

Supreme Court of Florida

STATE OF FLORIDA,

Petitioner,

vs.

GARY SWYCK,

Respondent.

No. 90,358

[August 20, 1998]

PER CURIAM.

We have for review the decision in Swyck v. State, 693 So. 2d 618 (Fla. 2d DCA 1997), which the district court certified to be in conflict with the opinions in Berry v. State, 684 So. 2d 239 (Fla. 1st DCA 1996), Sullivan v. State, 674 So. 2d 214 (Fla. 4th DCA 1996), and Chaney v. State, 678 So. 2d 880 (Fla. 5th DCA 1996). We have jurisdiction. Art. V, § 3(b)(4), Fla. Const.

Swyck moved to correct his sentence pursuant to Florida Rule of Criminal Procedure 3.800. Specifically, Swyck claimed that he was not properly credited with time spent in jail prior to the imposition of his sentence. The trial court denied the motion on the grounds it was not cognizable under rule 3.800. On appeal the Second District Court of Appeal held that Swyck must be given credit for twelve days he served in the county jail between the time of his arrest and the time he was sentenced. Swyck, 694 So. 2d at 619. In doing so, the court certified conflict with Berry, Sullivan, and Chaney, which hold that

a motion to correct an illegal sentence due to the denial of jail credit cannot be made under rule 3.800 unless the error would result in the defendant serving in excess of the statutory maximum allowed by law.

This Court recently addressed this issue in Mancino v. State, 23 Fla. L. Weekly S 301 (Fla. June 11, 1998), wherein we approved a Second District decision similar to Swyck.

Accordingly, we approve the decision below.

It is so ordered.

HARDING, C.J., and OVERTON, SHAW, KOGAN, WELLS and ANSTEAD, JJ., concur.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

Application for Review of the Decision of the District Court of Appeal - Certified Direct Conflict of Decisions

Second District - Case No. 96-04736

(Lee County)

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