

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D18-1488

KAREEM ABDUL JOHNSON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Duval County.
Mark Borello, Judge.

September 20, 2018

PER CURIAM.

The Appellant, Kareem Abdul Johnson, appeals from an order dismissing his Motion for Correction of Jail Credit and/or Prison Time Credit. The trial court dismissed the motion with prejudice, deeming it untimely pursuant to Florida Rule of Criminal Procedure 3.801. However, although the Appellant's motion cited to rule 3.801, which governs claims for additional jail credit, it requested prison credit for the time served from the date of his sentencing hearing until his resentencing hearing following the reversal of his original sentences on direct appeal. Thus, Appellant's motion should have been construed pursuant to Florida Rule of Criminal Procedure 3.800(a). *See Calderon v. State*, 138 So. 3d 589, 589 (Fla. 2d DCA 2014). In response to this

Court's *Toler** order, the state concedes that remand is required to permit the trial court to consider the motion pursuant to rule 3.800(a). Under these circumstances, we reverse and remand for further proceedings.

REVERSED and REMANDED.

MAKAR, OSTERHAUS, and JAY, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Kareem Abdul Johnson, pro se, Appellant.

Pamela Jo Bondi, Attorney General, and Sharon S. Traxler, Assistant Attorney General, Tallahassee, for Appellee.

* *Toler v. State*, 493 So. 2d 489 (Fla. 1st DCA 1986).