

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JULY TERM 2009

COLLEEN A. FLEMING,

Appellant,

v.

Case No. 5D09-2168

STATE OF FLORIDA,

Appellee.

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Opinion filed December 31, 2009

3.800 Appeal from the Circuit Court
for St. Johns County,
Wendy W. Berger, Judge.

Colleen A. Fleming, Florida City, pro se.

Bill McCollum, Attorney General,
Tallahassee, and Anthony J. Golden,
Assistant Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

Appellant challenges the denial of her rule 3.800 motion directed to her seven-year prison sentence after she violated her probation on a sale of cocaine charge. We affirm the lower court's order in all respects except as to Appellant's claim for jail credit. Appellant contends that she is entitled to jail credit for the time she spent in jail after sentencing waiting for a bed in a court-ordered drug treatment facility, which she ultimately completed. The trial court denied this request believing that this jail time

should not be credited because it was served post sentencing, while Appellant was technically on probation. This was error. *Fulton v. State*, 659 So. 2d 491 (Fla. 5th DCA 1995); *Scott v. State*, 805 So. 2d 926 (Fla. 2d DCA 2001).

On remand, the lower court shall award to Appellant an additional forty days in jail credit. In all other respects, the lower court's order is affirmed.

AFFIRMED IN PART; REVERSED IN PART AND REMANDED.

MONACO, C.J., TORPY and GRIFFIN, JJ., concur.