

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA

FIFTH DISTRICT

JULY TERM 2003

BLISS M. THOMAS,

Appellant,

v.

CASE NO. 5D03-1905

STATE OF FLORIDA,

Appellee.

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Opinion filed August 22, 2003

3.800 Appeal from the Circuit Court
for Orange County,
Anthony H. Johnson, Judge.

Bliss M. Thomas, Orlando,
pro se.

Charles J. Crist, Jr., Attorney General,
Tallahassee, and Ann M. Phillips, Assistant
Attorney General, Daytona Beach, for Appellee.

PLEUS, J.

We have for review an order which denies a Rule 3.800(a) motion to correct an illegal sentence. The trial court failed to attach portions of the record to support the denial of jail time credit. Once a *prima facie* claim is asserted that the record shows an entitlement to jail time credit, the burden is on the trial court to attach portions of the record to refute the claim. See *Martin v. State*, 799 So. 2d 343 (Fla. 5th DCA 2001); *Abney v. State*, 661 So. 2d 139 (Fla. 5th DCA 1995). The state's attempt to provide such documentation to this court in response

to this court's order to show cause does not cure the defect.¹ See *Worthington v. State*, 607 So. 2d 1023 (Fla. 5th DCA 1996).

The order denying the defendant, Bliss M. Thomas', Rule 3.800(a) motion to correct an illegal sentence is reversed and remanded for the trial court to either attach portions of the record to support the denial of jail time credit or to award the proper credit.

REVERSED AND REMANDED.

SAWAYA, C.J., and PETERSON, J. concur.

¹ We are concerned about the state's response which appears to misstate the facts presented in their own attachments and apparently recognizes that their attachments reflect two different jail time credit periods and yet fails to point this fact out to the court or concede error.