

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-4318

DENNIS MACNEILL,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Escambia County.
W. Joel Boles, Judge.

August 19, 2020

PER CURIAM.

Dennis MacNeill appeals the order denying his motion for correction of jail credit under Florida Rule of Criminal Procedure 3.801. We reverse and remand.

Because the lower court did not attach any records to its summary denial of Mr. MacNeill's motion, the underlying factual circumstances are unclear. The following procedural history is taken strictly from the trial court's order and the parties' filings.

It appears that in 2015, Mr. MacNeill pleaded no contest to a felony offense and the trial court placed him on probation. Mr. MacNeill violated his probation and the terms were then modified. At a subsequent violation of probation proceeding, Mr. MacNeill

was placed on community control with a special condition that he successfully complete the Pathways for Change program. Mr. MacNeill was apparently required to remain in the Escambia County Jail while he awaited placement in Pathways for Change. He waited in jail and was not placed in the program for nearly seven months. Mr. MacNeill later violated his community control by failing to successfully complete the program, and the trial court revoked his community control and sentenced him to prison.

Mr. MacNeill asserts he was awarded only 65 days of credit for time spent in the Escambia County Jail. He seeks a corrected order providing him with credit for the time he spent “incarcerated in the Escambia County Jail and was enrolled in the Pathways for Change Program.” His motion then lists dates that do not correspond to his time awaiting placement, but instead loosely align with the time he spent in Pathways for Change after release from the jail.

The lower court summarily denied the motion. Citing *Comer v. State*, 909 So. 2d 460 (Fla. 4th DCA 2005), the court reasoned Mr. MacNeill was not entitled to jail credit for time spent in a drug treatment or other facility that was a condition of probation or community control. However, it is not clear this is all Mr. MacNeill was seeking. His amended motion appears also to seek credit for time spent in the jail while awaiting placement in Pathways for Change. “A defendant is ‘entitled to credit for time spent in jail awaiting placement into a drug treatment facility imposed as a condition of probation or community control.’” *Grant v. State*, 76 So. 3d 1119, 1120 (Fla. 1st DCA 2011) (quoting *LaLonde v. State*, 941 So. 2d 586, 587 (Fla. 4th DCA 2006)).

While the lower court’s explanation of the law as to the issue addressed was correct, it did not attach any documents to its denial order demonstrating the actual dates Mr. MacNeill was enrolled in Pathways for Change or addressing his claim that he was not given credit for the time he was incarcerated while awaiting placement in the program. A circuit court summarily denying a rule 3.801 motion must attach portions of the record that conclusively refute it. *See Wright v. State*, 272 So. 3d 532, 533 (Fla. 1st DCA 2019). On remand, the lower court should either grant relief, attach portions of the record that conclusively refute the

motion, or hold an evidentiary hearing. See Fla. R. Crim. P. 3.801(e), 3.850(f).

Accordingly, we REVERSE and REMAND for further proceedings not inconsistent with this opinion.

RAY, C.J., and JAY and LONG, JJ., concur.

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

Dennis MacNeill, pro se, Appellant.

Ashley Moody, Attorney General, and Barbara Debelius, Assistant Attorney General, Tallahassee, for Appellee.