

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

JESSE DONOFRIO,)
)
 Appellant,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Appellee.)
 _____)

Case No. 2D19-1323

Opinion filed March 6, 2020.

Appeal pursuant to Fla. R. App. P.
9.141(b)(2) from the Circuit Court for
Hillsborough County; Nick Nazaretian,
Judge.

Jesse Donofrio, pro se.

NORTHCUTT, Judge.

Jesse Donofrio filed a motion to correct jail credit pursuant to Florida Rule of Criminal Procedure 3.801 in February 2016. The postconviction court dismissed the motion as facially insufficient because it was not under oath as required by rule 3.801(c). The order gave Donofrio sixty days in which to file an amended motion. Eventually, the court rendered a final order denying Donofrio's motion for jail credit with prejudice because Donofrio did not file an amended motion within the sixty days provided by the prior order.

The order dismissing Donofrio's motion for lack of an oath was mistaken. The motion contained a written declaration that complied with the requirements of section 92.525(2), Florida Statutes (2015). The written declaration was made under penalty of perjury, provided that Donofrio had read the motion, and certified that the facts contained therein were true and correct. The declaration was made at the end of the motion but above Donofrio's signature. The form and substance of the written declaration mirrored the written declaration contained in the form motion for jail credit contained in the Florida Rules of Criminal Procedure. See Fla. R. Crim. P. 3.9875. As such, it met the requirements of rule 3.801(c). Cf. State v. Shearer, 628 So. 2d 1102 (Fla. 1993) (holding that unnotarized written declaration under section 92.525 satisfied oath requirement of rule 3.850); Theoc v. State, 832 So. 2d 261 (Fla. 3d DCA 2002) (same).

Accordingly, we reverse the postconviction court's order denying Donofrio's motion for jail credit with prejudice and remand for further proceedings consistent with this opinion.

Reversed and remanded.

SALARIO and ROTHSTEIN-YOUAKIM, JJ., Concur.