

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

JEFFRY DICKERSON,

Appellant,

v.

Case No. 5D21-1062
LT Case No. 2015-CF-409

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed November 12, 2021

3.850 Appeal from the Circuit Court
for Citrus County,
Richard A. Howard, Judge.

Matthew J. Metz, Public Defender, and Joseph
Chloupek, Assistant Public Defender, Daytona
Beach, for Appellant.

Ashley Moody, Attorney General, Tallahassee,
and L. Charlene Matthews, Assistant Attorney
General, Daytona Beach, for Appellee.

TRAVER, J.

Jeffry Dickerson appeals the postconviction court's denial of his motion
filed pursuant to Florida Rule of Criminal Procedure 3.850. We affirm the

postconviction court's denial of Dickerson's motion but remand for it to strike an order concerning Dickerson's Department of Corrections ("DOC") gain time.

The postconviction court set an evidentiary hearing on several grounds Dickerson raised, and accordingly, ordered him transported from DOC. Following the hearing, which occurred about six weeks after Dickerson arrived, the postconviction court opined Dickerson's arguments were "completely unsupported" and "ridiculous." It suggested it would recommend to DOC that Dickerson not receive gain time for time spent awaiting his hearing. It then followed its statement with a signed "Felony Court Order" containing an unelaborated denial of Dickerson's motion¹ and a directive that "[Dickerson] is not to receive credit for time out of facility awaiting this hearing."

Only DOC is responsible for calculating and awarding credit for time served after imposition of a sentence, not a trial court. *Buelow v. State*, 994 So. 2d 1214, 1215 (Fla. 5th DCA 2008). Lower courts are permitted to recommend DOC institute disciplinary proceedings, provided they do not order DOC to take any explicit action. *See Hall v. State*, 752 So. 2d 575,

¹ It later issued a detailed order outlining the bases for denying Dickerson's motion.

581 (Fla. 2000) (finding court may only “recommend” that DOC sanction an inmate). The postconviction court lacked authority to direct DOC to discipline Dickerson by forfeiting his gain time or denying him credit for time served in jail awaiting the hearing; this violated the doctrine of separation of powers. See *id.* (citing Art. II, § 3, Fla. Const.); *Isom v. State*, 43 So. 3d 776, 777 (Fla. 5th DCA 2010). Accordingly, we remand and direct the postconviction court to strike that portion of its order.² See, e.g., *Cole v. State*, 913 So. 2d 709, 710 (Fla. 5th DCA 2005).

AFFIRMED and REMANDED.

HARRIS and NARDELLA, JJ., concur.

² We express no opinion on the frivolity of Dickerson’s petition. On remand, the postconviction court may pursue the appropriate procedure regarding DOC discipline at its discretion. See § 944.279(1), Fla. Stat. (2020); Fla. R. Crim. P. 3.850(n)(3).