

FLORIDA THIRD DISTRICT COURT OF APPEAL

Michel Hernandez Sarmiento v. State of Florida

Sarmiento · No. 3D25-1060 · Decided October 22, 2025

OPINION

PER CURIAM.

Third District Court of Appeal State of Florida Opinion filed October 22, 2025. Not final until disposition of timely filed motion for rehearing. _____ No. 3D25-1060 Lower Tribunal Nos. F20-13587, F22-9173, F21-12560 _____ Michel Hernandez Sarmiento, Appellant, vs. State of Florida, Appellee. An Appeal under Florida Rule of Appellate Procedure 9.141(b)(2) from the Circuit Court for Miami-Dade County, David Young, Judge.

Michel Hernandez Sarmiento, in proper person. James Uthmeier, Attorney General, and Haccord Curry, Assistant Attorney General, for appellee. Before MILLER, BOKOR, and GOODEN, JJ. MILLER, J. Appellant, Michel Hernandez Sarmiento, challenges the trial court's summary denial of his Florida Rule of Criminal Procedure 3.801 motion seeking additional jail credit.

We affirm the trial court's determination that the motion was legally insufficient. But we are constrained to reverse and remand with instructions to the trial court to allow appellant leave to amend within sixty days. See *Spera v. State*, 971 So. 2d 754, 761–62 (Fla. 2007) (explaining that a legally insufficient motion for postconviction relief should be denied without prejudice to allow leave to amend); *Belanger v. State*, 146 So.

3d 136, 137–38 (Fla. 3d DCA 2014) (“[I]t appears this was the defendant’s first attempt to file a facially sufficient rule 3.801 motion[,].... [hence,] the trial court should have entered ‘a nonfinal, nonappealable order allowing the defendant 60 days to amend the motion.’” (quoting Fla. R. Crim. P. 3.850(f)(2))). Affirmed in part and remanded. 2