

IN THE SECOND DISTRICT COURT OF APPEAL, LAKELAND, FLORIDA

March 31, 2010

BERNARDINO RAMOS VAZQUEZ,)
)
 Appellant,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Appellee.)
)
 _____)

Case No. 2D08-4750

BY ORDER OF THE COURT:

Upon the court's own motion,

IT IS ORDERED that the per curiam affirmance dated March 3, 2010, is
withdrawn, and the attached opinion is substituted therefor.

I HEREBY CERTIFY THE FOREGOING IS A
TRUE COPY OF THE ORIGINAL COURT ORDER.

JAMES BIRK HOLD, CLERK

c: Tosha Cohen, APD
Ronald Napolitano, AAG
The Honorable Elizabeth V. Krier

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

BERNARDINO RAMOS VAZQUEZ,)
)
 Appellant,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Appellee.)
 _____)

Case No. 2D08-4750

Opinion filed March 31, 2010.

Appeal from the Circuit Court for Collier
County; Elizabeth V. Krier, Judge.

James Marion Moorman, Public Defender,
and Tosha Cohen, Assistant Public
Defender, Bartow, for Appellant.

Bill McCollum, Attorney General,
Tallahassee, and Ronald Napolitano,
Assistant Attorney General, Tampa, for
Appellee.

SILBERMAN, Judge.

Bernardino Ramos Vazquez appeals his convictions and sentences for burglary of an unoccupied dwelling and grand theft and contends that he is entitled to additional jail credit for time served. The trial court properly dismissed as facially insufficient Vazquez's motion for jail credit filed pursuant to Florida Rule of Criminal

Procedure 3.800(b)(2). Because Vazquez may be able to prove that he is entitled to additional credit, we affirm his convictions and sentences without prejudice to any right he may have to file a timely postconviction motion that seeks additional credit. See Lowe v. State, 889 So. 2d 931, 933 (Fla. 2d DCA 2004). The circuit court should not deem such a motion successive. Id.

Affirmed without prejudice to seek postconviction relief.

LaROSE and CRENSHAW, JJ., Concur.