

Supreme Court of Florida

No. SC16-640

IN RE: AMENDMENTS TO THE FLORIDA RULES OF CRIMINAL PROCEDURE.

[November 23, 2016]

PER CURIAM.

This matter is before the Court for consideration of proposed amendments to the Florida Rules of Criminal Procedure. We have jurisdiction. See art. V, § 2(a), Fla. Const.

The Criminal Court Steering Committee (Steering Committee) has filed a petition proposing amendments to Florida Rules of Criminal Procedure 3.800 (Correction, Reduction, and Modification of Sentences), 3.801 (Correction of Jail Credit), and 3.9875 (Motion for Jail Credit). The Steering Committee published its proposals for comment prior to filing them with the Court. No comments were received by the Steering Committee regarding its proposals. After they were filed, the Court republished the Steering Committee's proposals for comment. No comments were filed.

Having considered the Steering Committee's petition, we adopt these straightforward amendments to the Florida Rules of Criminal Procedure as proposed by the Steering Committee. The amendments collectively make clear that jail credit matters can be litigated in either a motion filed under rule 3.800(b) while a defendant's direct appeal is pending, or in a motion filed under rule 3.801 after a defendant's sentence has become final.

Accordingly, the Florida Rules of Criminal Procedure are hereby amended as set forth in the appendix to this opinion. New language is underscored; deleted language is struck through. The committee notes are offered as an explanation only and are not adopted as an official part of the rules. The amendments shall become effective immediately upon the release of this opinion.

It is so ordered.

LABARGA, C.J., and PARIENTE, LEWIS, QUINCE, CANADY, POLSTON, and PERRY, JJ., concur.

THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THESE AMENDMENTS.

Original Proceeding – Florida Rules of Criminal Procedure

H. Scott Fingerhut, Chair, Criminal Procedure Rules Committee, H. Scott Fingerhut, P.A., Coral Gables, Florida; Meredith Charbula, Past Chair, Criminal Procedure Rules Committee, Jacksonville, Florida; Judge Jay Paul Cohen, Chair, Criminal Court Steering Committee, Daytona Beach, Florida; John F. Harkness, Jr., Executive Director, and Heather Savage Telfer, Bar Staff Liaison, The Florida Bar, Tallahassee, Florida; and Barton Neil Schneider, Office of the State Courts Administrator, Tallahassee, Florida,

for Petitioner

Appendix

RULE 3.800. CORRECTION, REDUCTION, AND MODIFICATION OF SENTENCES

(a) [No Change]

(b) **Motion to Correct Sentencing Error.** A motion to correct any sentencing error, including an illegal sentence or incorrect jail credit, may be filed as allowed by this subdivision. This subdivision shall not be applicable to those cases in which the death sentence has been imposed and direct appeal jurisdiction is in the ~~S~~supreme ~~C~~court under article V, section 3(b)(1) of the Florida Constitution. The motion must identify the error with specificity and provide a proposed correction. A response to the motion may be filed within 15 days, either admitting or contesting the alleged error. Motions may be filed by the state under this subdivision only if the correction of the sentencing error would benefit the defendant or to correct a scrivener's error.

(1)-(2) [No Change]

(c) [No Change]

Committee Notes

[No Change]

Court Commentary

[No Change]

RULE 3.801. CORRECTION OF JAIL CREDIT

(a) **Correction of Jail Credit.** A court may correct a final sentence that fails to allow a defendant credit for all of the time he or she spent in the county jail before sentencing as provided in section 921.161, Florida Statutes.

(b) **Time Limitations.** No motion shall be filed or considered pursuant to this rule if filed more than 1 year after the sentence becomes final. ~~For sentences imposed prior to July 1, 2013, a motion under this rule may be filed on or before July 1, 2014.~~

(c) **Contents of Motion.** The motion shall be under oath and include:

- (1) a brief statement of the facts relied on in support of the motion;
- (2) the dates, location of incarceration, and total time for credit already provided;
- (3) the dates, location of incarceration, and total time for credit the defendant contends was not properly awarded;
- (4) whether any other criminal charges were pending at the time of the incarceration noted in subdivision (c)(3), and if so, the location, case number, and resolution of the charges; and
- (5) whether the defendant waived any county jail credit at the time of sentencing, and if so, the number of days waived.

(d) **Successive Motions.** No successive motions for jail credit will be considered.

(e) **Incorporation of Portions of Florida Rule of Criminal Procedure 3.850.** The following subdivisions of Florida Rule of Criminal Procedure 3.850 apply to proceedings under this rule: 3.850(e), (f), (j), (k), and (n).

Court Commentary

2013 Adoption. All 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. No successive motions for jail credit will be allowed.

2016 Amendment. The 2016 amendment clarifies that rule 3.801 applies to final sentences. Prior to the sentence being final, defendants may avail themselves of all appropriate proceedings to litigate a jail credit issue, including direct appeal if properly preserved, a motion for rehearing, or a motion pursuant to rule 3.800(b).

RULE 3.9875. MOTION FOR JAIL CREDIT

**MODEL FORM FOR USE IN MOTIONS FOR
CORRECTION OF JAIL CREDIT PURSUANT TO
FLORIDA RULE OF CRIMINAL PROCEDURE 3.801**

In the Circuit Court of the
_____ Judicial Circuit,
in and for _____
County, Florida

State of Florida)
)
 v.)
)
_____)
(your name))
)
_____)

MOTION FOR CORRECTION OF JAIL CREDIT

**INSTRUCTIONS FOR FILING MOTION FOR JAIL CREDIT
PURSUANT TO FLORIDA RULE OF CRIMINAL PROCEDURE 3.801
READ CAREFULLY**

1. The attached motion is the only type of motion you are permitted to file to obtain in-state jail credit omitted from your final sentence. It may not be used to obtain out-of-state jail credit.
2. You must file this motion within 1 year of the date your sentence became final.
3. Only 1 motion may be filed to obtain jail credit omitted from your final sentence. No successive motion for jail credit from a final sentence will be considered.
4. You must complete the attached motion by filling in the blank spaces.
5. You must tell the truth and sign the attached motion. If you make a false statement of a material fact in your motion, you may be prosecuted for perjury.
6. You must file the attached motion in the court that imposed the sentence on which the jail credit was omitted.
7. You are not required to pay a filing fee to file the attached motion.

MOTION FOR CORRECTION OF JAIL CREDIT

_____ (hereinafter “Defendant”), in pro se fashion, respectfully moves this Honorable Court for jail credit pursuant to section 921.161(1), Florida Statutes, and Florida Rule of Criminal Procedure 3.801. In support of the motion, the Defendant states the following in a question-and-answer format:

1. What is/are the FACT(S) that was/were omitted from any sentence(s) imposed in this case that entitle you to jail credit? _____

2. Is this the first motion you have filed requesting this jail credit? _____
If you answered NO, how many prior motions have you filed? _____
As to EACH motion, what was the result? _____

3. If you have already received jail credit on any sentence(s) imposed in this case, what was the total time for jail credit on each sentence? _____
What dates did this jail credit cover? _____
Where were you incarcerated? _____

4. What is the total time for jail credit that you are requesting in this motion that you have NOT YET RECEIVED on any sentence(s) imposed in this case? _____

What dates does this jail credit cover? _____

Where were you incarcerated? _____

Did you have any other charge(s) pending during this time frame? _____

If the answer is YES, as to EACH charge, what is the case number, name of county, and resolution of charge(s)? _____

5. Was your sentence the result of a trial or plea? _____

If your sentence was the result of a plea:

Was it a negotiated plea with the Sstate or was it an open plea to the Ccourt?

Did you sign a written plea agreement? _____

Did you sign a written rights waiver form? _____

Did you waive any county jail credit as part of the plea? _____

If so, how many days did you agree to waive? _____

6. Under penalties of perjury and administrative sanctions from the Department of Corrections, including forfeiture of gain time if this motion is found to be frivolous or made in bad faith, I certify that I understand the contents of the foregoing motion, that the facts contained in the motion are true and correct, and that I have a reasonable belief that the motion is timely filed. I certify that this motion does not duplicate previous motions that have been disposed of by the court. I further certify that I understand English and have read the foregoing motion or had the motion read to me, or the foregoing motion was translated completely into a language which I understand and read to me by(name)....., whose address is(address)....., and whose certification of an accurate and complete translation is attached to this motion.

WHEREFORE, the Defendant respectfully moves the Ccourt to grant this motion for ___ days of additional jail credit, for a total of ___ days of credit.

/s/ _____
Name _____
DC# _____

Certificate of Mailing
(Must use Certificate of Mailing OR Certificate of Service)

I certify that I placed this document in the hands of(here insert name of institution official)..... for mailing to(here insert name or names and addresses used for service)..... on(date).....

/s/ _____
Name _____
Address _____
DC# _____

Certificate of Service
(Must use Certificate of Mailing OR Certificate of Service)

I certify that the foregoing document has been furnished to(here insert name or names, addresses used for service and mailing addresses)..... by (e-mail) (delivery) (mail) (fax) on(date).....

/s/ _____
Attorney

Certificate of an Accurate and Complete Translation
(To be used if translation of the motion was necessary.)

I certify that a complete and accurate translation of this motion was provided to the Defendant in this case on(date).....

/s/ _____
Name _____
Address _____