

IN THE SUPREME COURT OF FLORIDA

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

MICHAEL D. SPEAR,
Appellant,
v.
STATE OF FLORIDA,
Appellee.

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

INITIAL BRIEF FROM THE APPELLANT

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STATEMENT OF THE CASE AND FACTS

Jurisdiction. On April 17, 2020, the Fifth District Court of Appeal certified its decision to be in direct conflict with the decisions of other district courts of appeal and certified a question of great public importance. [Spear v. State, 294 So. 3d 995, 1003–04 \(Fla. 5th DCA 2020\)](#). On May 11, 2020, Mr. Spear timely filed a *pro se* Notice to Invoke Discretionary Jurisdiction of the Florida Supreme Court. On May 21, 2020, the undersigned counsel filed a Second Amended Notice to Invoke Discretionary Jurisdiction. On July 9, 2020, this Honorable Court accepted jurisdiction. [Spear v. State, SC20-676, 2020 WL 3866920, at *1 \(Fla. July 9, 2020\)](#).

Original Plea and Sentence. The State of Florida originally charged Mr. Spear in case number 2016-CF-039801 with Count I: Forgery, Count II: Uttering a Forged Instrument, Count III: Forgery, Count IV: Uttering a Forged Instrument, Count V: Forgery, and Count VI: Uttering a Forged Instrument. (R. 50–51.)

On November 10, 2016, Mr. Spear negotiated a deal with the State to resolve his case in exchange for an adjudication of guilt, twenty-four months of drug offender community control, followed by thirty-six months of drug offender probation. (R. 59–60.) The trial court entered an adjudication of guilt and sentenced him accordingly. (R. 65–81.)

Violation of Probation. Law enforcement subsequently arrested Mr. Spear on a new law violation, which prompted the State to charge him in case number 2016-CF-047845 with Count I: False Imprisonment and Count II: Battery - Domestic Violence. (R. 321.) He entered a plea of no contest in both cases and was sentenced by the trial court. (R. 123–24, 159, 161–63, 167, 341–42, 371.)

On February 13, 2017, Mr. Spear entered a plea of no contest in case number -039801 and admitted to violating the conditions of probation/community control. (R. 123–24.) He also entered a plea of no contest in case number -047845 to both offenses as charged in the information. (R. 341–42.)

The State agreed to recommend sixty months’ imprisonment on the felony offenses in both cases. (R. 123–24, 341.) Mr. Spear entered into a Quarterman¹ agreement with the understanding that he faced up to the statutory maximum if he violated the conditions of release by failing to appear at his future sentencing date. (R. 122, 340.) Sentencing was scheduled for March 30, 2017, but Mr. Spear failed to appear. (R. 134–37, 167, 346, 348, 357.)

Sentence in VOP and New Law Case. Mr. Spear proceeded to sentencing on May 30, 2017. (R. 357.) In case number -039801, the trial court revoked his probation, entered an adjudication of guilt for his failure to appear, and found he

¹ [Quarterman v. State](#), 527 So. 2d 1380 (Fla. 1988).

violated the Quarterman agreement. (R. 159, 161–62, 167.) The trial court sentenced him to consecutive five-year terms of imprisonment on each count, which totaled thirty years, and awarded 163 days credit for time served. (R. 163–67.) No penalty was imposed for the failure to appear. (R. 167.)

In case number -047845, the trial court entered an adjudication of guilt for all counts, which included the failure to appear, and found he violated the Quarterman agreement. (R. 362, 368–69, 373.) The trial court sentenced him to five years’ imprisonment on Count I to run consecutive to case number -039801 and 139 days in jail for Count II. (R. 371.)

On appeal, the Fifth District reversed² and remanded for a resentencing hearing to determine whether Mr. Spear’s violation of the Quarterman agreement was willful, and to afford him with due process on a contempt of court charge. (R. 171–72, 376–77.)

Resentencing. Mr. Spear proceeded to resentencing on October 4, 2018. (R. 171–72, 376–77, 409.) In case number -039801, the trial court sentenced Mr. Spear to five years’ imprisonment on Counts I–V to run consecutively with each count and a five-year term of imprisonment on Count VI to run concurrent with all

² [Spear v. State](#), 244 So. 3d 421 (Fla. 5th DCA 2018).

counts. (R. 198–99, 224, 412, 413.) Mr. Spear received 686 days credit for time served, which applied to each count. (R. 200–01, 417.)

In case number -047845, the trial court sentenced Mr. Spear to a five-year term of imprisonment to run concurrent with any other active sentence, 364 days in jail with credit for 364 days on Count II, and sixty days in jail with sixty days credit for time served on the failure to appear charge. (R. 225, 229, 389, 390, 413, 417.) Mr. Spear received 932 days credit for time served on Count I. (R. 225, 229, 390, 413, 417.)

Modification of Credit for Time Served. On December 7, 2018, the Florida Department of Corrections (“DOC”) wrote the sentencing judge a letter to review the credit for time served. (R. 219, 407.) The DOC informed the trial court that Mr. Spear received a “repeated benefit” in case number -039801 because the trial court applied credit to his consecutive counts. (R. 219, 407.) The DOC also informed the sentencing judge that his credit for time served in case number -047845 was miscalculated and that he was entitled to only “631 days.” (R. 219, 407.)

On April 2, 2019, the Fifth District affirmed.³ (R. 215, 403.) The mandate was issued on April 26, 2019. (R. 402.) On April 26, 2019, the sentencing judge

³ [Spear v. State](#), 267 So. 3d 1029 (Fla. 5th DCA 2019).

entered an order which removed Mr. Spear's credit for time served on Counts II–V in case number -039801 and reduced his credit for time served on Count I in case number -047845 to 632 days. (R. 217–18, 256, 404–06, 436–40.) On May 6, 2019, the trial court amended the credit for time served in case number -039801 as to Count I from 686 days to 656 days. (R. 275–92.)

Appeal of the Modification of Credit for Time Served. Mr. Spear appealed the trial court's reduction in his credit for time served. (R. 216–18, 293–94.) The Fifth District addressed the question of “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.” [Spear, 294 So. 3d at 996.](#)

Mr. Spear argued, among other things, that the trial court's reduction of jail credit increased punishment in violation of Double Jeopardy. (Appellant's Initial Br. 11, 18.) Mr. Spear requested the Fifth District to recede from its opinion in The Fifth District declined to recede from its opinion in [Gallinat v. State, 941 So. 2d 1237 \(Fla. 5th DCA 2006\)](#), (Appellant's Initial Br. 23), but the court declined because the opinion “remain[ed] correct on the merits and is properly applied to the present case.” [Spear, 294 So. 3d at 1002.](#)

The Fifth District certified the following question of great public importance to this Honorable 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?

[Id.](#) at 1003. The Fifth District also certified its decision to be in direct conflict with the decisions of the First and Second Districts:

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).

[Id.](#)

This appeal followed.

SUMMARY OF THE ARGUMENT

The trial court erred when it *sua sponte* entered an order that reduced Mr. Spear's credit for time served. The trial court's reduction in credit increased punishment in violation of Double Jeopardy. The reduction upset Mr. Spear's legitimate expectation of finality in his sentence because he already began serving his sentence, and the Fifth District affirmed his sentence as well as issued a mandate when the trial court reduced his credit for time served.

Mr. Spear respectfully requests this Honorable Court to resolve the conflict in his favor, quash the Fifth District's opinion, and remand for the trial court to restore his credit.

LEGAL ARGUMENT

I. THE TRIAL COURT’S REDUCTION OF CREDIT FOR TIME SERVED INCREASED MR. SPEAR’S PUNISHMENT IN VIOLATION OF DOUBLE JEOPARDY.

Standard of Review. “A double jeopardy claim based on undisputed facts presents a pure question of law and is reviewed de novo.” [State v. Tuttle](#), 177 So. 3d 1246, 1248 (Fla. 2015) (citation omitted).

Applicable Law. The Double Jeopardy Clauses of the United States and Florida Constitutions prohibit the government from subjecting a person to the same offense twice, U.S. Const. amend. V; Art. I, § 9, Fla. Const.; see also [Benton v. Maryland](#), 395 U.S. 784, 794 (1969) (holding that the Fourteenth Amendment makes applicable to the states all the protections provided by the Double Jeopardy Clause).

“Once a sentence has been imposed and the person begins to serve the sentence, that sentence may not be increased without running afoul of double jeopardy principles.” [Ashley v. State](#), 850 So. 2d 1265, 1267 (Fla. 2003) (citations omitted). However, a double jeopardy violation only occurs “when it disrupts the defendant’s legitimate expectations of finality.” [Dunbar v. State](#), 89 So. 3d 901,

905 (Fla. 2012) (quoting [U.S. v. Young](#), 953 F. 2d 1288, 1291 n. 3 (11th Cir.1992)).

Conflict Between the First, Second, and Fifth DCAs. There is direct conflict between the aforementioned DCAs with respect to whether it violates a defendant’s right against double jeopardy when a trial court “rescinds” previously awarded credit for time served. See [Cummings v. State](#), 279 So. 3d 818 (Fla. 1st DCA 2019); [Washington v. State](#), 199 So. 3d 1110 (Fla. 1st DCA 2016); [Hagley v. State](#), 140 So. 3d 678 (Fla. 5th DCA 2014); [Gallinat v. State](#), 941 So. 2d 1237 (Fla. 5th DCA 2006); [Wheeler v. State](#), 880 So. 2d 1260 (Fla. 1st DCA 2004); [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); [Gilmore v. State](#), 523 So. 2d 1244 (Fla. 2d DCA 1988).

On the one hand, the First and Second DCAs have repeatedly held that rescinding previously awarded credit for time served amounts to an increased penalty in violation of the Fifth Amendment right against double jeopardy. See, e.g., [Washington](#), 199 So. 3d at 1112; [Platt](#), 827 So. 2d at 1064–65. On the other hand, the Fifth DCA held that erroneous calculations of credit for time served do not increase a sentence in violation of double jeopardy except for two

circumstances.⁴ [Gallinat, 941 So. 2d at 1239](#). Rather, such a correction amounted to the correction of a clerical error. [Id.](#)

The Fifth DCA reasoned that credit for time served calculations are not the result of judicial decision-making, such as a judicially-imposed sentence of three years, and do not increase sentences. [Id. at 1241](#). Second, the failure to permit a trial court to correct a miscalculation would turn into a sentencing game. Third, a defendant's only legitimate expectation is that he or she would serve the full sentence and will receive full credit for all time actually served on an offense. [Id. at 1242](#). Lastly:

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.](#) (Emphasis added).

Analysis. Here, the trial court's reduction of credit for time served increased punishment in violation of Double Jeopardy. First, an increased punishment occurred here based on the inverse relationship between credit for time served and the overall length of incarceration imposed by the trial court. For example, an

⁴ Post-sentencing orders where the general prohibition against sentence increases should apply: (1) where the State and defendant negotiate an overall sentence structure that includes a stipulated amount of time served; and (2) where a trial court exercises discretion in the award of credit for time served. [Gallinat, 941 So. 2d at 1240](#).

increase in credit for time served necessarily decreases the overall length of incarceration, whereas a decrease in credit for time served necessarily increases the overall length of incarceration.

The Gallinat opinion reasoned that a miscalculation of credit for time served does not amount to a sentence increase, but claimed that society's interest would be thwarted if the judiciary created a rule that **shortened** a lawfully-imposed sentence. Yet, if an increase in credit for time served did not produce a decrease in incarceration, there would be no concern of society's interest being thwarted.

Second, the reduction upset Mr. Spear's legitimate expectation of finality in his sentence because he already began serving his sentence, and the Fifth District affirmed his sentence as well as issued a mandate when the trial court reduced his credit for time served.

This Honorable Court should resolve the conflict in Mr. Spear's favor, quash the Fifth District's opinion, and remand for the trial court to restore his credit for time served.

CONCLUSION

BASED ON the foregoing facts, authorities, and arguments, the Appellant respectfully requests this Honorable Court to resolve the conflict in his favor, quash the Fifth District's opinion, and remand for the trial court to restore his credit for time served.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I **HEREBY CERTIFY** that the font used in this brief is 14 point, proportionally spaced Times New Roman.

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on August 28, 2020, this document was filed electronically through The Florida Courts E-Filing Portal at <https://www.myflcourtagency.com> in the **Fifth District Court of Appeal**, 300 South Beach Street, Daytona Beach, Florida 32114, and served upon the following parties in the manner specified below:

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