

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2014

RICARDO VINCENT,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D14-658

[October 8, 2014]

Appeal of order denying rule 3.800 motion from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Stephen A. Rapp, Judge; L.T. Case No. 502009CF013256A.

Ricardo Vincent, Crawfordville, Pro Se.

No appearance required for appellee.

PER CURIAM.

Prior to the effective date of rule 3.801, the appellant filed an insufficient rule 3.800(a) motion seeking additional jail time credit. The trial court summarily denied it based on the state's response, which explained that appellant had received all the credit to which he was entitled. The state did not attach any portions of the record to its response, and the trial court did not attach any to its order. *See Johnson v. State*, 60 So. 3d 1045, 1051 (Fla. 2011) (explaining trial court need not attach documents to refute a rule 3.800(a) claim). The appellant appealed, seeking the portions of the record that refuted his claim pursuant to new rule 3.801.¹ However, his motion did not comply with that rule; it was not sworn and did not contain the contents required by rule 3.801(c).

Rule 3.801 became effective on July 1, 2013, while the appellant's

¹ Rule 3.801 incorporates rule 3.850(f). Fla. R. Crim. P. 3.801(e). Rule 3.850(f)(5) provides in part, "if the denial is based on the records in the case, a copy of that portion of the files and records that conclusively shows that the defendant is entitled to no relief shall be attached to the final order."

motion was pending in the trial court. The time to file a rule 3.801 motion as to sentences imposed before July 1, 2013, expired on July 1, 2014, while his appeal was pending in this Court. Under the circumstances, we affirm without prejudice to his filing a facially sufficient rule 3.801 motion within thirty days of the issuance of this court's mandate. A motion filed within this time will not be deemed untimely or successive.

Affirmed without prejudice.

DAMOORGIAN, C.J., TAYLOR and GERBER, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.