

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

JULY TERM2008

PATRICK NEEL,

Appellant,

v.

Case No. 5D08-688

STATE OF FLORIDA,

Appellee.

Opinion filed August 5, 2008

3.850 Appeal from the Circuit
Court for Orange County,
Roger J. McDonald, Judge.

Patrick Neel, Orlando, pro se.

Bill McCollum, Attorney General,
Tallahassee, and Ann M. Phillips,
Assistant Attorney General,
Daytona Beach, for Appellee.

PLEUS, J.

We reverse the trial court's summary denial of appellant's motion for enforcement of plea agreement. While the trial court is correct that it does not have the authority to instruct the Department of Corrections ("DOC") on how it administers sentences, it does have the authority to ensure that a forfeiture of gain time does not interfere with the terms of a valid plea agreement. See *Dellofano v. State*, 946 So. 2d 127, 128 (Fla. 5th DCA 2007); *Dellahoy v. State*, 816 So. 2d 1253, 1253 (Fla. 5th DCA 2002).

In the instant motion, appellant alleges that despite the intention of all parties that appellant receive a sentence of 18 months incarceration in Orange County case number 48-1999-CF-1144, the DOC has nonetheless forfeited nine months of previously-earned gain time resulting in a 27-month term of incarceration. Because appellant's motion states a viable claim for postconviction relief and because appellant's unrefuted allegations must be taken as true, the instant matter must be reversed and remanded for an evidentiary hearing. Furthermore, because appellant's allegations, if true, would appear to demonstrate appellant's entitlement to an immediate release from prison, we direct the trial court to take immediate action to ensure that a hearing is conducted as soon as practicable regarding the issue raised in appellant's motion.

REVERSED and REMANDED.

PALMER, C.J. and TORPY, J., concur.