

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

LEON E. ALLEN,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D08-1562

[September 3, 2008]

PER CURIAM.

Leon E. Allen appeals the trial court order dismissing his motion to correct sentence seeking additional jail time credit filed pursuant to Florida Rule of Criminal Procedure 3.800(a). The trial court relied on a response by the State of Florida arguing that the motion raised a claim previously rejected in an earlier motion for jail time credit, the denial of which was not appealed. While it is true that appellant did raise this claim previously, we find that a manifest injustice will occur if appellant's successive motion is not entertained on its merits. *State v. McBride*, 848 So. 2d 287 (Fla. 2003).

Appellant argued in his motion that he was entitled to additional jail time credit for time spent in Broward County Jail and mostly in Dade County Jail before his sentencing on February 12, 2007. He is entitled to credit for the time served in Dade County Jail on Dade County charges, as Broward County had issued and served a warrant for him for that time. He claimed entitlement to eighty days in his motion filed in the trial court. In the response to this Court's order to show cause why relief should not be granted, the State of Florida advises that it does not dispute his entitlement to eighty-two days of credit, acknowledging his entitlement to jail credit under *Gethers v. State*, 838 So. 2d 504 (Fla. 2003); *see also Perez v. State*, 967 So. 2d 440 (Fla. 4th DCA 2007).

Accordingly, we reverse the trial court's order of dismissal and remand for further proceedings on the merits of his motion for jail credit, applying *Gethers*.

Reversed and Remanded.

GROSS, MAY and DAMOORGIAN, JJ., concur.

* * *

Appeal of order denying rule 3.800 motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Eileen M. O'Connor, Judge; L.T. Case No. 06-16438CF10A.

Leon E. Allen, Florida City, pro se.

Bill McCollum, Attorney General, Tallahassee, and Mitchell A. Egber, Assistant Attorney General, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing.