IN THE SUPREME COURT OF FLORIDA

CASE NO. SC11-1646

LOWER COURT CASE NO. 1D11-969

CRAIG B. DANIELS,

Petitioner,

-vs-

STATE OF FLORIDA,

Respondent.

INITIAL BRIEF OF PETITIONER ON THE MERITS

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QUESTION PRESENTED

Does *Spera v. State*, 971 So. 2d 754 (Fla. 2007) authorize trial courts to deny a motion for postconviction relief with prejudice where the movant has moved to dismiss or otherwise withdraw the postconviction motion, if the movant has previously been granted leave to amend the postconviction motion?

STATEMENT OF THE CASE AND FACTS

Procedural History

On April 14, 2005, a jury found Craig B. Daniels guilty of one count of robbery with a firearm and one count of burglary of a conveyance while armed with an explosive or dangerous weapon. R-11. The trial court sentenced Mr. Daniels to concurrent sentences of life in prison for each count. R-11. In a separate case, the trial court sentenced Mr. Daniels to 35.3 months in prison, to run concurrently with his life sentences. R-11. The First District Court of Appeal affirmed Mr. Daniels' convictions and sentence in a per curiam decision. R-11; *see also Daniels v. State*, 959 So. 2d 256 (Fla. 1st DCA 2007).

Thereafter, Mr. Daniels began to aggressively pursue postconviction relief. On February 6, 2008, Mr. Daniels filed an eighty-seven page motion for postconviction relief. R-1-87. The trial court struck this motion, finding that (1) the memorandum of law was not separate from the motion and did not contain its own oath, R-88-89; and (2) the motion was excessive in length, R-90-91. The trial

court allowed Mr. Daniels twenty days to cure these deficiencies. R-91. Mr. Daniels appealed the order striking his postconviction motion, R-92, which the First District ultimately dismissed, R-144. While this appeal was pending, Mr. Daniels filed a petition for writ of habeas corpus before the trial court. R-94-117. He also filed an amended motion for postconviction relief, R-121-143, along with a separate motion for extension of time to file supplemental claims to his amended motion for postconviction relief, R-118-120.

The trial court dismissed Mr. Daniels' petition for writ of habeas corpus, R-115-166, on the ground that habeas corpus was not a substitute for a postconviction motion, R-146. Alternatively, the trial court ruled that even if Mr. Daniels' writ were treated as an amended motion for postconviction relief, it should be stricken because it lacked (1) a properly signed oath; and (2) all content required by Fla. R. Crim. P. 3.850(c). R-146.

Shortly thereafter, the trial court struck without prejudice Mr. Daniels' amended motion for postconviction relief and his motion for extension of time to file supplemental claims. R-167-169. As grounds, the trial court noted that rather than file a "proper and concise amended rule 3.850 motion," Mr. Daniels filed the above-mentioned writ, an amended postconviction motion, and a request for an extension of time to file supplemental claims. R-167-68. These multiple filings, the court found, were "contrary to the single amended rule 3.850 motion the Court

authorized." R-168. The court further noted that filing supplemental claims would likely result in more than fifty pages of briefing. R-168. Although the trial court never found that the amended postconviction motion was facially insufficient, it struck the amendment. R-168. The court then afforded Mr. Daniels an additional period of time to file a second amended motion for postconviction relief. R-168.

Mr. Daniels later requested additional time to file his amended motion, R-170-74, which the court denied, R-175-76. The court also struck Mr. Daniels' amended motion pursuant to Fla. R. Crim. P. 3.800(c) without prejudice. R-177-79. The trial court determined that the claims asserted in that motion should be part of his amended motion for postconviction relief. R-178.

Thereafter, Mr. Daniels moved to vacate, set aside, or correct his judgment of conviction and sentence. R-180-213. He later filed an amended motion. R-214-260. The trial court struck the first motion as facially insufficient because it contained a "defective notarized oath", R-261, and took the amended motion under advisement, R-261-62. With respect to the amended motion, the trial court noted that at least one of the claims asserted "appear[ed] to have extensive changes," while another had "some additional allegations." R-261. The court added that "[n]o final determination as to facial and legal sufficiency (in form or substance) of the amended motion . . . and grounds/claims therein has yet been made by the Court - - it remains under advisement of the Court." R-261.

As relevant to this appeal, the trial court later directed the State to file a response to the amended motion for postconviction relief. R-282-87. In its response, the State urged the trial court to deny relief as to each claim. R-302-36. Mr. Daniels sought leave to file a reply brief, R-337-40, which the trial court denied, R-341-43.

Mr. Daniels then moved to dismiss his amended motion for postconviction relief, R-348-52, on the ground that his motion was "inadequately pleaded . . . [,]" R-349. Mr. Daniels later filed what the trial court referred to as a third amended motion for postconviction relief. R-353-80. After some further procedural wrangling, R-381-83, 384-85, 386-88, 389-93, 394, 395, and 454-77, the trial court, as further discussed below, denied Mr. Daniels' amended motion for postconviction relief, along with his motion to voluntarily dismiss the motion.

The Trial Court Denies Relief

On December 3, 2010, the trial court entered a "Final Order" denying Mr. Daniels' second and third amended motions for postconviction relief. R.396-453. In the same order, the court also denied Mr. Daniels' motion to voluntarily dismiss his postconviction motion. R-398. As a result, the trial court did not reach the merits of Mr. Daniels' third amended motion. The trial court explained that "under the circumstances of the instant postconviction case the defendant's motion for voluntary dismissal should be denied and thus his Third Amended Rule 3.850

Motion should be denied with prejudice as an unauthorized amendment and an abuse of the 3.850 procedures . . . ." R-398.

The court cited this Court's decision in *Spera* as authority for denying the motion to voluntarily dismiss, but did not explain what aspects of that decision it relied upon. *Id.* Notably, the trial court did not find that the State would be prejudiced if a voluntary dismissal was granted.

Mr. Daniels moved for rehearing of the "Final Order," R-478-81, which the trial court denied, 482-86. Thereafter, Mr. Daniels appealed to the First District. R-487.

The Fourth District Court Of Appeal Affirms The "Final Order"

In *Daniels v. State*, 66 So. 3d 328, 329 (Fla. 1st DCA 2011), the First District Court of Appeal affirmed the trial court's order denying postconviction relief. The district court rejected Daniels' argument that the trial court could not reach the merits of his postconviction motion without first ruling on a motion to dismiss. *Id.* at 329. According to Daniels, the trial court should have granted the motion to dismiss because it was filed before the trial court ruled on his postconviction claims and the State would not be prejudiced. *Id.*

The First District noted that Daniels relied on cases predating this Court's decision in *Spera v. State*, 971 So. 2d 754 (Fla. 2007). Before *Spera*, as the district court explained, case law "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." *Daniels*, 66 So. 3d at 329 (internal citations omitted). However, the First District found that "the process for evaluating postconviction motions changed with *Spera*." *Id.*

The district court explained that, after *Spera*, trial courts were required to give defendants an opportunity to amend a postconviction motion that was summarily denied for failure to meet pleading requirements. *Id.* *Spera*, the court stressed, only required "one opportunity" to amend, after which there would be no obligation to give defendants additional chances to cure pleading deficiencies. *Id.* While the First District noted that a trial court is still "required" to grant a defendant's motion to dismiss a postconviction motion without prejudice, it limited the application of this rule to one instance. *Id.* at 330. Where a defendant moves to dismiss a postconviction motion without prejudice before a trial court has evaluated the underlying motion for legal sufficiency, and there is no prejudice to the State, the motion should be granted. *Id.* This, according to the district court, would be consistent with pre-*Spera* case law. *Id.*

The First District, however, took the position that "the situation changes once the defendant is given the opportunity to amend." *Id.* *Spera*, the district court noted, only requires "one opportunity to amend." *Id.* If the defendant has

already had that chance, the First District reasoned that "a court should not be obligated to extend yet another opportunity by granting a subsequent motion to dismiss without prejudice." *Id.* Absent this limitation, the district court worried that "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.*

Accordingly, the First District found that when a defendant moves to dismiss a postconviction motion without prejudice, the trial court must first determine whether a previous order gave the defendant an opportunity to amend as required by *Spera*. *Id.* If no such order was issued, the motion to dismiss should be granted unless it will prejudice the State. *Id.* Drawing a bright-line rule, the district court explained that if such an order was issued, the trial court will have the discretion to deny the motion. *Id.*

Applying the procedure to this case, the First District found that the trial court gave Mr. Daniels at least two opportunities to amend his postconviction motion before he filed his motion to dismiss. *Id.* The appellate court further noted that Mr. Daniels then amended his postconviction claims several times. *Id.* Because it gave Mr. Daniels "ample opportunity to amend his postconviction claim," the First District concluded that the trial court "was not obligated to grant the motion to dismiss without prejudice." *Id.* To do so, the appellate court

concluded, "would be an abuse of the postconviction process." *Id.* In so ruling, the First District made no findings with respect to whether the State would have been prejudiced if the trial court granted the motion to dismiss without prejudice. *Id.*

STANDARD OF REVIEW

Whether the First District Court of Appeal applied the correct legal standard in denying Mr. Daniels' motion to voluntarily dismiss his amended postconviction motion presents a pure question of law subject to de novo review. *Files v. State*, 613 So. 2d 1301, 1304 (Fla. 1992).

SUMMARY OF ARGUMENT

This Court should reverse the First District Court of Appeal's decision below because it conflicts with this Court's decisions in *Clark v. State*, 491 So. 2d 545 (Fla. 1986), and *Spera v. State*, 971 So. 2d 754 (Fla. 2007). *Clark* found that a defendant could dismiss a pending motion for postconviction relief and file a new motion, or amend a pending motion. *Clark,* 491 So. 2d at 546. *Spera* further developed the rule, holding that where a trial court initially determined that a defendant's postconviction motion was legally deficient, it should allow the defendant at least one opportunity to amend and correct any deficiencies. *Spera*, 971 So. 2d at 755. *Spera* did not overrule or recede from *Clark*, nor did it limit *Clark* to only those cases where the trial court had not yet made an initial

determination as to a postconviction motion's legal sufficiency. In holding to the contrary, the Fourth District misapplied this Court's holdings and reasoning.

ARGUMENT

I. THE FIRST DISTRICT COURT OF APPEAL'S DECISION BELOW EXPRESSLY AND DIRECTLY CONFLICTS WITH THIS COURT'S DECISIONS IN *CLARK v. STATE*, 491 So. 2d 545 (Fla. 1986), AND *SPERA v. STATE*, 971 So. 2d 754 (Fla. 2007).

Florida Rule of Appellate Procedure 9.030(a)(2)(A)(iv) authorizes petitioners to seek this Court's discretionary jurisdiction to review decisions of the district courts of appeal that "expressly and directly conflict with a decision of . . . the supreme court on the same question of law." The First District Court of Appeal's decision here directly and expressly conflicts with this Court's prior decisions in *Clark v. State*, 491 So. 2d 545 (Fla. 1986), and *Spera v. State*, 971 So. 2d 754 (Fla. 2007).

A. *Clark* And The Pre-*Spera* Cases Allowed Defendants To Dismiss Or Withdraw Postconviction Motions.

In *Clark*, this Court found that a defendant could either withdraw his pro se motion for post-conviction relief and file a new one, or amend his original motion. *Clark*, 491 So. 2d at 546. After filing his pro se motion, Clark learned that volunteer counsel would be representing him. *Id.* As a result, Clark filed a pro se motion to withdraw his post-conviction motion. *Id.* Even though the clerk of the lower court forwarded the post-conviction motion to the trial judge, the court

apparently never received the later-filed motion to withdraw. *Id.* The State filed a response to the pro se post-conviction motion, but did not provide Clark's counsel with a copy. *Id.* The day after receiving the State's response, the trial judge held a hearing on the pro se post-conviction motion. *Id.* Although two prosecutors were present, neither Clark nor his counsel attended because they had not received notice. *Id.* The trial court summarily denied Clark's pro se post-conviction motion. *Id.*

When Clark's counsel discovered what had happened, he moved to vacate the trial court's order. *Id.* Because the original judge had transferred to the civil division, a new judge heard the motion. *Id.* The successor judge denied the motion to vacate. *Id.* No judge ever ruled on Clark's motion to withdraw. *Id.* In reversing the second trial judge's decision, this Court noted the importance of having "a judicious regard for the constitutional rights of criminal defendants . . . [,]" something which was missing in this case. *Id.* (internal citation omitted). Citing the seriousness of Clark's death sentence, the fact that he had obtained counsel, and the reality that the State would suffer no prejudice, this Court found that the successor judge should have vacated the original order denying post-

conviction relief. *Id.* According to this Court, "[a]ny other action, or inaction, would on the facts of this case constitute an abuse of discretion." *Id.*[1]

Although *Clark* involved a defendant facing the death penalty, the State has conceded that its reasoning applied to non-death penalty cases as well. *Simon v. State*, 768 So. 2d 1089, 1090 (Fla. 3d DCA 1995) (noting that the State acknowledged that, under *Clark*, "the appellant was entitled to withdraw his Rule 3.850 motion where . . . there was no prejudice to the State."). Consistent with pre-*Spera* decisions, the First District has regularly granted motions to dismiss filed by non-capital defendants. *See, e.g.*, *Hutchinson v. State*, 921 So. 2d 780 (Fla. 1st DCA 2006); *Brown v. State*, 919 So. 2d 673 (Fla. 1st DCA 2006); *Long v. State*, 861 So. 2d 531 (Fla. 1st DCA 2003); *Hansen v. State*, 816 So. 2d 808 (Fla. 1st DCA 2002).

Even after *Spera*, the First District, despite its ruling here, has granted a motion to dismiss a postconviction motion. In *Davis v. State*, 28 So. 3d 168, 169 (Fla. 1st DCA 2010), the First District reversed the denial of the defendant's motion to voluntarily dismiss his postconviction motion. The court explained that "[b]ecause the motion for a voluntary dismissal was filed before the court ruled on

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[1] The Court further found that the motion to vacate filed by Clark's counsel should have been treated as a motion for rehearing and should have been granted. *Clark*, 491 So. 2d at 546. Additionally, the Court determined that Clark should have been notified of the hearing on his pro se postconviction motion and should have been present, especially given the fact that the trial court considered evidence. *Id.* at 547.

his postconviction motion and there was no prejudice to the state, the appellant was entitled to withdraw his rule 3.850 motion." *Id.* (internal citation omitted).

B. *Spera* Requires Trial Courts To Give Defendants At Least One Opportunity To Amend A Postconviction Motion To Correct A Pleading Deficiency In Order To Avoid A Procedural Default.

While *Clark* dealt with a defendant's ability to dismiss a postconviction motion, *Spera* focused on amendments to pending motions for postconviction relief. In *Spera*, this Court held that "in dismissing a first postconviction motion based on a pleading deficiency, a court abuses its discretion in failing to allow the defendant at least one opportunity to correct the deficiency unless it cannot be corrected." *Spera*, 971 So. 2d at 755. Spera was convicted of fleeing or attempting to elude a law enforcement officer and also burglary of an occupied dwelling. *Id.* After the Fourth District affirmed his conviction, Spera filed a postconviction motion in which he alleged that his trial lawyer rendered ineffective assistance of counsel by failing to call witnesses on Spera's behalf despite being directed to do so. *Id.* The trial court found the claim facially insufficient and dismissed the case. *Id.*

In affirming, the Fourth District considered this Court's decisions in *Nelson v. State*, 875 So. 2d 579 (Fla. 2004), and *Bryant v. State*, 901 So. 2d 810 (Fla. 2005), finding that neither decision required a trial court to permit an amendment. *Spera*, 971 So. 2d at 755. In so ruling, the Fourth District recognized conflict with

the Second District's decision in *Keevis v. State*, 908 So. 2d 552 (Fla. 2d DCA 2005), which read *Nelson* more broadly to allow an amendment to correct other pleading deficiencies in a claim alleging counsel's failure to call witnesses at trial. *Spera*, 971 So. 2d at 755.

This Court granted discretionary review in *Spera* to resolve the conflict. *Id.* As a threshold matter, the Court found that the conflict between the districts arose from their divergent interpretations of *Nelson*, a case in which a defendant alleged that he received ineffective assistance of counsel when his attorney failed to call, interview, or investigate witnesses for trial. *Spera*, 971 So. 2d at 756. The *Spera* court noted that *Nelson* held that in addition to alleging the identity of the witnesses, the substances of their testimony, and how the defendant was prejudiced, a movant would also have to allege that the witness was available to testify at trial. *Id*. Because the defendant failed to allege this final fact, the *Nelson* court allowed the defendant to amend his claim. *Id*. The *Nelson* court further outlined a procedure for amendment in which the movant would be given leave to amend the motion within a specified time period. *Id.* If no amendment was filed within the allotted time, the trial court could then deny relief with prejudice. *Id.*

The *Spera* court noted that the Second and Fourth Districts initially applied *Nelson* broadly, allowing amendments where the movant failed to include one or all of the allegations required for a claim that counsel failed to call witnesses. *Id.*

However, the Fourth District, in *Spera*, later concluded that *Nelson* required amendment only in those cases where the defendant omitted the "technical" requirement of alleging a witness's availability. *Id.* at 757.

In resolving this conflict, the *Spera* court first reviewed the requirements of Rule 3.850 as they pertained to amendments. The Court explained that upon receiving a motion filed under Fla. R. Crim. P. 3.850, the postconviction court must first determine whether the motion is facially sufficient. *Id.* at 758. Only after determining that a motion is facially sufficient could the court consider whether there was any evidence in the record refuting the claims. *Id.* In those cases where the defendant filed a facially insufficient claim, the trial court had the discretion to allow an amendment. *Id.*

The court noted that Rule 3.850 further allowed a defendant to correct a facial deficiency by filing a successive motion. *Id.* And, the court explained that a trial court could not summarily dismiss a successive motion that raised issues that were either summarily denied or dismissed as legally insufficient in the first motion. *Id.* Thus, under Rule 3.850, a defendant whose postconviction claim was denied for legal insufficiency could file a successive motion that remedied the deficiency. *Id.* at 759. The court noted one caveat – Rule 3.850 requires that successive motions be filed within two years. *Id.* Thus, a defendant whose motion

was dismissed as insufficient after the deadline expired could not avail himself of the rule. *Id.*

Alternatively, the *Spera* court noted that defendants could amend their postconviction motions. *Id.* Although not mentioned in the rule, the court cited precedent holding that trial courts abused their discretion when they refused to consider an amendment filed before the two-year deadline and before the trial court ruled on the motion. *Id.* (internal citations omitted).

Despite these various options, the court noted that "[a] gap . . . remains for defendants who file a timely but insufficient initial postconviction motion, but whose amended or successive motion would be filed after the deadline." *Id.* The *Spera* court "closed that gap" by extending the reasoning in *Bryant v. State*, 901 So. 2d 810 (Fla. 2005), a capital postconviction case, to Rule 3.850 motions. *Id.*

The *Spera* court noted that *Bryant* involved a postconviction motion under Fla. R. Crim. P. 3.851, which is analogous to Rule 3.850. *Spera*, 971 So. 2d at 759. In *Bryant*, the State moved to strike the motion, citing various pleading deficiencies. *Id.* The trial court granted the motion without specifying the grounds. *Id.* After the deadline for seeking postconviction relief expired, the defendant moved to amend the stricken motion. *Id.* at 759-60. The trial court initially granted the motion, but later determined that because the amendment did not relate back to the original and was filed outside the applicable time limits, it

was procedurally barred. *Id.* at 760. Alternatively, the trial court dismissed the amended motion for lack of jurisdiction and summarily denied it on the merits. *Id.*

After examining the original motion, the court found that Bryant's postconviction motion was not a "shell motion . . . filed merely to comply with the filing deadline." *Id*. (internal quotation marks omitted). The court noted that, had the trial court granted leave to amend, the amended motion would have related back to the original. *Id.* *Bryant* made clear that "due process demands that some reasonable opportunity be given to defendants" to amend such motions. *Id.* Accordingly, the court held "that when a defendant's initial postconviction motion fails to comply with the requirements of rule 3.851, the proper procedure is to strike the motion with leave to amend within a reasonable period." *Id.*

Spera extended *Bryant's* holding and reasoning to all defendants. *Id.* at 761. The *Spera* court, however, was keen to point out the limited nature of its holding:

> 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.

Id. at 762. *Spera* further limited its holding to only those cases where deficient pleadings could be amended in good faith. *Id.*

C. The Fourth District Misread *Spera* And Improperly Limited The Relief Afforded By *Clark*.

Although the First District here recognized, without citing, the continuing viability of this Court's decision in *Clark*, it found that *Spera* had all but limited a defendant's right to dismiss or withdraw a pending motion for postconviction relief to one instance. *Daniels*, 66 So. 3d at 329-30. The First District found that, if a defendant moved to dismiss a postconviction motion without prejudice before the trial court had evaluated the underlying motion for legal sufficiency, the motion should be granted so long as there was no prejudice to the State. *Id.*

However, once a defendant is given the opportunity to amend, the district court explained that "a court should not be obligated to extend yet another opportunity by granting a subsequent motion to dismiss without prejudice." *Id.* at 330. The First District's reasoning conflicts with *Clark* and *Spera*.

In *Clark*, this Court reaffirmed the important proposition that courts should have "a judicious regard for the constitutional rights of criminal defendants when dealing with pro se motions." *Clark*, 491 So. 2d at 546 (internal citation and quotation marks omitted). In determining whether to grant a motion to dismiss or withdraw a pro se postconviction motion, the *Clark* court noted that trial courts should consider such factors as the seriousness of the sentence and whether the State would be prejudiced. *Id.* The First District's lockstep procedure would render consideration of these factors unnecessary.

In fact, the Fourth District's holding could be read to permit the very same situation that arose in *Clark*. If a defendant files a pro se postconviction motion, is then lucky enough to secure counsel, and subsequently moves to dismiss the original motion so that his new counsel can raise additional claims and/or supplement existing claims, a trial court could nevertheless deny relief if this pro se defendant had already been given the opportunity to amend the motion once before. *Clark* sought to avoid this very situation rather than encourage it through a rigid procedure that was designed to simply prevent defendants from "prolonging the postconviction process." *Daniels*, 66 So. 3d at 330.[2]

The Fourth District's procedure below also conflicts with *Spera*. Contrary to what the district court found, *Spera* did not change the way trial courts evaluate postconviction motions. *Id.* at 329. Instead, *Spera* refined the method by which trial courts analyze these motions. It considered a "narrow issue of law" – whether courts should allow movants at least one opportunity to cure pleading deficiencies – *Spera*, 971 So. 2d at 755, and limited its decision to only those motions "deemed facially insufficient to support relief . . . ," *id.* at 762.

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[2] While there are certainly serial-litigants whose motions clutter the trial and appellate courts' dockets, it is difficult to imagine that the majority of defendants are interested in prolonging a process that, if concluded in their favor, would allow for a new trial and/or release from a potentially long prison sentence. At any rate, this Court has defined a procedure for dealing with those litigants who would abuse the judicial process. *State v. Spencer*, 751 So. 2d 47 (Fla. 1999).

In reaching its decision, this Court merely extended its holdings in analogous capital postconviction proceedings to all defendants, regardless of their sentence. *Id.* at 759. The goal was to close the gap that "remains for defendants who file a timely but insufficient initial postconviction motion, but whose amended or successive motion would be filed after the deadline." *Id*. In closing that gap, this Court did not intend to also limit a defendant's ability to dismiss or withdraw a pending motion for postconviction relief. *Spera* did not offer defendants a choice between dismissing their postconviction motion, or filing an amendment. *Spera* did not even contemplate, much less foreclose, a defendant's ability to dismiss or withdraw a postconviction motion. As further discussed below, the First District's finding that dismissal or withdrawal would only be appropriate where the trial court has not yet offered the defendant an opportunity to amend is not supported by *Spera*'s holding or its reasoning.

Accordingly, the First District's decision below expressly and directly conflicts with the decisions in *Clark* and *Spera*, and this Court has jurisdiction.

II. IN DIRECTING POSTCONVICTION COURTS TO PERMIT MOVANTS TO AMEND THEIR MOTIONS TO REMEDY PLEADING DEFICIENCIES, THIS COURT DID NOT OVERRULE ITS PRIOR PRECEDENT ALLOWING MOVANTS TO DISMISS OR OTHERWISE WITHDRAW THEIR PENDING MOTIONS.

As noted above, nothing in *Spera* suggests that this Court receded from or otherwise overruled its prior decision in *Clark.* Indeed, *Spera* did not even contemplate the specific situation raised here.

The First District acknowledged as much when it recognized that even "[i]n 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 . . . ." *Daniels*, 66 So. 2d at 329-30. Those "circumstances," however, appear to be limited only to those cases where the trial court has not yet evaluated the postconviction motion for legal sufficiency and there is no prejudice to the State. *Id.* at 330. And, according to the First District, "the situation changes once the defendant is given the opportunity to amend." *Id.* In trying to harmonize *Clark* and *Spera*, the First District committed error.

First, this Court does not overrule its prior precedent *sub silentio. Puryear v. State*, 810 So. 2d 901, 905 (Fla. 2002) ("We take this opportunity to expressly state that this Court does not intentionally overrule itself sub silentio."). Nothing in *Spera* suggested that this Court's approval of motions to dismiss or withdrawal of pending postconviction motions was overruled, nor did the Court recede from its

decision such that only those motions filed before the defendant was offered the opportunity to amend would be contemplated.

Second, although they are seemingly related, *Spera* is factually distinguishable from both this case and *Clark*. *Spera* did not involve a defendant seeking to dismiss or withdraw a motion for postconviction relief. *Keevis*, the decision that conflicted with the Fourth District in *Spera*, likewise did not involve a motion to dismiss. Moreover, the decisions in *Nelson* and *Bryant*, which this Court analyzed in the course of deciding *Spera*, did not involve motions to dismiss. That is not surprising given that *Spera* "involve[d] a narrow issue of law[,]" namely whether a trial court should afford a defendant the opportunity to amend a postconviction motion at least once in order to cure a pleading deficiency. *Spera*, 971 So. 2d at 755. This is a critical distinction given the *Spera* court's clear statement that its decision was "limited to motions deemed facially insufficient to support relief – that is, claims that fail to contain required allegations." *Id.* at 762.

Whereas *Clark* and the pre-*Spera* case law concerned motions to dismiss, *Spera* focused on the amendment of existing claims to the extent that they could be supplemented on a good faith basis. Said differently, *Spera*'s language does not contemplate an amendment that adds additional claims, but only one that cures a pleading deficiency in a claim that, no matter how poorly drafted, has already been

alleged. In urging this distinction, Mr. Daniels is not inviting this Court to dance on the head of a pin.

There are numerous reasons why a defendant would move to dismiss or withdraw a postconviction motion. In *Clark*, for example, the defendant secured counsel after filing a pro se 3.850 motion. 491 So. 2d at 546. By withdrawing his pro se motion for postconviction relief, the defendant likely hoped to present the trial court with a stronger motion. A defendant might likewise seek to dismiss a pending motion in order to properly investigate a claim for ineffective assistance of counsel because his attorney failed to call witnesses or present an alibi.

These examples do not properly fall within *Spera*'s holding. Indeed, it would make sense for a defendant to move to withdraw or dismiss in these cases in order to protect against a dismissal under Fla. R. Crim. P. 3.850(f). Under subsection (f) of the rule, a trial judge may deny a second or successive postconviction motion, even if it raises new and different grounds, if it is determined that the "failure of the movant or the attorney to assert those grounds in a prior motion constituted an abuse of the procedure . . . ." FLA. R. CRIM. P. 3.850(f).

If *Spera* was designed to close yet another gap in the postconviction process, the Fourth District's decision in *Daniels* has exposed another gusher in this already complicated system. By barring a defendant from dismissing a postconviction

motion if the trial court has already afforded him or her the opportunity to amend, the First District is creating the potential for a situation like the one encountered in *Clark.* The district court's rigid procedure should therefore be rejected.

III. THE PETITONER'S REPEATED EFFORTS TO AMEND HIS POSTCONVICTION MOTION DID NOT WARRANT DENIAL OF HIS MOTION TO DISMSS.

In affirming the denial of Mr. Daniels' amended motion for postconviction relief, the First District determined that he had been afforded numerous opportunities to amend his pleadings. *Daniels*, 66 So. 2d at 330. The district court further noted that Mr. Daniels intended to file yet another amended postconviction motion in the event that his motion to dismiss was granted. *Id.* While there is no doubt that Mr. Daniels' has aggressively pursued postconviction relief on a pro se basis, the trial and district courts should not have discounted his claims simply because of the number of motions he filed.

This Court noted in *Spera* that most postconviciton motions are filed pro se. *Spera*, 971 So. 2d at 757. In his dissenting opinion in *Nelson*, then Chief Justice Anstead explained that "ninety-nine percent of rule 3.850 claims are filed pro se . . . ." *Nelson*, 875 So. 2d at 584 (Anstead, C.J., dissenting). Justice Anstead further noted that this fact alone accounted for the "limited pleading requirements" contained in rule 3.850. *Id.* These requirements "represented a policy choice that it was far less costly to the state to provide simple pleading requirements for

habeas corpus claims than to provide costly lawyers." *Id.* It is for that reason that Justice Anstead dissented in *Nelson.* He objected to the amendment of Rule 3.850 "in an ad hoc manner to add very specific and rigid pleading requirements which were never contemplated by the drafters of rule 3.850 or by this Court in adopting the rule." *Id.*

It seems that the First District's procedure in this case constitutes yet another ad hoc amendment to Rule 3.850. Indeed, in affirming the denial of Mr. Daniels' motion for postconviction relief, the First District expressed a concern with defendants who might try to "prolong[] the postconviction process." *Daniels*, 66 So. 3d at 330. Yet, Mr. Daniels' motions are a far cry from those "shell motions . . . that contain sparse facts and argument and are filed merely to comply with the deadlines, with the intent of filing an amended, more substantive, motion at a later date." *Spera*, 971 So. 2d at 761 (internal quotation marks and citation omitted).

Mr. Daniels' filings were anything but perfunctory. His initial motion for postconviction relief spanned eighty-seven pages and included various sections, including a "History of the Case," a "Statement of the Case and Facts," and a "Memorandum of Law" that raised five claims for relief. R-1-87. Each claim, in turn, was supported by facts and citations to authority. For example, in his first claim, Mr. Daniels alleged that his trial attorney rendered ineffective assistance of counsel by failing to investigate and prepare an adequate defense. R-20-29. Over

nearly ten pages, Mr. Daniels' plead his claim, noting that his attorney failed to take any depositions prior to trial. R-22-23 (trial counsel concedes that "Mr. Daniels is right, there was [sic] never depositions taken of all the witnesses. They thought they were taken in a co-defendant's case and they weren't."). Critically, the trial court's subsequent order striking this first motion did not find that this, or any other claim, was legally insufficient. Instead, the court ruled, as noted above, that the motion did not contain a separate memorandum of law, did not contain an oath, and was too long. R-88-92.

Mr. Daniels' subsequent filings likewise continued to assert numerous claims that were amply supported by factual allegations. As another example, in his amended motion for postconviction relief, Mr. Daniels asserted that he received ineffective assistance of counsel because his trial counsel failed to present an alibi defense. R-131. Mr. Daniels alleged that he informed his trial counsel

> that he had an alibi to where he was during the time of the incident. Defendant told [his trial counsel] that he was in Denver [sic] Colorado during the time of the incident staying at the 11th Avenue Hotel and that all [his trial counsel] had to do was get verification from the Hotels' [sic] general manger, Susan Johnson and their log sheets to prove this alibi.

R-131. In striking this amended motion, the trial court again did not find that this, or any other claim, was legally insufficient. R-167-69.

Finally, Mr. Daniels' motion to vacate, set aside, or correct judgment of conviction and sentence, R-180-213, and his amended motion, R-214-60, also presented detailed claims and arguments. The amended motion corrected many of the key problems previously cited by the trial court. It contained a motion, R-214-17, separate from the memorandum of law, R-217-259, and a signed and notarized oath, R-259. By way of example, the amended motion advanced well-developed claims for ineffective assistance of counsel 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.

With respect to the alibi defense, Mr. Daniels' noted that during his initial meeting with trial counsel, he told his lawyer "that he could not possibly have committed the crimes with which he'd been charged because he had been living in an efficiency apartment and working in Denver, Colorado at the time of their commission." R-240. Mr. Daniels added that he gave his lawyer "the names, addresses, and phone numbers of his apartment manager and employer where he'd been living and working at the time, and explained they were willing and available to testify that Defendant was in Denver on July 29th, 2004." R-240.

As noted above, the trial court ultimately denied Mr. Daniels' postconviction claims. R-396-453. With respect to the alibi claim, the trial court found that it was rebutted by the fact that on November 18, 2004, Mr. Daniels "completed an

affidavit of indigent status." R-400 (citing Exhibit "A" to State's Response to the Defendant's Amended Rule 3.850 Motion at R-312-14). In that affidavit, the trial court noted that Mr. Daniels' listed a "DeFuniak Springs address, the same one listed on the DeFuniak Springs Police Department arrest report." R-400 (citing Exhibit "B" to State's Response to the Defendant's Amended Rule 3.850 Motion at R-315-17). It is not clear whether the trial court ever determined if this address represented Mr. Daniels' domicile or place of residence at the time the charged offenses occurred. *See, e.g.*, *Weiler v. Weiler*, 861 So. 2d 472, 476-77 (Fla. 5th DCA 2003) (noting that there is a difference between "domicile" and "residence"); *Keveloh v. Carter*, 699 So. 2d 285, 288 (Fla. 5th DCA 1997) ("A person may have several temporary local residences but can have only one legal residence.").

Clearly, Mr. Daniels' case does not serve as the model for foreclosing a defendant's ability to dismiss or withdraw a postconviction motion. While not all of Mr. Daniels' claim may have survived judicial scrutiny, there is reason to believe that his claims based on his trial counsel's failure to investigate and present an alibi defense warranted closer review, and may well have benefited from further amendment following dismissal of the original motion.

Even if the First District's concern that defendants may simply try to prolong the postconviction process was legitimate, there is no reason to think that allowing Mr. Daniels and other defendants to dismiss or withdraw their motions

would compound the work of the trial courts. As Justice Anstead noted in *Nelson*, "[t]he overwhelming majority of claims presented, for example, represent issues that should have been raised at trial or on appeal and are easily identified as such and summarily resolved." 875 So. 2d at 585 (Anstead, C.J., dissenting). Moreover, as in *Spera*, this Court could limit the number of motions to dismiss that a defendant can file. This Court could, for example, find that a defendant may dismiss or withdraw a motion for postconviction relief at least once. Thereafter, if the defendant filed a new motion which the trial court deemed legally insufficient, the defendant would be afforded the opportunity to amend at least once as dictated by *Spera*. If the defendant sought to then dismiss his motion, rather than file the amendment, the trial court would have the discretion to grant or deny further relief.

This procedure would harmonize this Court's decisions in *Clark* and *Spera*. And, rather than increase the trial courts' labors, it would likely reduce the time spent on individual motions by making it clear that defendants would have two opportunities to craft a motion for postconviction relief. If, after dismissing once, and amending another time, the defendant could not plead a legally sufficient motion, the trial court would likely be on firm ground in denying relief with prejudice.

CONCLUSION

Based on the foregoing points and authorities, Mr. Daniels asks this Court to reverse the First District Court of Appeal's decision with instructions that the motion to dismiss be granted and that Mr. Daniels be afforded a reasonable amount of time to file his amended motion for postconviction relief.

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Respectfully submitted,

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I certify that a copy of the foregoing was served via email and U.S. Mail this 24th day of May 2012 to the parties listed below.

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CERTIFICATE OF COMPLIANCE

I certify that the foregoing brief complies with the font requirements contained in FLA. R. APP. P. 9.210(a)(2).

_____
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