IN THE SUPREME COURT OF FLORIDA

CRAIG B. DANIELS,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

CASE NO. SC11-1646

On Discretionary Review from the First District Court of Appeal: NON-Certified Conflict

RESPONDENT'S ANSWER BRIEF

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PRELIMINARY STATEMENT

The three-volume record on appeal is cited (R[vol. no.]:[page no.]). State-supplied emphasis is noted [e.s.]. Daniels' initial brief is cited (IB,p.__). The decision below (Appendix A) is cited (App.A,p.__).

STATEMENT OF THE CASE AND FACTS

Case--Daniels seeks discretionary review of the First DCA's decision, which affirmed denial of postconviction relief without certifying conflict. In April 2005, he was convicted for robbery with a firearm and armed burglary of a conveyance. (R1:11). He was sentenced as a habitual felon to concurrent [R3:435-7] life terms on the robbery and burglary convictions, and 5 months for another offense. (R3:423-34). On direct appeal, the First DCA affirmed. (R3:450). Daniels v. State, 959 So.2d 256 (Fla.1st DCA 2007). The mandate issued July 3, 2007. (R3:449).

Daniels filed his original rule 3.850 motion February 6, 2008. (R1:1). After interim proceedings, the postconviction court denied voluntary dismissal of his second amended 3.850 motion, precluding further amendment; and denied that motion on the merits. (R3:396-413). The First DCA affirmed on June 28, 2011; in the decision at issue. Daniels v. State, 66 So.3d 328 (Fla.1st DCA 2011). After rehearing was denied, Daniels timely invoked this court's discretionary jurisdiction.

Facts--The State accepts the events noted in Daniels' procedural history (IB,p.1-4), but rejects his parsing of the decision below. (IB,p.5-8). Because his statement is overly detailed, and obscures some events at the trial level, the State submits its own statement:

Daniels' original rule 3.850 motion was stricken, without prejudice, as "facially insufficient" due to excessive length and other deficiencies. He was given 20 days to file an amended motion. (R1:88-92). In late March 2008, he filed the first amended motion (R1:121-43), with a motion for extension of time to file claims supplementing that motion. (R1:118-20). The same day, he petitioned for habeas corpus. (R1:94-117). The petition was dismissed as an abuse of the "rule 3.850 process." (R1:145-7).

The first amended motion was stricken, without prejudice, in June 2008; because Daniels had filed the three documents noted, but still had time to compile all claims into a motion proper in form. He was given over four months to do so. (R1:167-9,175-6). In early September 2008, he filed a "Motion to Vacate, Set Aside [etc]." (R1:180-200). That motion was amended by motion submitted October 17, 2008. (R2:214-60). The September version was stricken. The court took under advisement the October 17 version, treating it as the "second" amended 3.850 motion. In so doing, the court noted that changes in the October 17 version were substantive, or supplements, to the stricken September version. (R2:261-3).

The court issued an order which found the second amended motion "properly sworn and timely filed," and directed the State to respond. (R2:282-7). The State did so. (R2:302-36). In late March 2009, Daniels moved to reply. (R2:337-40). That motion was denied. (R2:341-43).

In mid-April 2009, Daniels filed a "Motion for Voluntary Dismissal," which contended the second amended motion was inadequately pled, etc. He requested dismissal, without prejudice, to file another motion. (R2:348-

52). In June 2009--without a ruling or leave to further amend--he submitted an "Amended Motion for Postconviction Relief" (R2:353-80), which would have been his third amended motion.

On December 3, 2010 the postconviction court entered the order which was the subject of the decision below. It denied Daniels' motion for voluntary dismissal; denied with prejudice the third amended [June 2009] rule 3.850 motion as procedurally barred; and summarily denied relief on the merits of the second amended motion. (R3:396-453). Daniels' motion for rehearing (R3:478-81), which mentioned the third and fourth amended versions of his rule 3.850 motion, was denied. (R3:482-6).

Clarification of Record: The motion for rehearing (R3:478,¶2) alleges Daniels filed a [second] amended version October 12, 2008; and a [third] amended version October 17. The record on appeal does not include an amended postconviction motion dated of October 12.

The trial docket shows an "Amended Motion to Vacate [etc.]" docketed October 21, 2008; and an "Amended Rule 3.850 Motion (dated Oct. 17, 2008)" docketed October 31. The postconviction court ruled upon the October 17 motion as the "second" amended motion, although it appears to have been the third one filed. This circumstance may explain why the decision below begins: "Craig B. Daniels appeals a circuit court order denying his third and fourth amended motions for postconviction relief ...." (App.A,p.1).

SUMMARY OF ARGUMENT

Issue I (Jurisdiction)--To the extent Daniels' new jurisdictional argument implies "misapplication" of Spera establishes conflict, he is

wrong. Instead, the decision below concluded Spera changed the "process for evaluating postconviction motions," and applied Spera to uphold dismissal of the "third and fourth" amended motions. This interpretation and application of Spera do not give rise to express and direct conflict. At most, they establish certiorari-type jurisdiction in this court; however, such jurisdiction was removed by the 1980 re-write of Art.V, Fla.Const.

If this court finds express and direct conflict, it should not exercise the resultant jurisdiction. The facts show Daniels amended his rule 3.850 motion twice to cure technical deficiencies; and, in going from the first to the second [Oct.17, 2008] amended version, made substantive changes. He would not have been entitled to amend under Spera, regardless of whether he sought voluntary dismissal, withdrawal, or leave to amend. This court should await a case which an inmate wants only to cure facial insufficiency in a postconviction motion which has already been amended.

Issue II (Denial of Voluntary Dismissal)--The First DCA correctly interpreted Spera as requiring only one amendment of right, but leaving further amendment to the court's discretion. This interpretation properly balanced earlier caselaw--holding inmates can obtain voluntary dismissal of a 3.850 motion when the court has not "ruled" and the State is not prejudiced--with recognition that an inmate should not be able to keep a postconviction proceeding open indefinitely, through repeated voluntary dismissal without prejudice. This court should approve the decision below.

Spera applies only to amendment of rule 3.850 motions which are facially insufficient. An inmate has no right under Spera to further amend

a facially sufficient motion. By denying voluntary dismissal and precluding further amendment, the postconviction court did not abuse its discretion and reached the right result; as did the decision below.

Issue III (Ancillary Jurisdiction)--This court should not exercise ancillary jurisdiction to review denial of the individual claims for relief in the second amended motion. Instead, it should remand with directions for the First DCA to do so.

ARGUMENT

ISSUE I

THIS COURT LACKS CONFLICT JURISDICTION, OR SHOULD NOT EXERCISE SUCH JURISDICTION. (Restated).

A. Standard of Review.

The standard of review is de novo, as set forth in the State's jurisdictional brief. (p.2).

B. No Conflict Jurisdiction; Jurisdiction Should Not be Exercised.

Daniels advances a greatly expanded argument in favor of jurisdiction based on direct and express conflict. (IB, p.9-19). The State adopts its jurisdictional brief. As argued there, to the extent Daniels relies on "misapplication" of Spera v. State, 971 So.2d 754 (Fla.2007), he is wrong.

The decision below carefully interprets Spera to conclude it changed the "process for evaluating postconviction motions." It correctly recognized Spera requires a first opportunity to amend, but only one, when a postconviction motion is dismissed as facially insufficient. (App.A,p.2-3). It then reasoned that once the inmate has amended the first time, the court is not "obligated" to allow repeated amendments through the artifice

of voluntary dismissal without prejudice. (App.A,p.3-4).

Far from conflicting with Spera, the decision below interprets it reasonably. If this court disagrees, its disagreement does not rise to "conflict" which is express and direct. To conclude otherwise equates specific conflict jurisdiction with general "certiorari" jurisdiction, which was ended by the 1980 re-write of Article V, Fla. Const. *Cf.* In re Emergency Amendments to Rules of Appellate Procedure, 381 So.2d 1370, 1374 (Fla.1980)("Under the earlier constitution, this jurisdiction was exercised by writ of certiorari. Constitutional certiorari is abolished under amended Article V. Reflecting this change, revised subsection (a)(2) of this rule substitutes the phrase "discretionary jurisdiction" for "certiorari jurisdiction" in the predecessor rule.").

The decision below noted Daniels had "at least two" opportunities to amend. (App.A, p.4). The facts show he amended his postconviction motion in substance from the first to second amended version. If Spera requires an inmate be given one opportunity to amend a facially insufficient motion of right, Daniels received the benefit of that decision. By upholding denial of further amendment, the decision below did not expressly and directly conflict with Spera.

If conflict jurisdiction is present, this should not exercise it. Again, the facts show Daniels amended his rule 3.850 motion to cure technical deficiencies; and, in going from the first to second amended versions, made substantive changes also. This pleading and re-pleading consumed close to three years, from filing of the original 3.850 motion in

February 2008; to the issuance of the order under review in December 2010.This court should await a case which does not involve an inmate who took several opportunities to cure technical deficiencies and actually amended his original motion in substance, before seeking further amendment.

ISSUE II

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY DENYING VOLUNTARY DISMISSAL, PRECLUDING FURTHER AMENDMENT TO THE SECOND AMENDED RULE 3.850 MOTION. (Restated).

A. Standard of Review

This issue asks the court to announce how Spera should be applied to inmates who have cured a facially insufficient rule 3.850 motion, yet seek further amendment before a dispositive ruling. It raises a question of law answered de novo. *See* State v. Glatzmayer, 789 So.2d 297,301 n.7 (Fla.2001) ("If the ruling consists of a pure question of law, the ruling is subject to de novo review.").

B. Merits

Daniels moved to voluntarily dismiss, without prejudice, his second amended rule 3.850 motion. By denying that motion, the postconviction court precluded further amendment; accordingly, it denied the third amended motion as "procedurally barred." (R3:412). It then denied the second amended motion on the merits. (*Id.*).

The issue is whether the trial court abused its discretion by denying voluntary dismissal without prejudice, but is better understood in two parts: (1) whether Daniels was entitled to re-amend, of right, under Spera; and (2) if not, whether the trial court abused its discretion by denying

the proposed third amended motion as procedurally barred. The State's answers are: (1) Daniels was not entitled to re-amend of right under Spera because the second amended motion was already facially sufficient, so further amendment was left to the trial court's discretion; and (2) the trial did not abuse that discretion by denying voluntary dismissal and rejecting the third amended motion.

1. Daniels was Not Entitled to Re-Amend, of Right, under *Spera*

The postconviction court had found Daniels' first amended motion facially insufficient because there was no notary signature in the oath, and struck that motion. Later, the court observed that the second amended motion appeared to have extensive changes and additional claims, and was 12 pages longer than the first. It advised that no determination had been made on facial and legal sufficiency. (R2:261). Afterward, it issued a show-cause order, implicitly finding the second amended motion facially sufficient. (R2:282). Daniels did not challenge this order.

Because the second amended motion was facially sufficient, Daniels could not amend of right under Spera--regardless of whether he moved to amend, withdraw the second amended motion, or voluntarily dismiss without prejudice. As Spera declared:

> We also stress that our decision is limited to motions deemed facially insufficient to support relief--that is, claims that fail to contain required allegations. When trial courts deny relief because the record conclusively refutes the allegations, they need not permit the amendment of pleadings.

971 So.2d at 762 [e.s.]. *See* Cortes v. State, 85 So.3d 1135 (Fla.4th DCA 2012) ("*Spera* does not require courts to give movants multiple

opportunities to establish *Strickland* prejudice or to expand upon their allegations."). *See also* St. James v. State, 2012 WL 1859527, 2 (Fla.4th DCA 2012) (rejecting argument that appellant was entitled to amend his 3.850 motion under Spera, because: "Not only has appellant already amended his claim once, both motions being filed by counsel, but the trial court denied the motions, not as facially insufficient, but as conclusively refuted by the record or legally insufficient.").

Because Daniels was not entitled to invoke Spera, the decision below missed the mark; while overlooking denial of the second amended motion on the merits. The decision below, did, however, explain Spera's application after the first amendment of right, but without the conflict Daniels would find based on Clark and Spera itself.

In Clark v. State, 491 So.2d 545 (Fla.1986), a death-sentenced inmate filed a pro se 3.850 motion, only to learn volunteer counsel had been located. Just three weeks after the pro se motion had been filed, the inmate moved to withdraw it. The pro se motion got forwarded to the judge, but not the motion to withdraw or notice counsel had been obtained. The State responded to the pro se motion, which was summarily denied. Upon learning of denial, Clark's counsel moved to vacate--which was denied by a successor judge. No ruling was made on Clark's early pro se motion to withdraw the 3.850 motion. *Id.* at 546. Under these facts (and "extra-record" evidence by the State), the court held the motion to vacate should have been treated as a motion for rehearing and granted. *Id.* at 547.

In addition to marked factual difference from this case, Clark has no

language establishing a broad "right" of inmates to withdraw or dismiss postconviction motions at will before a dispositive ruling. Clark stands only for the point that a motion to vacate should have been granted under Clark's unusual circumstances. Also, it strongly appears the pro se 3.850 motion was facially sufficient. Clark sought withdrawal only because he had obtained counsel; the State responded; and the motion was denied summarily.

None of this would have happened had the motion been facially insufficient. Read correctly, Clark requires withdrawal of facially sufficient motions when unusual circumstances so dictate. Spera operates in a different field, of facially insufficient motions. By applying Spera as it did, the decision below did not limit the relief available under Clark.

Spera itself declares successive amendment of a 3.850 motion is subject to trial court discretion:

> Accordingly, when 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. As we did in *Bryant*, we hold that the proper procedure is to strike the motion with leave to amend within a reasonable period. We do not envision that window of opportunity would exceed thirty days and may be less. The striking of further amendments is subject to an abuse of discretion standard that depends on the circumstances of each case.

Spera, 971 So.2d at 761 [e.s.]. If the trial court has the discretion to strike further amendments, it necessarily has the discretion to allow them. Again, amendments after the first are not of right, but subject to the court's discretion. The decision below neither conflicted with, nor misinterpreted Spera.

In retrospect, Spera's use of "at least one" is ambiguous. Nevertheless, because the underlined language above includes the phrase "further amendments" without limitation, such language means that any amendment after the first is subject to the court's discretion. As the decision below correctly explained:

> This does not mean postconviction defendants have unlimited opportunities to amend a facially insufficient motion. Spera requires only that courts give defendants one opportunity to amend.

66 So.3d at 329.

The decision below then recognized the problem with Daniels' position:

> However, the situation changes once the defendant is given the opportunity to amend. *Spera* requires only one opportunity to amend. Therefore, if the defendant has already had that chance, a court should not be obligated to extend yet another opportunity by granting a subsequent motion to dismiss without prejudice. Otherwise, a defendant could attempt to circumvent *Spera* by following each amended postconviction motion with a motion to dismiss without prejudice, thereby prolonging the postconviction process.

Id. at 330 [e.s.]. By limiting amendments of right to one, the decision below accommodated Spera, while reducing the likelihood of inmate delay.

An inmate can still obtain the first amendment of a facially insufficient rule 3.850 motion of right, and further opportunity to amend any 3.850 motion (facially insufficient or not) with leave of court. The decision below did not limit relief available under Clark or Spera; and did not conflict with them.

2. No Abuse of Discretion to Deny Voluntary Dismissal/Leave to Amend

A postconviction court's ruling on a motion to amend a 3.850 motion is reviewed for abuse of discretion. *See* Huff v. State, 762 So.2d 476, 481

(Fla. 2000) (declaring review of a trial court's ruling is "whether there was an abuse of discretion."). Except for initial motions to amend facially insufficient 3.850 motions, nothing in Spera changed that standard.

Daniels was proceeding on his second amended motion. As the postconviction court found, he had made substantive changes going from the first to the second amended motion (R2:261), which was later found to be facially sufficient. (R2:282). His motion to voluntarily dismiss conceded the pending 3.850 motion was "inadequately" pled (R2:349,¶3), but did not allege facial insufficiency. (R2:350). By issuing a show-cause order (R2:282-7), the postconviction court necessarily found the second amended 3.850 motion facially sufficient. Not entitled to amend of right under Spera, Daniels cannot reasonably maintain the postconviction court abused its discretion by denying further amendment.

Again, Clark does not apply here. It involved denial of withdrawal of a facially sufficient rule 3.850 motion, sought because counsel was obtained unexpectedly. It offers no support for Daniels' position.

Daniels fares no better in the more recent, pre-Spera decisions he advances. (IB, p.11). In Hutchinson v. State, 921 So.2d 780 (Fla.1st DCA 2006), the defendant moved to voluntarily dismiss, to file a facially sufficient 3.850 motion. He did so before the court had ruled, and without prejudice to the State. Although it held the motion should have been granted, Hutchinson reveals no more facts. It appears the motion to voluntarily dismiss was done to obtain the first opportunity to amend, and the State had not responded; circumstances not present here. Without more

facts, Hutchinson does not support Daniels' point that inmates can voluntarily dismiss at will, if the court has not ruled and the State is not prejudiced. *See also* Brown v. State, 919 So.2d 673 (Fla.1st DCA 2006) (reversing summary denial of 3.850 motion when inmate moved to voluntarily dismiss "before the trial court ruled," with no further explanation); Long v. State, 861 So.2d 531 (Fla.1st DCA 2003) (same); Hansen v. State, 816 So.2d 808 (Fla.1st DCA 2002) (same).

Issued after Spera, Davis v. State, 28 So.3d 168 (Fla.1st DCA 2010) does not help Daniels. As the decision below recognized:

> Since then, the only case from this District dealing with a motion to voluntarily dismiss a postconviction claim has been Davis v. State, 28 So.3d 168 (Fla.1st DCA 2010). Davis does not indicate whether the defendant was given an opportunity to amend under Spera. It states only that the defendant filed a motion for voluntary dismissal prior to the denial of his postconviction motion on the merits. *Id.* at 169. Under such circumstances, the motion to dismiss should have been granted without prejudice, which is what this Court found. *Id.*

Daniels, 66 So.3d at 330 n.1.

In contrast, Daniels sought to voluntary dismissal to re-amend his facially sufficient, second amended motion. The State had responded, giving him a free look at defenses to his claims. Under these circumstances, Davis does not support his position.

Regardless of whether the better remedy is to withdraw a pending 3.850 motion, voluntarily dismiss it without prejudice, or seek leave to amend; the movant who would invoke Spera must be intending to cure facial pleading deficiencies only. Daniels had already gone beyond facial insufficiency, by making "extensive changes" and "additional allegations" in the second

amended motion (R2:261), which was also found timely and properly sworn. (R2:282). The postconviction court issued a show-cause order, implicitly determining the second amended motion was facially sufficient. (R2:282-7). Daniels did not below, and does not here, contest that determination. He thus concedes facial sufficiency of the second amended motion.

In part B (IB,p.12-17), Daniels argues that Spera requires defendants be given "at least one opportunity to amend ... to correct a pleading deficiency." The State agrees that Spera establishes the right to amend an otherwise proper, but facially insufficient, 3.850 motion once of right; however, further amendment requires leave of court.

Spera is expressly limited to correction of pleading deficiencies arising from failure to include requisite factual allegations. Here, the trial court initially declared it had not yet reviewed the second amended motion for facial and legal sufficiency. (R2:261-2). Later, it issued a show cause order; implicitly determining the second amended motion was facially sufficient. Because the second amended motion was facially sufficient, Spera was unavailable to Daniels. Whether it requires more than one amendment of right to correct facial insufficiency is a moot point.

Daniels' part C (IB, p.17-19) adds little to his earlier points. Clark does not improve his position, as the State has already argued. Whether the device to effect a Spera-amendment is a motion to withdraw or one for voluntary dismissal, the movant must come within the scope of Spera's operation. If the movant wants to do more than cure a facial pleading deficiency, he must justify further substantive change; subject to the

postconviction court's discretion. (In passing, the State notes rule 3.850 does not include a counterpart to rule 3.851(f)(4)[allowing amendments to capital postconviction motions up to 30 days before the evidentiary hearing, when good cause shown]).

The postconviction court did not abuse its discretion by denying voluntary dismissal--tantamount to denying leave to amend. This case had been pending for almost three years. The court had found, tacitly, that the second amended motion was facially sufficient. Denying the third amended motion as "procedurally barred," when it could have been stricken as unauthorized, reached the right result. There was no abuse of discretion.

ISSUE III

THIS COURT SHOULD NOT EXERCISE ANCILLARY JURISDICITON TO REACH THE MERITS OF INDIVIDUAL CLAIMS IN THE SECOND AMENDED RULE 3.850 MOTION, BUT REMAND FOR THAT PURPOSE. (Restated).

Daniels' third issue urges denial of voluntary dismissal was not warranted. The State relies on its argument in Issue II. The postconviction court did not abuse its discretion.

Daniels recounts the substance of earlier versions of his rule 3.850 motion, and changes made in the second amended motion. (IB, p.24-8). He observes, for example, the second amended motion: "advanced well-developed claims ... based on trial counsel's failure to investigate and present a defense, R-217-23, and, more specifically, for failure to present an alibi defense, R-240-41." (IB, p.26). These observations virtually concede the second amended motion was facially sufficient, thus admitting he was not entitled to further amendment of right under Spera.

The State is concerned that Daniels' detailed description of his postconviction motions may serve as a subtle invitation for this court to exercise ancillary jurisdiction; to review denial of the individual claims for relief in the second amended motion. If so, this court should not reach the merits of those claims, but should remand for that purpose.

The postconviction court entered a careful order, which first denied voluntary dismissal, etc. (R3:396-99). As the State has argued, this was a correct application of Spera which the decision below properly affirmed. The order next denied the individual claims for relief in the second amended motion. (R3:399-412).

Curiously, the decision below did not mention these claims. Given its lengthy consideration of the voluntary dismissal issue, it is not clear the decision below intended to silently affirm denial of relief on the merits.

Daniels is serving two, concurrent life sentences. He will have time to seek federal habeas relief if necessary. The State is concerned the silence of the decision below on individual claims for relief will encourage a federal court to evualuate those claims de novo, instead of extending the double-deference required by the AEDPA. *See* Knowles v. Mirzayance 556 U.S. 111, 123 (2009) (concluding the prisoner's ineffective counsel claim failed "[u]nder the doubly deferential judicial review that applies to a *Strickland* claim evaluated under the §2254(d)(1) standard").

This court should approve the decision below, but remand with directions to address the postconviction court's denial of the 12 claims in the second amended motion. The State respectfully requests this court--if

it finds and exercises jurisdiction--to resolve the conflict, but not do more. *Cf.* Ponton v. State, 73 So.3d 70, 73 n.4 (Fla.2011) (declining to reach issue of whether the postconviction court erred by holding certain offenses comprised two criminal episodes, when that issue "was not a basis for exercising our conflict jurisdiction" [cites omitted]).

CONCLUSION

This appeal should be dismissed for lack of jurisdiction. If bare jurisdiction exists, this court should decline review. The rule of law announced in Spera--that an otherwise proper, but facially insufficient rule 3.850 motion can be amended "at least" once of right--was correctly applied under Daniels' facts. Spera does not require multiple opportunities to amend, whenever an inmate moves to voluntarily dismiss before the court has ruled. The decision below should be approved, but remanded for review of denial of the individual claims in the second amended motion.

Respectfully submitted,

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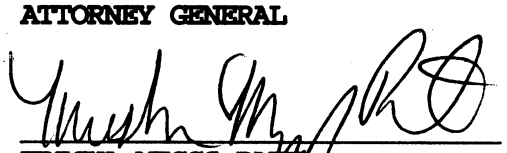

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CERTIFICATE OF SERVICE AND COMPLIANCE WITH RULE 9.210

I certify a copy of this ANSWER BRIEF has been sent by U.S. mail to Petitioner's attorney: **CARLOS F. GONZALEZ**, Diaz, Reus & Targ, LLP, 100 Southeast Second Street, 2600 Miami Tower, Miami, Florida 33131; on June 27th, 2012. I also certify this brief complies with Fla.R.App.P. 9.210.

CHARLES R. MCCOY
Senior Assistant Attorney General

APPENDIX

(Decision Below)

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

CRAIG B. DANIELS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

_____/

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

CASE NO. 1D11-0969

Opinion filed June 28, 2011.

An appeal from the Circuit Court for Walton County.
Kelvin C. Wells, Judge.

Craig B. Daniels, pro se, for Appellant.

Pamela Jo Bondi, Attorney General, and Charlie McCoy, Senior Assistant Attorney General, Tallahassee, for Appellee.

HAWKES, J.,

Craig B. Daniels appeals a circuit court order denying his third and fourth amended motions for postconviction relief under Florida Rule of Criminal Procedure 3.850. The order also denied his motion to voluntarily dismiss the third amended postconviction motion without prejudice. Daniels argues the court erred

in denying the third amended postconviction motion without first ruling upon the motion to dismiss. He claims the court was obligated to grant the motion to dismiss without prejudice, as he brought the motion before the trial court ruled on the underlying postconviction claims and the State would suffer no prejudice by a dismissal. We disagree.

Defendant supports his argument with caselaw which preceded the Supreme Court's decision in Spera v. State, 971 So. 2d 754 (Fla. 2007). Prior to Spera, cases consistently held that the trial court was required to grant a defendant's motion to dismiss a postconviction claim without prejudice, so long as it was filed before the court ruled on the underlying claim and dismissal would not cause prejudice to the State. See Hutchinson v. State, 921 So. 2d 780, 781 (Fla. 1st DCA 2006); Hansen v. State, 816 So. 2d 808, 809 (Fla. 1st DCA 2002); see also Clark v. State, 491 So. 2d 545, 546 (Fla. 1986); Carvalleria v. State, 675 So. 2d 251 (Fla. 3d DCA 1996); Washington v. State, 937 So. 2d 271, 272 (Fla. 4th DCA 2006).

However, the process for evaluating postconviction motions changed with Spera. Spera held that when a trial court summarily denies a defendant's motion for postconviction relief for failure to meet pleading requirements, it must give the defendant the opportunity to amend the motion. See Spera, 971 So. 2d at 761; see also Wilson v. State, 13 So. 3d 83, 85 (Fla. 2d DCA 2009); Watson v. State, 975 So. 2d 572, 573 (Fla. 1st DCA 2008). This does not mean postconviction

defendants have unlimited opportunities to amend a facially insufficient motion. Spera requires only that courts give defendants one opportunity to amend. See Oquendo v. State, 2 So. 3d 1001, 1006 (Fla. 4th DCA 2008); Prevost v. State, 972 So. 2d 274, 275 (Fla. 1st DCA 2008). After this one opportunity is given, courts are not required to give additional chances. See Nelson v. State, 977 So. 2d 710, 711 (Fla. 1st DCA 2008) (stating "[a]lthough a trial court in its discretion may grant more than one opportunity to amend an insufficient claim, Spera does not mandate repeated opportunities").

In light of Spera, it seems there are certain circumstances where a trial court is still required to grant a postconviction defendant's motion to dismiss without prejudice, and certain circumstances where it can exercise discretion regarding such motions. For example, if a defendant moves to dismiss a postconviction motion without prejudice before a trial court has issued a ruling – meaning before the court has evaluated the underlying motion for legal sufficiency – the motion should be granted, so long as it is not prejudicial to the State. This aligns with the pre-Spera cases stating a trial court should grant a defendant's motion to dismiss without prejudice unless it has ruled upon the underlying postconviction claims.

However, the situation changes once the defendant is given the opportunity to amend. Spera requires only one opportunity to amend. Therefore, if the defendant has already had that chance, a court should not be obligated to extend

yet another opportunity by granting a subsequent motion to dismiss without prejudice. Otherwise, a defendant could attempt to circumvent Spera by following each amended postconviction motion with a motion to dismiss without prejudice, thereby prolonging the postconviction process.

In short, when a postconviction defendant moves to dismiss his motion without prejudice, the trial court must determine whether a previous order gave the defendant an opportunity to amend pursuant to Spera. If no such order was issued, the motion to dismiss should be granted unless it will cause prejudice to the State. However, if such an order was issued, the disposition of the motion to dismiss should be left to the trial court's discretion and the court is not required to grant it.[1]

Turning to the instant case, the trial court gave Daniels at least two opportunities to amend his postconviction motion under Spera before he brought the instant motion to dismiss without prejudice. In orders dated February 27, 2008, and June 18, 2008, the trial court gave Daniels the chance to address the facial deficiencies in his postconviction motion. Daniels, in turn, amended his

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[1] This reasoning is consistent with how we have treated motions to dismiss postconviction claims following Spera. Since then, the only case from this District dealing with a motion to voluntarily dismiss a postconviction claim has been Davis v. State, 28 So. 3d 168 (Fla. 1st DCA 2010). Davis does not indicate whether the defendant was given an opportunity to amend under Spera. It states only that the defendant filed a motion for voluntary dismissal prior to the denial of his postconviction motion on the merits. Id. at 169. Under such circumstances, the motion to dismiss should have been granted without prejudice, which is what this Court found. Id.

postconviction claims several times; in fact, the instant motion to dismiss concerns the third amended postconviction motion and indicates Daniels' intent to file a fourth amended motion.

Since the trial court gave Daniels ample opportunity to amend his postconviction claim, it was not obligated to grant the motion to dismiss without prejudice. It properly determined that to do so would be an abuse of the postconviction process. This determination is AFFIRMED.

VAN NORTWICK and PADOVANO, JJ., CONCUR.