

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

COREY WAYNE WEBB,

Appellant,

v.

Case No. 5D20-1151

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed September 4, 2020

3.800 Appeal from the Circuit
Court for Lake County,
Mark J. Hill, Judge.

Corey Wayne Webb, Perry, pro se.

Ashley Moody, Attorney General,
Tallahassee, and Deborah A. Chance,
Assistant Attorney General, Daytona
Beach, for Appellee.

ORFINGER, J.

Corey Wayne Webb appeals the denial of his motion to correct sentence filed pursuant to Florida Rule of Criminal Procedure 3.800(a). He argues that his written sentence does not conform to the trial court's oral pronouncement regarding credit for time served in prison on his newly imposed sentence.

Webb was charged with three counts of lewd or lascivious battery on a child twelve years of age or older, but younger than sixteen, as well as one count of disorderly intoxication. He entered a negotiated plea to one count of lewd or lascivious battery and to disorderly intoxication. The State dismissed the remaining two lewd or lascivious battery counts. Webb was sentenced to time served on the disorderly intoxication charge, and to two years in prison, followed by ten years of sexual offender probation, for the lewd or lascivious battery. He served his prison term and was released on probation. He subsequently violated his probation multiple times and was on community control (his probation had been revoked) at the time that his last violation came before the court.

At the violation of community control hearing, Webb admitted the violation and a discussion ensued concerning Webb's credit for time served earlier in jail and prison:

THE COURT: What was your offer, [defense counsel]? I'm sorry. I didn't write it down.

[DEFENSE COUNSEL]: Four years in the Department of Corrections with credit for time served.

THE COURT: And correct me if I'm wrong, [defense counsel]. He does score 108 months, that's nine years. Get a credit for two, that would leave seven.

[DEFENSE COUNSEL]: It would be with the multiple violations, he would get credit for more than two years. I don't know the exact amount but —

THE COURT: Because he was doing jail time —

[DEFENSE COUNSEL]: Right.

THE COURT: — for each one of those. Okay.

[DEFENSE COUNSEL]: So there should be, like, three bookings.

....

THE COURT: . . . Probably has about six months credit . . . here, besides the prison time. So you're looking at — how much time do you have credit? You should know that in your head.

THE DEFENDANT: I think like 30 months, I think.

THE COURT: Thirty months credit?

THE DEFENDANT: Thirty months, I believe.

THE COURT: Uh-huh.

. . . .

THE COURT: So you think that you have 30 months credit?

THE DEFENDANT: Yes, sir.

THE COURT: [Defense counsel], I'm willing to reduce the sentence to 60 months. Credit time served [sic] of 30 months gives him another 30 months to do.

[DEFENSE COUNSEL]: Okay.

. . . .

THE COURT: So it's — you can take a choice. It's six years Department of Corrections with 30 months time served. That makes you — you've got to do another — actually, it might be — I want it to be — let's see 60 months. Sixty-six months time served. So you have to do an equal amount of time. So you have to do another 30 months.

THE DEFENDANT: Another three years?

THE COURT: Yeah.

[DEFENSE COUNSEL]: The total was 66 months?

THE COURT: Right. Sentenced to 66 months in the Department of Corrections. Credit time served [sic] at 30 months.

[DEFENSE COUNSEL]: He said 30 months.

....

THE DEFENDANT: . . . So I'll do three more years up the road or in prison?

THE COURT: Somewhere around that amount. I don't know exactly how much time you have served. We're just doing ballpark figures right now.

[DEFENSE COUNSEL]: Your Honor, I put 30 months credit for time previously served. Did you want me to put including — I'm sorry. Credit for any time served or —

THE COURT: No. Credit all time served.

MS. GREENE: Okay. I'm sorry.

THE COURT: That way we have an idea in ballpark [sic] of what he's done. . . .

After the trial court accepted Webb's plea, the trial court revoked his community control and sentenced Webb "to 66 months in the Department of Corrections, with credit all [sic] time served and gain time earned." Despite the assurance that Webb would receive credit for all the jail and prison time that he had served, the trial court entered a written sentence that stated he was sentenced to 66 months in prison with credit for only 387 days of jail time. No prison credit was included as part of the written sentence. When Webb pointed out the error in the motion to correct sentence, the trial court denied it, ruling that "[t]he sentencing order . . . accurately reflects the oral pronouncement and intent of this Court."¹

¹ Webb also filed an administrative grievance with the Department of Corrections to correct the discrepancy, but his grievance was denied.

A motion filed pursuant to rule 3.800(a) is the proper vehicle to address a discrepancy between the oral pronouncement and the written sentence. Mallon v. State, 939 So. 2d 198, 199 n.1 (Fla. 5th DCA 2006); see Harris v. State, 160 So. 3d 523, 523 (Fla. 5th DCA 2020). Because no evidentiary hearing is permitted under a rule 3.800(a) motion, an appeal of the trial court's ruling involves only pure issues of law and therefore is reviewed de novo. Williams v. State, 235 So. 3d 962, 963 (Fla. 5th DCA 2017).

Here, the transcript clearly shows that the trial court agreed to give Webb credit for the jail and prison time that he had served on this case.² Contrary to the trial court's intent and the oral pronouncement, the written sentence allowed Webb credit for only 387 days of jail time. When there is a conflict between the oral pronouncement and the written sentence, the oral pronouncement controls. See Williams v. State, 957 So. 2d 600, 603 (Fla. 2007). The trial court erred in denying Webb's motion to correct the written sentence to conform to the oral sentence. We reverse the trial court's order, and remand for correction of the written sentence to include credit for all prison and jail time in accordance with the trial court's oral pronouncement.

REVERSED and REMANDED.

EVANDER, C.J., and TRAVER, J., concur.

² It is evident from the transcript that no one knew exactly how much time Webb had served in prison or in jail to that point. Regardless of what the actual figures are, the trial court plainly intended for him to receive credit for all of it. It orally sentenced him at the hearing to "66 months in the Department of Corrections, with credit all [sic] time served and gain time earned." And the trial court repeatedly stated that in addition to his jail time, it intended to give credit for all the prison time that Webb had served.