IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT JULY TERM 2005

MIGUEL JOSE GALLINAT,

Appellant,

v. Case No. 5D05-497

STATE OF FLORIDA,

Appellee.

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Opinion filed August 19, 2005

3.800 Appeal from the Circuit Court
for Flagler County,
Robert K. Rouse, Jr., Judge.

Miguel J. Gallinat, DeFuniak Springs,
pro se.

Charles J. Crist, Attorney General, Tallahassee, and Jeffrey R. Casey, Assistant Attorney General, Daytona Beach, for Appellee.

EN BANC

SHARP, W., J.

Gallinat appeals from the circuit court's order which summarily denied his motion filed pursuant to Florida Rule of Criminal Procedure 3.800(a), in which he seeks an award of additional jail credit time. The lower court attached no records to its order. We reverse and remand.

In his motion, Gallinat alleges he was incarcerated in the county jail awaiting sentencing on the charges for which he was convicted in the case on the following

dates: October 13, 2002 to January 16, 2003 and August 25, 2003 to May 12, 2004. Based on these calculations, Gallinat served a total of 358 days in the county jail awaiting judgment and sentencing. Elsewhere in his motion he alleges he should have received 11 months and 28 days jail credit time.

Gallinat also alleges the trial court imposed a prison term of three years, one month and fifteen days. He concludes that because the court failed to award him credit for all of the jail time to which he is entitled, he has been caused to serve "approximately" five months and sixteen days longer than had the jail time been properly credited.

We conclude that Gallinat's motion is legally sufficient. His entitlement to credit for jail time may be determined from the face of court records which demonstrate Gallinat is not entitled to the relief requested, or that he should be granted the relief. Or, if the issue cannot be determined based on the face of the records at hand, the court may deny relief after attaching the records available and Gallinat shall be without prejudice to file a motion pursuant to Rule 3.850, or seek other remedies. *See State v. Mancino*, 714 So. 2d 429 (Fla. 1998); *Atwood v. State*, 765 So. 2d 242 (Fla. 1st DCA 2001).

We *en banc* this case because we recede from any inference in *Hankerson v. State*, 864 So. 2d 574 (Fla. 5th DCA 2004) that holding an evidentiary hearing is proper to resolve matters raised in motions filed pursuant to Rule 3.800(a). We reaffirm this

court's position on this issue, as expressed in *Paul v. State*, 830 So. 2d 953 (Fla. 5th DCA 2002).

REVERSED and REMANDED.

PLEUS, CJ., , PETERSON, GRIFFIN, THOMPSON,
PALMER, ORFINGER, MONACO and TORPY, JJ., concur.

SAWAYA, J., concurs specially with opinion.

SAWAYA, J., concurring specially.

I agree that we should recede from Hankerson v. State, 864 So. 2d 574 (Fla. 5th DCA 2004), to the extent that it implies an evidentiary hearing is appropriate to resolve issues raised in a motion filed pursuant to Florida Rule of Criminal Procedure 3.800(a). As to the remainder of the opinion, I concur in result only.