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

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

PATRICK LAMON BROWN,

Appellant,

v. Case No. 5D18-398

STATE OF FLORIDA,

Appellee.

_____/

Opinion filed May 25, 2018

3.850 Appeal from the Circuit Court
for Orange County,
A. James Craner, Judge.

Patrick Lamon Brown, Madison, pro se.

No Appearance for Appellee.

PER CURIAM.

Patrick Lamon Brown appeals the summary denial of his motion for postconviction relief, filed pursuant to Florida Rule of Criminal Procedure 3.850, and his rule 3.800(a) motion to correct illegal sentence.[1] We affirm the denial of his rule 3.800(a) motion without further discussion. As for Brown's motion for postconviction relief, we affirm as to Grounds One, Two, Three, Four, Seven, Nine, Ten, and Eleven. However, because

[1] The trial court disposed of both motions in one order.

the record does not conclusively refute Brown's claim that counsel was ineffective for failing to object to a defective jury instruction and failing to inform the trial court about his mental illness, we reverse the summary denial of Grounds Six and Eight and remand for attachment of portions of the record conclusively refuting those claims or for an evidentiary hearing. See Freeman v. State, 761 So. 2d 1055, 1061 (Fla. 2000) ("[A] defendant is entitled to an evidentiary hearing on a postconviction relief motion unless (1) the motion, files, and records in the case conclusively show that the prisoner is entitled to no relief, or (2) the motion or a particular claim is legally insufficient." (citing Maharaj v. State, 684 So. 2d 726 (Fla. 1996))). We conclude that Ground Five of Brown's motion, alleging counsel was ineffective for failing to subpoena witnesses, was insufficiently pled. Accordingly, we reverse the summary denial of this ground and remand for the purpose of providing Brown an opportunity to amend this claim. See Spera v. State, 971 So. 2d 754, 762 (Fla. 2007).

AFFIRMED in part, REVERSED in part, and REMANDED.

SAWAYA, PALMER and BERGER, JJ., concur.