

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2008

LINARDO RODRIGUEZ,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D07-3716

[September 10, 2008]

PER CURIAM.

In this appeal from an order denying appellant's motion to withdraw his plea after sentencing, appellant claims that the court erred in forfeiting his gain time, because the court had no authority under section 944.28(2)(a), Florida Statutes, to enter an order of forfeiture. Instead, the trial court can recommend that the Department of Corrections take this action where the court finds that the proceeding is frivolous or brought with "reckless disregard for the truth," or where the defendant has presented false evidence. *Id; Hall v. State*, 752 So. 2d 575 (Fla. 2000). The state concedes that the trial court does not have authority to forfeit gain time pursuant to that section and agrees that the provision forfeiting gain time must be stricken.

We reverse and remand with instructions to strike the forfeiture of gain time from the order denying appellant's motion to withdraw his plea. The court may amend the order to make a recommendation to the Department of Corrections with respect to gain time forfeiture under the provision of the statute.

WARNER, STEVENSON and MAY, JJ., concur.

* * *

Appeal from the Circuit Court for the Nineteenth Judicial Circuit, Martin County; Larry Schack and Robert E. Belanger, Judges; L.T. Case No. 432006CF000960A.

Carey Haughwout, Public Defender, and Ellen Griffin, Assistant Public Defender, West Palm Beach, for appellant.

Bill McCollum, Attorney General, Tallahassee, and Sue-Ellen Kenny, Assistant Attorney General, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing.