

# Third District Court of Appeal

State of Florida, January Term, A.D. 2011

Opinion filed March 23, 2011.

Not final until disposition of timely filed motion for rehearing.

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No. 3D10-3064

Lower Tribunal No. 06-35685

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**Gary E. Marshall,**  
Appellant,

vs.

**The State of Florida,**  
Appellee.

An Appeal under Florida Rule of Appellate Procedure 9.141(b)(2) from the Circuit Court for Miami-Dade County, Stacy Glick, Judge.

Gary E. Marshall, in proper person.

Pamela Jo Bondi, Attorney General, and Richard L. Polin, Chief Assistant Attorney General, for appellee.

Before SHEPHERD, SALTER, and EMAS, JJ.

SHEPHERD, J.

Appellant, Gary E. Marshall, appeals a trial court order denying his Florida Rule of Criminal Procedure 3.800(a) motion to correct illegal sentence. Marshall contends he is entitled to further credit for time served, specifically for: 1) a sentence imposed on October 22, 2008, of ninety days received as a result of probation violation; and 2) for a sentence of 180 days imposed on April 6, 2009, as a result of a probation violation.

The State concedes county jail cards do, indeed, reflect that Marshall commenced serving a ninety-day sentence on or about October 23, 2008, and likewise commenced serving a 180-day sentence on April 6, 2009, but states both sentences expired prior to Marshall completing them.

Because the record does not show conclusively that Marshall is entitled to no relief, we reverse and remand to the trial court with directions that it obtain the transcript from the sentencing hearing, and 1) either attach it to a further order, or 2) grant any additional credit to which Marshall might be entitled under the plea if there was no waiver of credit for time served. See Fla. R. App. P. 9.141(b)(2)(D).

Reversed and remanded with directions.