

Third District Court of Appeal
State of Florida, January Term, A.D. 2011

Opinion filed June 22, 2011.
Not final until disposition of timely filed motion for rehearing.

No. 3D11-1406
Lower Tribunal No. 10-15043

Roger E. Ramos-Perez,
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, Beth Bloom, Judge.

Roger Eduardo Ramos-Perez, in proper person.

Pamela Jo Bondi, Attorney General, for appellee.

Before WELLS, SHEPHERD and EMAS, JJ.

SHEPHERD, J.

The defendant, Roger E. Ramos-Perez, appeals the summary denial of his motion filed pursuant to Florida Rule of Criminal Procedure 3.850. For the reasons stated below, we reverse and remand.

The defendant entered into a plea agreement in which he admitted to violating his probation in exchange for a sentence of 366 days in state prison. After he was sentenced, the Department of Corrections forfeited 177 days of gain time he received in his original sentence. The defendant argues, in his post-conviction motion, the reinstatement of the 177 days of gain time will result in an increase of incarceration of almost six months, which would thwart the intention of his negotiated plea agreement—that he serve a total of 366 days in state prison. We find the defendant’s argument to be meritorious.

The Department of Corrections has the authority to forfeit all of a defendant’s gain time following a violation of probation. See § 944.28(1), Fla. Stat. (2010). “However, a defendant is entitled to have a plea agreement enforced if the Department’s forfeiture of gain time thwarted the intent of a negotiated plea.” Chase v. State, 57 So. 3d 898, 899 (Fla. 1st DCA 2011); see also Etienne v. State, 994 So. 2d 450, 452 (Fla. 3d DCA 2008). In this case, the forfeiture of the defendant’s gain time means the defendant will be facing a longer sentence than agreed, and thus, the defendant would be entitled to relief on this basis.

We, therefore, reverse the trial court's summary denial and remand for the trial court to determine whether the record shows conclusively the defendant is entitled to no relief. See Fla. R. App. P. 9.141(b)(2)(D). If the record reflects the defendant was to serve a total of 366 days in state prison under the negotiated plea agreement, the trial court shall resentence the defendant in a manner that effectuates the plea agreement in light of the gain time forfeiture, or allow the defendant to withdraw his plea. See Hashem v. State, No. 3D10-2875 (Fla. 3d DCA June 1, 2011).

Reversed and remanded for further proceedings.