

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

CHARLES BIRDSONG,)
)
 Appellant,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Appellee.)
 _____)

Case No. 2D03-4968

Opinion filed June 9, 2004.

Appeal pursuant to Fla. R. App. P.
9.141(b)(2) from the Circuit Court for
Polk County; Dick Prince,
Judge.

VILLANTI, Judge.

Charles Birdsong appeals the denial of his motions for jail credit filed pursuant to Florida Rule of Criminal Procedure 3.800(a). Birdsong is a county prisoner, and he filed a motion for jail credit in the circuit court seeking "trusty" status in order to earn gain time to be applied to his county jail sentence. The trial court denied the motion, stating that Birdsong must address this issue with the Department of

Corrections (DOC) because the DOC has the exclusive authority to regulate gain time. Birdsong then filed another motion for jail credit raising the same claim and arguing that he is in the custody of Polk County, and the trial court denied the motion as successive.

We affirm the trial court orders denying Birdsong's motions because such a claim is not properly raised in a rule 3.800(a) motion and should be addressed through any available administrative avenues. See Swain v. State, 795 So. 2d 1031 (Fla. 2d DCA 2001). However, the trial court erred in concluding that the DOC has exclusive authority to award gain time because Birdsong is not in the DOC's custody. We note, without commenting on the merits of Birdsong's claim for gain time, that Birdsong is a county prisoner and the local board of county commissioners has authority to commute gain time for good behavior for county prisoners. See § 951.21, Fla. Stat. (2002).

Affirmed.

SALCINES and SILBERMAN, JJ., Concur.