trial court’s order denying Appellant’s motion for postconviction relief and **REMAND** with directions that the trial court either: 1) enter an amended order that attaches those portions of the files and record that conclusively establish that Appellant is entitled to no relief; or 2) permit Appellant an opportunity to amend his motion to state facially sufficient claims, and for proceedings thereafter consistent with this opinion. An evidentiary

hearing should only be granted if the trial court finds that Appellant's claim cannot be conclusively refuted by the record nor denied as a matter of law. Fla. R. Crim. P. 3.850(f)(5).

SHEPHERD, G. KEYSER, and SCHER, JJ., concur.