

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

JANUARY TERM 2010

BRADY JOHNSON,

Appellant,

v.

Case No. 5D09-3176

STATE OF FLORIDA,

Appellee.

Opinion filed May 7, 2010

Appeal from the Circuit Court
for Sumter County,
William H. Hallman, III, Judge.

Brady Johnson, Bushnell, pro se.

Bill McCollum, Attorney General,
Tallahassee, and Wesley Heidt,
Assistant Attorney General,
Daytona Beach, for Appellee.

COHEN, J.

Brady Johnson appeals the denial of his petition for writ of habeas corpus. Based upon a lack of a record, we affirm without prejudice to Johnson renewing his request.

Johnson claims entitlement to release pursuant to McNeil v. Canty, 12 So. 3d 215 (Fla. 2009), where the supreme court held that the Department of Corrections, "upon revocation of conditional release, must *retroactively* credit prison time served on

any concurrent sentence as prison time served on all concurrent sentences." Canty, 12 So. 3d at 217 (citations omitted). The court prohibited the serving of a greater sentence than originally imposed. As the trial court correctly pointed out, Johnson did not show that he exhausted his administrative remedies through the Department of Corrections, Davis v. State, 943 So. 2d 975 (Fla. 5th DCA 2006), or that the recalculation of his release date following revocation of his conditional release resulted in an incarceration exceeding that imposed by the sentencing judge.

AFFIRMED without prejudice.

GRIFFIN and ORFINGER, JJ., concur.