

Third District Court of Appeal

State of Florida, July Term, A.D. 2009

Opinion filed November 12, 2009.
Not final until disposition of timely filed motion for rehearing.

No. 3D09-482
Lower Tribunal Nos. 04-28824; 04-28823

Cesar Del Rio,
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, Diane Ward, Judge.

Cesar Del Rio, in proper person.

Bill McCollum, Attorney General, and Nicholas A. Merlin, Assistant Attorney General, for appellee.

Before WELLS, SHEPHERD, and CORTIÑAS, JJ.

PER CURIAM.

Appellant, Cesar Del Rio, appeals a trial court order denying his motion for post-conviction relief. Del Rio argues his counsel was ineffective for failing to investigate the proper jail credit accumulated by him and, as a result, his sentence was longer than the statutorily permitted maximum. We treat the order on appeal as one taken from the denial of a motion to correct illegal sentence under Florida Rule of Appellate Procedure 3.800(a).

The State commendably concedes the possibility Del Rio's total concurrent sentences for the third-degree felonies or aggravated stalking, § 784.048(3), Fla. Stat. (2004), and threatening a public servant, § 838.021(3)(b), Fla. Stat. (2004), exceed the statutory maximum.

We reverse and remand to the trial court for further proceedings. Upon remand, the trial court should consider the accurate calculation of the number of days Del Rio has served to determine whether the sentence, in fact, exceeds the five-year statutory maximum.

Reversed and remanded with directions.