

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

JOSE M. VEGA,

Appellant,

v.

Case No. 5D17-3493

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed April 6, 2018

3.850 Appeal from the Circuit
Court for Osceola County,
Elaine A. Barbour, Judge.

Jose M. Vega, Bristol, pro se.

No Appearance for Appellee.

PER CURIAM.

The appellant, Jose M. Vega, appeals the trial court's summary denial of the motion he filed pursuant to Florida Rule of Criminal Procedure 3.850. In the motion, Vega alleged that he entered into a plea agreement that provided that he would admit his violation of probation and serve an additional eighteen months in prison. Vega had previously served a sentence of ten years in prison on the substantive charges. The trial court, in accordance with the plea agreement, sentenced him to eleven years and 283

days in prison, with credit for 103 days served in the county jail and the ten years he had previously served in the Department of Corrections.

After he was sentenced, the Department of Corrections calculated the gain time Vega was entitled to from his previous term of incarceration. Pursuant to that calculation, Vega would be required to serve in excess of the eighteen months in prison provided for in his plea agreement. Accordingly, we reverse the order denying Vega's motion and remand this case to the trial court to either resentence Vega in accordance with the plea agreement or to allow him to withdraw his plea. See Dellofano v. State, 946 So. 2d 127, 129 (Fla. 5th DCA 2007); Dellahoy v. State, 816 So. 2d 1253, 1253 (Fla. 5th DCA 2002).

REVERSED and REMANDED.

SAWAYA, ORFINGER and BERGER, JJ., concur.