

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

DANA ALAN PEVEY,)
)
 Appellant,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Appellee.)
 _____)

Case No. 2D10-3963

Opinion filed April 20, 2011.

Appeal pursuant to Fla. R. App. P.
9.141(b)(2) from the Circuit Court for
Polk County; John K. Stargel,
Judge.

Dana Alan Pevey, pro se.

WHATLEY, Judge.

Dana Alan Pevey appeals the order granting in part and denying in part his motion pursuant to Florida Rule of Criminal Procedure 3.800(a) seeking proper credit for time served. The postconviction court determined that Pevey was entitled to five more days credit than he had received, and it awarded him those five additional days on count one only. Consequently, the court denied Pevey's assertion that the sentencing court had orally pronounced that he would receive credit against both counts of his consecutive sentences. The record before us does not contain the sentencing

transcript, and it was not attached to either Pevey's motion or the court's order.

Accordingly, we remand for the postconviction court to determine whether the transcript is in the record. If it is, the court shall either grant Pevey's motion or deny it and attach the portions of the record refuting Pevey's claim. If the transcript is not in the record, the court shall deny Pevey's motion without prejudice to him filing an amended motion with the relevant portion of the transcript attached. See Beard v. State, 27 So. 3d 186, 187-88 (Fla. 5th DCA 2010) (citing Williams v. State, 957 So. 2d 600, 604 (Fla. 2007)).

Remanded with directions.

KELLY and LaROSE, JJ., Concur.