FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-2332

SCOTT HARTMAN,

Appellant,

v.

DEPARTMENT OF CORRECTIONS,

Appellee.

On appeal from the Circuit Court for Leon County.
Charles W. Dodson, Judge.

November 9, 2022

B.L. THOMAS, J.

Scott Hartman seeks certiorari relief from the trial court's order denying his petition for writ of mandamus. We treat this matter as a direct appeal because the trial court was reviewing the Department's refusal to award gain-time as the trial court found that Hartman was ineligible for additional gain-time past the 85% service date on each of his consecutive sentences. *See Fla. Dep't of Corr. v. Gould*, 344 So. 3d 496, 505 (Fla. 1st DCA 2022) (explaining that review by direct appeal was appropriate where an inmate sought mandamus relief in the trial court to compel the Department to exercise its discretion and consider awarding the inmate gain-time); *Skinner v. Skinner*, 561 So. 2d 260, 262 (Fla. 1990) (concluding that even though a party mischaracterized an appeal as a petition for writ of certiorari, the court possessed

jurisdiction to review the matter as an appeal). We affirm because Hartman failed to show a clear legal right to relief. *See Gould*, 334 So. 3d at 506 (explaining that the question on direct appeal from the denial of mandamus petition is whether the appellant has demonstrated a clear legal right to relief).

Hartman was found guilty of six counts of burglary of a structure, sixteen counts of dealing in stolen property, one count of felony petit theft, four counts of grand theft, one count of possession of burglary tools, and one count of possession of property with false identification number. In 2006, the trial court sentenced Hartman as a habitual felony offender to concurrent terms of five years in prison on multiple counts, followed by fifteen years in prison on one count, followed by fifteen years in prison on multiple counts, followed by fifteen years' probation on the final count; Hartman's sentence totaled to thirty-five years in prison followed by fifteen years on probation. Originally, the trial court awarded Hartman 504 days of jail credit on each count but two weeks later, amended the judgment making all jail credit concurrent.

Hartman filed his petition for writ of mandamus asking the trial court to order the Department of Corrections to apply fifty-nine days of gain-time to his temporary release date ("TRD"). Hartman alleged that for the months of May 2018 through October 2018, the Department had awarded him sixty days of gain-time, yet only deducted one day from his TRD. Hartman alleged that the Department removed sixty more days of his gain-time.

While preparing its response below, the Department discovered that 504 days jail credit had been erroneously applied to the consecutive sentences imposed. The Department corrected this error by removing the jail credit from the consecutive counts which caused his release date to change by 1008 days.

The trial court denied the petition for writ of mandamus. The trial court found that Hartman had reached his minimum 85% sentence date with gain-time applied on each consecutive term of imprisonment. Due to this, Hartman lost eligibility for additional gain-time until he received a disciplinary revocation of sixty days gain-time. However, the law does not allow for banking of gain-

time. The trial court further found that Hartman became ineligible for more gain-time because he again reached his 85% date. Hartman timely sought review in this Court.

In his first argument, Hartman claims the trial court erred by applying the 85% rule to Hartman's individual sentences, not his over-all sentence. Hartman argues the trial court incorrectly allowed the Department to assess gain-time and calculate the 85% date based on each of his three individual sentences instead of his overall sentence. Hartman claims that the legislature intended the 85% rule should apply to the overall sentence not the individual sentences. Under this calculation, Hartman would continue receiving gain-time until he reaches the correct 85% date on the total sentence.

The Department responded claiming that Hartman cannot receive gain-time to reduce his sentences below the 85% service date on each consecutive sentence.

Hartman's claim regarding the 85% rule lacks merit. The applicable gain-time statute in effect at the time of the offense controls gain-time determinations. *Young v. Moore*, 820 So. 2d 901, 902 (Fla. 2002). Hartman committed the offenses between September 27, 2004, and January 13, 2005. The appropriate version of the gain-time statute reflects the following:

> For sentences imposed for offenses committed on or after October 1, 1995, the department may grant up to 10 days per month of incentive gain-time, except that no prisoner is eligible to earn any type of gain-time in an amount that would cause *a sentence to expire, end, or terminate, or that would result in a prisoner's release*, prior to serving a minimum of 85 percent of the sentence imposed . . . . Except as provided by this section, a prisoner shall not accumulate further gain-time awards at any point when the tentative release date is the same as that date at which the prisoner will have served 85 percent of the sentence imposed.

§ 944.275(4)(b)(3), Fla. Stat. (2004) (emphasis added). The statute also states that "[p]ortions of any sentences to be served

concurrently shall be treated as a single sentence when determining basic gain-time." § 944.275(4)(a)(1), Fla. Stat. Taken together, a plain reading of the statute reveals that the 85% rule applies to each consecutive sentence, not the overall sentence term. While, as Hartman points out, a TRD is calculated based on the overall sentence term, the rule also explicitly states that the 85% rule applies to when a sentence would "expire, end, or terminate, or that would result in a prisoner's release." § 944.275(4)(b)(3), Fla. Stat. This language suggests that gain-time might cause an individual sentence to expire, even though the prisoner may not have been released yet. Thus, the trial court properly denied his petition because the Department had properly awarded gain-time based on the 85% rule on each consecutive sentence.

In his second argument, Hartman claims that the Department lacked authority to remove the 1008 days of jail credit as imposed by the trial court originally. Hartman cites *Palmer v. State*, to show that the Department should not have removed this jail credit. 22 So. 3d 795, 797 (Fla. 1st DCA 2009) ("Jail credit cannot be rescinded after it has been awarded, even if the award was made in error."). Hartman argues that the trial court must not have rescinded his jail credit because the court did not have the authority to do so. Thus, the Department should have applied the jail credit as originally written.

The Department responded claiming that it acted lawfully. The Department has the authority and a duty to correct errors in the computation of sentences when they are discovered.

Hartman's claim lacks merit. The Department's adjustment of his jail credit application was lawful. "Simply put, the Department is not responsible for sentencing an individual; the court is. The Department is charged with ensuring proper execution of that sentence." *Sullivan v. Jones*, 165 So. 3d 26, 30 (Fla. 1st DCA 2015) (citations omitted). Thus, the Department has a duty to correct any mistakes in applying the sentence. *Id*. After originally giving Hartman 504 days of jail credit on each count, the trial court later amended the judgment to cause all the credit to run concurrently. Upon discovering the amended judgment, the Department removed the jail credit that had been applied in a

consecutive manner. Because it has a duty to execute the sentence as imposed, the Department corrected Appellant's jail credit to run concurrently based on the trial court's amended judgment. Thus, the Department acted lawfully in adjusting Hartman's jail credit, and Hartman's claim lacks merit.

AFFIRMED.

BILBREY and WINOKUR, JJ., concur.

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

Scott Hartman, pro se, Appellant.

Lance Eric Neff, General Counsel, and Charles T. Martin, Jr., Assistant General Counsel, Florida Department of Corrections, Tallahassee, for Appellee.