

**IN THE CIRCUIT COURT OF THE
SEVENTH JUDICIAL CIRCUIT
FLAGLER COUNTY, FLORIDA**

CASE NO: 2011CF-000533-XX

STATE OF FLORIDA,

Plaintiff,

v.

WILLIAM COPELAND,

Defendant.

_____ /

MOTION TO CORRECT SENTENCING ERROR

THE DEFENDANT, William Copeland, by and through the undersigned counsel, hereby files this Motion to Correct Sentencing Error pursuant to Florida Rule of Criminal Procedure 3.800(b)(2), and as grounds therefor, states:

Jurisdictional Issue

Florida Rule of Criminal Procedure 3.800(b) provides in pertinent part:

(b) Motion to Correct Sentencing Error. A motion to correct **any** sentencing error, including an illegal sentence, may be filed as allowed in this subdivision. ...

* * *

(2) Motion Pending Appeal. If an appeal is pending, a defendant or the state may file in the trial court a motion to correct a sentencing error. The motion may be filed by appellate counsel and must be served before the party's first brief is served. ... [Emphasis added].

In Jackson v. State, 983 So. 2d 562 (Fla. 2008), the supreme court clarified the scope of Rule 3.800(b)(2), holding that it "may be used to correct and preserve

for appeal *any error in an order entered as a result of the sentencing process* - that is, orders related to the sanctions imposed." Id. at 574. [Emphasis added]. Clearly an error in the award of jail credit, reflected in the sentencing order, falls within this scope.

Rule of Criminal Procedure 3.801 became effective July 1, 2013. It provides in pertinent part:

(a) Correction of Jail Credit. A court may correct a sentence that fails to allow a defendant credit for all of the time he or she spent in the county jail before sentencing

The court commentary to this new Rule provides that “[a]ll jail credit issues must be handled pursuant to this rule. The rule is intended to require that jail credit issues be dealt with promptly, within 1 year of the sentence becoming final.” However, significantly, there was no amendment to the language of Rule 3.800(b) upon the promulgation of the new Rule 3.801. Therefore, under the current state of the law, jail credit issues may be raised as early as just prior to the briefing process on direct appeal (pursuant to Rule 3.800(b)) or as late one year after the judgment and sentence become final (pursuant to Rule 3.801). Unless and until the plain language of Rule 3.800(b) is changed, jail credit issues continue to remain cognizable in a Rule 3.800(b) motion. See, e.g., Moore v. State, 138 So. 3d 1222 (Fla. 4th DCA 2014)(Implying that jail credit issues are cognizable under both Rules).

The Merits

The Defendant was arrested on the warrant in this case in Volusia County

on May 21, 2011. On May 23, 2011, he was transferred to Flagler County Jail. He remained incarcerated until the date of his sentencing on December 14, 2012. Therefore the Defendant was entitled to an award of 574 days of jail time credit. However, the judgment and sentence reflects that he was only awarded credit for 572 days. It appears that the Defendant was not given credit for the two days he spent in the Volusia County Jail, where he had been taken into custody solely as a result of the warrant issued in this case. The failure to award credit for the two days of incarceration in Volusia County was error. See Perez v. State, 967 So. 2d 440 (Fla. 4th DCA 2007)(Defendant was entitled to credit for time served in other county on warrant issued in county where he was serving sentence).

Pursuant to Florida Rule of Criminal Procedure 3.800(b)(2)(A), trial counsel shall represent the Defendant on proceedings pertaining to this motion.

WHEREFORE, the Defendant requests that this Court amend the erroneous award of jail time credit from 572 to 574 days, to correctly reflect the Defendant's incarceration from the date he was arrested on the warrant on May 21, 2011 until the date of his sentencing on December 14, 2012 and for such other and further relief as to the court may seem just and proper.

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COUNSEL FOR APPELLANT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. mail this 19th day of August, 2014, to **Hon. Raul Zambrano**, Seventh Judicial Circuit, Volusia County Courthouse, 101 N. Alabama Avenue, DeLand, FL 32724; **Mark Johnson**, Assistant State Attorney, Office of the State Attorney, 410 St. John's Avenue, Room 109, Palatka, FL 32177; **Lynn W. Martin, Esquire**, 4711 U.S. Highway 17, Suite C4, Fleming Island, FL 32003; and by e-mail to the **Office of the Attorney General**, Crimappdab@myfloridalegal.com, 444 Seabreeze Blvd., Daytona Beach, FL 32114.

/s/Richard J. D'Amico
Richard J. D'Amico, Esquire
COUNSEL FOR APPELLANT