

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

VIRGIL O'KEITH STEWART,

Appellant,

v.

Case No. 5D16-3564

STATE OF FLORIDA,

Appellee.

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Opinion filed May 26, 2017

3.801 Appeal from the Circuit Court  
for Marion County,  
Anthony M. Tatti, Judge.

James S. Purdy, Public Defender, and  
Alexander J. Gilewicz, Assistant Public  
Defender, Daytona Beach, for Appellant.

Pamela Jo Bondi, Attorney General,  
Tallahassee, and Allison Leigh Morris,  
Assistant Attorney General, Daytona  
Beach, for Appellee.

PER CURIAM.

Virgil Stewart appeals the summary denial of his motion seeking additional credit for time served both in jail and in prison. Although the trial court properly concluded Stewart's motion was facially insufficient, it also denied Stewart's claim on the merits. This denial was error. The trial court should have allowed Stewart sixty days to amend

his motion. See *Nazario v. State*, 188 So. 3d 975, 976 (Fla. 5th DCA 2016) (holding that when defendant files facially insufficient rule 3.801 motion, court must enter non-final, non-appealable order allowing defendant sixty days to amend motion); see also Fla. R. Crim. P. 3.850(e).

We reverse the trial court's summary denial order and remand to provide Stewart sixty days to amend his motion.

REVERSED and REMANDED with instructions.

PALMER, ORFINGER, and EVANDER, JJ., concur.