

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

THOMAS W. ROGERS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

No. 2D19-2714

December 22, 2021

Appeal from the Circuit Court for Manatee County; Edward Nicholas, Judge.

Howard L. Dimmig, II, Public Defender, and Daniel Muller, Assistant Public Defender, Bartow, for Appellant.

Ashley Moody, Attorney General, Tallahassee, and Johnny T. Salgado, Assistant Attorney General, Tampa, for Appellee.

VILLANTI, Judge.

Thomas W. Rogers appeals from his judgment and sentences following his conviction in a jury trial of the offenses of

misdemeanor assault and felony battery. The sole issue raised in this appeal is whether the trial court erred by denying Rogers' fourth motion to correct sentencing error, which he filed pursuant to Florida Rule of Criminal Procedure 3.800(b)(2) while this appeal was pending. We affirm.

When Rogers was originally sentenced in 2018, the trial court granted credit for the time Rogers was in jail before he was sentenced; however, Rogers was in jail for forty additional days from the date he was sentenced until he was transported to prison. Rogers does not dispute that the Department of Corrections (DOC) is responsible for granting jail time credit when there is a delay between sentencing and transport from jail to prison, *see Valdespino v. State*, 209 So. 3d 64, 66 (Fla. 3d DCA 2016); however, he asserts that pursuant to section 921.161(1), Florida Statutes (2020),¹ the trial court was required to grant him forty additional

¹ Section 921.161(1) provides, "A sentence of imprisonment shall not begin to run before the date it is imposed, but the court imposing a sentence shall allow a defendant credit for all of the time she or he spent in the county jail before sentence. The credit must be for a specified period of time and shall be provided for in the sentence."

days of credit in addition to the time he spent in jail awaiting resentencing because the original forty days he spent in jail awaiting transport are now, in effect, presentence jail time as a result of his de novo resentencing.

We disagree. In doing so, we adopt the trial court's rationale: "The nature of the credit for time spent in jail awaiting transport to the DOC after initial sentencing does not change its character upon subsequent resentencing." *Cf. Barnishin v. State*, 927 So. 2d 68, 71 (Fla. 1st DCA 2006) ("Time spent in jail before sentencing initially occurs differs from time served as part of (or already credited against) a sentence."). Accordingly, we affirm.

Our affirmance is without prejudice to any right Rogers might have to pursue any administrative remedies he may have with the DOC if the DOC has not properly calculated his time served. *See Valdespino*, 209 So. 3d at 66 ("If the defendant has not received post-sentencing credit, he may submit his request for this additional time to the DOC. If he is unsuccessful in obtaining the requested relief from the DOC, and he exhausts his administrative remedies, he may then seek mandamus relief." (citing *Leiffer v. State*, 867 So. 2d 538, 538 n.1 (Fla. 5th DCA 2004))).

Affirmed.

KELLY and SLEET, JJ., Concur.

Opinion subject to revision prior to official publication.