

Third District Court of Appeal

State of Florida

Opinion filed May 22, 2019.

No. 3D18-2623
Lower Tribunal No. 14-9874

Hector Lopez,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal under Florida Rule of Appellate Procedure 9.141(b)(2) from the Circuit Court for Miami-Dade County, Martin Zilber, Judge.

Hector Lopez, in proper person.

Ashley Moody, Attorney General, and Sandra Lipman, Assistant Attorney General, for appellee.

Before LOGUE, SCALES and HENDON, JJ.

ON PARTIAL CONFESSION OF ERROR

PER CURIAM.

Hector Lopez, the defendant below, appeals an order summarily denying his Florida Rule of Criminal Procedure 3.801 motion for correction of jail credit.

Lopez's motion is facially insufficient because the motion is not under oath and otherwise fails to contain the contents required by rule 3.801(c). As the State properly and commendably concedes, however, the trial court erred by denying Lopez's motion without giving him leave to amend the motion. See Fla. R. Crim. P. 3.801(e) (incorporating the amendment procedure under Florida Rule of Criminal Procedure 3.850(f)(2) for timely but facially insufficient post-conviction motions); Belanger v. State, 146 So. 3d 136, 137 (Fla. 3d DCA 2014). Accordingly, we reverse the order under review to allow Lopez to file a facially sufficient rule 3.801 motion within sixty days of the issuance of this Court's mandate. See Belanger, 146 So. 3d at 137.

Reversed.