**IN THE SUPREME COURT OF FLORIDA**

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Case No. SC20-676
Lower Tribunal Case No. 5D19-1747

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**MICHAEL D. SPEAR**,
Petitioner,
v.
**STATE OF FLORIDA**,
Respondent.

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# APPENDIX TO AMENDED BRIEF ON JURISDICTION FROM THE PETITIONER

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SEVENTH JUDICIAL CIRCUIT

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

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

MICHAEL D. SPEAR,

Appellant,

v. Case No. 5D19-1747

STATE OF FLORIDA,

Appellee.

_____/

Opinion filed April 17, 2020

Appeal from the Circuit Court
for Brevard County,
Robin C. Lemonidis, Judge.

James S. Purdy, Public Defender, and Glendon George Gordon, Jr., Assistant Public Defender, Daytona Beach, for Appellant.

Ashley Moody, Attorney General, Tallahassee, and Kaylee D. Tatman, Assistant Attorney General, Daytona Beach, for Appellee.

LAMBERT, J.

The primary question that we address in this appeal is whether a trial court, on its own motion, may, at any time after a judgment and sentence becomes final, correct a ministerial error in sentencing documents that overreport the amount of jail credit and prison credit awarded to a defendant. Appellant, Michael D. Spear, argues that the

answer to this question is "No," and, for various reasons, he essentially asks that we recede from this court's earlier precedent that such a post-judgment correction by the court of the amount of jail credit previously overly-reported is permissible. *See Gallinat v. State*, 941 So. 2d 1237, 1238 (Fla. 5th DCA 2006) (concluding that a trial court's sua sponte reduction to an erroneous jail credit calculation so that the judgment and sentence accurately reflect the amount of time previously served by the defendant prior to sentencing does not increase the sentence in violation of the double jeopardy provisions of the Fifth Amendment to the United States Constitution).

For the following reasons, we decline to recede from *Gallinat*.[1] Accordingly, we affirm the amended judgments and sentences entered by the trial court sua sponte in the two cases below that reduced the erroneously-excessive amount of jail credit and prison credit that was awarded to Spear in each case at his resentencing.[2] However, because other of our sister courts have specifically held that a trial court may not sua sponte rescind jail credit previously awarded, even if the initial award was improper, we certify conflict with those decisions. We also certify a question of great public importance to the Florida Supreme Court.

HISTORY—

Spear was initially placed on twenty-four months' drug offender community control

[1] Even if we were so inclined, a three-judge panel of a district court does not overrule or recede from a prior panel's ruling on an identical point of law. *See In re Rule 9.331, Determination of Causes by a Dist. Court of Appeal En Banc, Fla. Rules of Appellate Procedure*, 416 So. 2d 1127, 1128 (Fla. 1982).

[2] Spear has not argued on appeal that these amended judgments and sentences inaccurately reflect his actual jail credit or prison credit prior to resentencing.

to be followed by thirty-six months of drug offender probation on six felony counts, with supervision running concurrently on each count. Shortly thereafter, Spear was charged with two Condition 5 violations of his community control for committing the criminal offenses of false imprisonment and domestic violence battery. The State also brought a separate criminal prosecution against Spear charging him with these two crimes.

The parties ultimately entered into a plea agreement to resolve both cases. The court accepted the plea but, consistent with a "*Quarterman* agreement,"[3] the court permitted Spear to be released from custody pending his sentencing, "with the understanding that if [he] violates any of the release conditions listed [in the *Quarterman* agreement], [he] agrees to be sentenced to the maximum sentence in the above styled case[s]."

Spear failed to appear at the sentencing hearing, and a warrant was issued for his arrest. He was eventually arrested and thereafter appeared before the trial court for sentencing. At this hearing, the court first found that Spear had violated the *Quarterman* agreement. It then revoked Spear's community control and sentenced him in that case to serve the maximum prison sentence on each of the six counts, with all sentences running consecutively. Spear was awarded 163 days of jail credit on the first count only. On his second case, the court sentenced Spear to serve the maximum prison sentence on the sole felony count,[4] to run consecutively to the aggregate prison sentence imposed in his violation of community control case. Spear was awarded 139 days of jail credit in

[3] *Quarterman v. State*, 527 So. 2d 1380 (Fla. 1988).

[4] Spear received a "time served" jail sentence on the remaining charge of misdemeanor domestic battery. This sentence is not being challenged.

this second case.

Spear appealed his judgments and sentences. In a brief opinion, we reversed the sentences imposed in each case and remanded for an evidentiary hearing and factual determination as to whether Spear's failure to comply with the *Quarterman* agreement was willful. *Spear v. State*, 244 So. 3d 421, 421 (Fla. 5th DCA 2018).

Spear was returned from prison for this hearing. Thereafter, the court resentenced Spear in each case, and while his aggregate prison sentence was still lengthy, it was less than his original sentence.[5]

Pertinent here, after the trial court pronounced Spear's respective prison sentences, the deputy clerk then proceeded to compute Spear's jail credit in each case. While arguably unnecessary, the deputy clerk also computed Spear's prison credit. *See Bryant v. State*, 240 So. 3d 55, 57 (Fla. 3d DCA 2018) (explaining that once the trial court determines that a defendant is entitled to prison credit upon resentencing, the Department of Corrections has the primary responsibility for calculating the credit, and it is permissible for the trial court to confirm the defendant's entitlement to prison credit and to delegate the task of calculating the amount of credit to the Department). The clerk apparently calculated that Spear had spent 493 days in prison prior to resentencing, a figure that Spear has not challenged here. Thus, at resentencing, Spear was entitled to 656 days of credit in his violation of community control case, reflecting his 163 days of previous jail

[5] Spear appealed following resentencing. We affirmed his sentences without opinion. *Spear v. State*, 267 So. 3d 1029 (Fla. 5th DCA 2019). The trial court's amendment to Spear's judgments and sentences at issue in the instant appeal occurred three days after the mandate issued.

credit awarded plus 493 days' prison credit. Instead, the deputy clerk announced that Spear's credit was "going to be 686."

As to Spear's second case, rather than awarding 632 days of credit for the 139 days of previous jail credit plus the 493 days' prison credit, the clerk stated that "it'll be 932 [days of credit]." The trial court did not thereafter separately announce the jail or prison credit awarded prior to entering the written sentencing documents in each case containing these incorrect credit figures, generically described in the judgments as "original jail credit."

TRIAL COURT'S SUA SPONTE MODIFICATION OF CREDIT—

Approximately two months after Spear was resentenced, the trial court received a letter from a Correctional Service Consultant with the Florida Department of Corrections ("DOC"). The DOC confirmed that it had awarded Spear the amount of credit as ordered by the court in the resentencing documents, but questioned the correctness of the aforementioned mathematical computations in the calculation of the amount of credit awarded in each case. The DOC suggested that if it was not the court's intent to award Spear the additional credit in each case, amended judgments and sentences would be required.

Based upon this letter, the trial court, citing to this court's opinions in *Gallinat* and *Hagley v. State*, 140 So. 3d 678, 679 (Fla. 5th DCA 2014) (recognizing that a court has the "inherent power to correct clerical errors such as calculation of jail credit"), sua sponte entered orders that the judgments and sentences in each case be corrected to show that Spear now had a total of 656 days of "jail credit" on count one in his violation of community

control case and 632 days of "jail credit" on his second case.[6]

Spear has timely appealed these amended judgments and sentences, and he has raised three arguments for reversal. First, he contends that Florida Rule of Criminal Procedure 3.801 is the only mechanism to adjust jail credit and it does not authorize the trial court to sua sponte reduce jail credit. Second, Spear argues that the court's reduction in jail credit violated the constitutional prohibition against double jeopardy because it resulted in his punishment being increased after he began serving his sentence. Lastly, Spear claims that the court had "no legal basis" to sua sponte modify his jail credit. We will address each argument in the order presented.

DOES RULE 3.801 PRECLUDE A POST-SENTENCING REDUCTION IN JAIL CREDIT?

Spear argues that the trial court's sua sponte reduction in jail credit was erroneous because the plain language of Florida Rule of Criminal Procedure 3.801 does not permit such a reduction. We disagree.

Where, as here, the construction of a procedural rule is at issue, appellate courts apply a de novo standard of review. *See Barco v. Sch. Bd. of Pinellas Cty.*, 975 So. 2d 1116, 1121 (Fla. 2008) (citing *Saia Motor Freight Line, Inc. v. Reid*, 930 So. 2d 598, 599 (Fla. 2006)). Thus, to facilitate our review, we turn to the pertinent language of rule 3.801, which provides:

> **(a) Correction of Jail Credit.** A court may correct a final sentence that fails to allow a defendant credit for all of the

[6] The amended judgments and sentences entered again did not differentiate between Spear's accrued jail credit and his prison credit.

> time he or she spent in the county jail before sentencing as provided in section 921.161, Florida Statutes.[7]

Fla. R. Crim. P. 3.801(a).

Spear's reliance on rule 3.801 for relief is misplaced for two reasons. First, the rule applies only to situations where too little jail credit is awarded to a defendant in the sentencing documents, which is not what occurred here. This rule does not speak to, nor, more specifically, does it preclude the correction of improperly-awarded excessive jail credit.

Second, by its plain language, the rule does not apply to awards of prison credit. Here, while the trial court broadly labeled Spear's time served in the resentencing documents as "original jail credit," the incorrect amount of credit that was awarded to him in each case at resentencing resulted from a mathematical miscalculation by the deputy clerk of Spear's combined jail credit and prison credit. Florida Rule of Criminal Procedure 3.800(a), and not rule 3.801, is the proper vehicle to address a trial court's incorrect award of prison credit. *Rivera v. State*, 257 So. 3d 1142, 1144–45 & n.1 (Fla. 3d DCA 2018) (recognizing that a challenge to an award of proper prison credit is properly raised in a rule 3.800(a) motion, which can be filed at any time); *Curtis v. State*, 197 So. 3d 135, 136 (Fla. 2d DCA 2016).

DID THE TRIAL COURT'S REDUCTION IN JAIL CREDIT VIOLATE THE CONSTITUTIONAL PROHIBITION AGAINST DOUBLE JEOPARDY?

Spear next argues that by sua sponte rescinding some of the jail credit that he was

[7] The remainder of the rule describes the time limitations for filing the motion and the motion's required contents. It also precludes the filing of successive motions and, lastly, incorporates portions of Florida Rule of Criminal Procedure 3.850.

previously awarded, the trial court effectively increased his penalty in each case. Thus, Spear contends that, as a result, he has been subjected to double punishment for the same offense in violation of the Fifth Amendment to the United States Constitution, which provides that "no person shall 'be subject for the same offense to be twice put in jeopardy of life or limb.'" *See Wheeler v. State*, 880 So. 2d 1260, 1261 (Fla. 1st DCA 2004) (holding that a "trial court cannot rescind jail credit after imposing it" because it results in an illegal enhancement of a defendant's sentence in violation of his double jeopardy rights).[8] The Second District Court of Appeal has also announced this rule, *see Gilmore v. State*, 523 So. 2d 1244, 1245 (Fla. 2d DCA 1988), and has followed it consistently.[9]

Not surprisingly, Spear requests that we adopt this rule from our sister courts and reverse the amended sentences with directions to restore the rescinded credit. Spear candidly acknowledges that to do this, it would require that this court recede from our earlier decision in *Gallinat*, but suggests there are legitimate reasons to do so. *See Rotemi Realty, Inc. v. Act Realty Co.*, 911 So. 2d 1181, 1188 (Fla. 2005) (providing that "[t]he doctrine of stare decisis counsels us to follow our precedents unless there has been 'a significant change in circumstances after the adoption of the legal rule, or . . . an error in legal analysis'" (quoting *Dorsey v. State*, 868 So. 2d 1192, 1199 (Fla. 2003))). Therefore, we next consider whether we erred in our legal analysis in *Gallinat* or there

[8] The First District Court of Appeal has subsequently maintained this position. *See Cummings v. State*, 279 So. 3d 818, 820 (Fla. 1st DCA 2019); *Washington v. State*, 199 So. 3d 1110, 1112 (Fla. 1st DCA 2016).

[9] *See King v. State*, 913 So. 2d 758, 760 (Fla. 2d DCA 2005); *Lebron v. State*, 870 So. 2d 165, 165 (Fla. 2d DCA 2004); *Platt v. State*, 827 So. 2d 1064, 1064 (Fla. 2d DCA 2002); *Keene v. State*, 826 So. 2d 327, 327 (Fla. 2d DCA 2002); *Linton v. State*, 702 So. 2d 236, 236–37 (Fla. 2d DCA 1997).

has been a significant change in circumstances since our decision.

In *Gallinat*, an opinion authored by now-Justice Lawson, we held that other than in two situations that are not applicable here,[10] double jeopardy principles do not bar a trial court from sua sponte correcting a defendant's jail credit to accurately reflect the amount of time previously served on a charge. 941 So. 2d at 1238. There, we affirmed the trial court's sua sponte correction of previously-excessive awards of jail credit in the defendant's cases. *Id.* In doing so, we disagreed with aforementioned decisions from the First District Court and Second District Court that held that the correction of an erroneous award of too much jail credit violated double jeopardy because it increased a defendant's sentence. *Id.* at 1239. Instead, we viewed "a judge's correction in the reporting of time that an inmate has served toward a sentence when the error is brought to the court's attention by the state or the court's clerk" to be no different than when a DOC commitment auditor properly corrects a clerical error that initially overstated the amount of prison time an inmate had served. *Id.*

We then provided four reasons explaining why, in a typical case, a trial court's later correction to the jail credit calculation in the sentencing documents was not an unconstitutional increase in a defendant's sentence. *Id.* at 1241. First, we observed that,

[10] The first situation is when the parties enter into a negotiated overall sentence structure that includes a stipulated amount of jail credit. *Gallinat*, 941 So. 2d at 1240. The second is when the court, although not required to do so, elects to exercise its discretion and awards jail credit to a defendant who was incarcerated in another state solely because of the Florida offense for which he or she is being sentenced. *Id.*; *see also Kronz v. State*, 462 So. 2d 450, 451 (Fla. 1985). In each circumstance, we concluded that a trial court's subsequent reduction in the previously-awarded jail credit would cause an increase in the overall sentence and violate double jeopardy principles. *Gallinat*, 941 So. 2d at 1240.

in most cases, the trial court simply imposes sentence, and then the deputy clerk generally provides the court with a time-served calculation based upon his or her review of either the court file or from a computer link to the local county jail records. *Id.* The clerk then provides the court with the amount of the jail credit and includes it in the written sentencing documents. *Id.* Thus, we reasoned that the jail credit determination "is not a result of judicial decision-making," and a later correction of inadvertently over-reported jail credit would not change the imposed sentence. *Id.*

Second, citing to the caution expressed by the United States Supreme Court in *Bozza v. United States*, 330 U.S. 160, 166–67 (1947), that the prohibition against double jeopardy should not cause a sentencing hearing to be "a game in which a wrong move by the judge means immunity for the prisoner," we held that this would be the exact result if a judge could never correct a jail credit calculation. *Id.*

Third, we determined that a jail credit correction made by the judge to the amount of a time-served reporting error did not defeat a defendant's "legitimate expectations" in the finality of his or her sentence. *Id.* at 1242. Rather, we opined that a defendant's only legitimate expectations were that he or she would serve the sentence imposed by the court and that the correct amount of any time the defendant may have served prior to sentencing would be accurately communicated to the correctional facility where the defendant would continue serving the sentence. *Id.*

Fourth, as explained by now-Justice Lawson, we observed that "[a] judicially-created rule that shortens a lawfully-imposed sentence by barring anyone from correcting a mistake that credits the defendant with time against his sentence that he or she has

never actually served clearly thwarts society's interest in extracting a full and just punishment for crime." *Id.*

Spear believes that our legal analysis in *Gallinat* was mistaken. He asserts that we should not simply affirm the trial court's amended judgments and sentences here under the doctrine of stare decisis, which is a doctrine of precedent that directs a court to follow its earlier judicial decisions when the same points arise again in litigation. *See Stare Decisis*, Black's Law Dictionary (10th ed. 2014).

We acknowledge that the doctrine of stare decisis, while providing stability to the law, does not command blind allegiance to precedent. *See Shepard v. State*, 259 So. 3d 701, 707 (Fla. 2018). Spear argues that any presumption that we give in favor of following *Gallinat* under stare decisis is overcome upon our consideration and application of the following factors:

> (1) Has the prior decision proved unworkable due to reliance on an impractical legal "fiction"? (2) Can the rule of law announced in the decision be reversed without serious injustice to those who have relied on it and without serious disruption in the stability of the law? And (3) have the factual premises underlying the decision changed so drastically as to leave the decision's central holding utterly without legal justification?

*See Strand v. Escambia Cty.*, 992 So. 2d 150, 159 (Fla. 2008) (quoting *N. Fla. Women's Health & Counseling Servs., Inc. v. State*, 866 So. 2d 612, 637 (Fla. 2003)).

The Florida Supreme Court, however, has very recently cautioned against applying this multi-factor stare decisis test. In *State v. Poole*, 45 Fla. L. Weekly S41 (Fla. Jan. 23, 2020), the court explained:

> More fundamentally, we are wary of any invocation of multi-factor *stare decisis* tests or frameworks like the one set out in *North Florida Women's Health*. They are malleable and do

> not lend themselves to objective, consistent, and predictable application. They can distract us from the merits of a legal question and encourage us to think more like a legislature than a court. And they can lead us to decide cases on the basis of guesses about the consequences of our decisions, which in turn can make those decisions less principled. Multi-factor tests or frameworks like the one in *North Florida Women's Health* often serve as little more than a toolbox of excuses to justify a court's unwillingness to examine a precedent's correctness on the merits.
>
> We believe that the proper approach to *stare decisis* is much more straightforward. In a case where we are bound by a higher legal authority—whether it be a constitutional provision, a statute, or a decision of the Supreme Court—our job is to apply that law correctly to the case before us. When we are convinced that a precedent clearly conflicts with the law we are sworn to uphold, precedent normally must yield.

*Id.* at S48.

Applying this straightforward approach described in *Poole*, we believe that *Gallinat* remains correct on the merits and is properly applied to the present case. At its core, *Gallinat* recognized that a defendant and the State are each entitled to a written judgment and sentence that correctly reflects the length of the sentence orally imposed by the court and provides the precise amount of time that a defendant has served prior to the imposition of the sentence or, in this case, the resentence.

We see nothing unjust or unconstitutional in applying this rule here to the trial court's sua sponte corrections to Spear's judgments and sentences. To the contrary, by way of example, its application corrects the "fictional" award of 932 days of credit to Spear in one of his cases, which was indisputably 300 more days than what he had actually served in prison prior to resentencing. Spear was never entitled to have these additional days applied as a credit against his sentence or to assume that the mathematical errors

in calculating his jail credit and prison credit in each case could never be rectified by the trial court to accurately reflect the true amounts of credit.

DID THE TRIAL COURT HAVE A "LEGAL BASIS" TO SUA SPONTE MODIFY SPEAR'S JAIL CREDIT?

Spear's final argument here is that the factual premises underlying our decision in *Gallinat* changed so drastically that there is no longer any legal justification to continue with its holding. Spear argues that at the time that *Gallinat* was decided, Florida Rule of Criminal Procedure 3.800(a) provided that a court may, at any time, correct a sentence that did not grant proper credit for time served, thus justifying our result there. He points out that in 2013, when rule 3.801 was specifically adopted regarding the correction of jail credit, rule 3.800(a) was also amended to delete any reference in the rule to a party seeking relief from a sentence that did not grant proper credit for time served. Spear reasons that these amendments so changed the law "as to leave the [*Gallinat*] decision's central holding utterly without legal justification."

As we previously explained, rule 3.801 is not applicable to situations, like here, when jail credit is overreported. Thus, we disagree with Spear's premise that the creation of rule 3.801 regarding a defendant's ability to seek relief from an underreporting of jail credit and the contemporaneous modification to rule 3.800(a) deleting the language from that rule that had provided a basis to seek such relief left our underlying rationale in *Gallinat* (that a trial court, on its own motion, could correct an overreporting of jail credit), to be "utterly without legal justification." Moreover, Spear's cases below did not just involve jail credit. Rather, mathematical errors were made in calculating the combined jail credit and prison credit. An improper award of prison credit can be corrected by the

court at any time under rule 3.800(a), *see Rivera*, 257 So. 3d at 1144 (holding that a court at any time may correct an error in a defendant's pre-sentence prison credit), which is arguably consistent with the underlying rationale in *Gallinat*.

In addition to or regardless of these two rules of procedure, Florida has also long recognized a trial court's inherent power to correct its clerical errors. *See Drumwright v. State*, 572 So. 2d 1029, 1030–31 (Fla. 5th DCA 1991) (affirming trial court's sua sponte correction of a clerical error in the written judgment and sentence that showed that the defendant received a thirty-month, instead of the orally announced thirty-year, prison sentence, when the error was "brought to the court's attention" by the defendant's premature release from prison back into the community (citing *Sawyer v. State*, 113 So. 736, 738 (Fla. 1927))). A miscalculation in the amount of jail credit is a clerical error. *See Ashley v. State*, 850 So. 2d 1265, 1268 (Fla. 2003); s*ee also Hagley*, 140 So. 3d at 679 ("Florida has long recognized a court's inherent power to correct clerical errors such as calculation of jail credit."); *Luke v. State*, 672 So. 2d 654, 655 (Fla. 4th DCA 1996) ("[T]he court's recitation of the number of days' credit for time served is merely a ministerial act requiring no personal judgment or discretion in its performance. . . . [N]either the appellant nor the State should receive the benefit of any miscalculation or misstatement by the court."); *Carson v. State*, 489 So. 2d 1236, 1238 (Fla. 2d DCA 1986) ("A court may correct clerical mistakes in its own judgments and records, nunc pro tunc, even after the term of court has expired . . . ."). Here, the trial court, on its own motion, simply corrected a clerical error in the resentencing documents.

Accordingly, we affirm Spear's amended judgments and sentences in each case as they now accurately reflect his accrued jail credit and prison credit at the time of

resentencing. We do, however, certify the following question of great public importance to the Florida Supreme Court:

> ONCE A JUDGMENT AND SENTENCE IS FINAL, DOES A TRIAL COURT HAVE THE INHERENT AUTHORITY AT ANY TIME TO SUA SPONTE CORRECT SENTENCING DOCUMENTS THAT OVERREPORT THE AMOUNT OF JAIL TIME SERVED BY A DEFENDANT PRIOR TO SENTENCING OR THE AMOUNT OF JAIL TIME AND PRISON TIME SERVED BY A DEFENDANT PRIOR TO RESENTENCING?

Lastly, we certify conflict with the First District Court's decisions in *Cummings v. State*, 279 So. 3d 818 (Fla. 1st DCA 2019); *Washington v. State*, 199 So. 3d 1110 (Fla. 1st DCA 2016); and *Wheeler v. State*, 880 So. 2d 1260 (Fla. 1st DCA 2004), and with the Second District Court's decisions in *King v. State*, 913 So. 2d 758 (Fla. 2d DCA 2005); *Lebron v. State*, 870 So. 2d 165 (Fla. 2d DCA 2004); *Platt v. State*, 827 So. 2d 1064 (Fla. 2d DCA 2002); *Keene v. State*, 826 So. 2d 327 (Fla. 2d DCA 2002); *Linton v. State*, 702 So. 2d 236 (Fla. 2d DCA 1997); and *Gilmore v. State*, 523 So. 2d 1244 (Fla. 2d DCA 1988).[11]

AFFIRMED; CONFLICT CERTIFIED; QUESTION CERTIFIED.

COHEN and EISNAUGLE, JJ., concur.

[11] In *Gallinat*, we had certified conflict with the First District Court's decision in *Wheeler* and the Second District Court's decisions in *King*; *Lebron*; *Platt*; *Keene*; *Linton*; and *Gilmore*. Mr. Gallinat did not appeal our decision to the Florida Supreme Court.