

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JANUARY TERM, A.D. 2004

DAVID PEREZ,

**

**

Appellant,

**

CASE NO. 3D03-1549

vs.

**

THE STATE OF FLORIDA,

**

LOWER TRIBUNAL
CASE NO. 97-12417

Appellee.

**

Opinion filed February 4, 2004.

An Appeal under Fla.R.App.P. 9.141(b)(2) from the Circuit Court of Miami-Dade County, Cecilia Altonaga, Judge.

David Perez, in proper person.

Charles J. Crist, Jr., Attorney General, and Linda S. Katz, Assistant Attorney General, for appellee.

Before COPE, GODERICH, and FLETCHER, JJ.,

CONFESSION OF ERROR

PER CURIAM.

David Perez appeals from the trial court's order denying his motion pursuant to Florida Rule of Criminal Procedure 3.800(a), to apply credit for time served in prison to his new period of incarceration after revocation of community control. The state

concedes that the motion should have been granted in part¹ and our review of the record supports that conclusion. We therefore vacate the trial court's order and remand the cause with directions to grant Perez credit for all time served in prison and in county jail prior to being sentenced to his current period of incarceration.²

Vacated and remanded with directions.

1

Credit should be granted for the time Perez spent in prison, and not for the time he spent under house arrest. See Fernandez v. State, 627 So. 2d 1 (Fla. 3d DCA 1993), rev. denied, 639 So. 2d 977 (Fla. 1994).

2

The state has indicated that it will obtain from the Department of Corrections verification of the actual time Perez spent in prison so that the proper credit will be applied.