

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO FLORIDA  
RULES OF CRIMINAL PROCEDURE -  
3.800, 3.801, 3.9875

SC16-

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**PETITION OF THE CRIMINAL COURT STEERING COMMITTEE**

The Florida Supreme Court’s Criminal Court Steering Committee (“Committee”), by and through its chair, submits this petition to amend Florida Rules of Criminal Procedure 3.800, 3.801, and 3.9875.

**A. Jurisdiction**

In AOSC14-44, the Florida Supreme Court (“Court”) authorized the Committee to propose rule amendments that are necessary as a result of Supreme Court decisions in criminal cases. (see Appendix D). In *In re Amendments to the Florida Rules of Criminal Procedure and the Florida Rules of Appellate Procedure*, 132 So. 3d 734 (Fla. 2013), the Court promulgated procedural rules in criminal cases that the Committee believes are in need of clarification, as explained below.

**B. Background**

The chair of the Criminal Procedure Rules Committee, Ms. Meredith Charbula, informed the Committee there was an apparent conflict in the District Courts of Appeal regarding whether a defendant could litigate a jail credit issue under rule 3.800(b).

Ms. Charbula noted that in *Lowe v. State*, 152 So. 3d 1279 (Fla. 1st DCA 2015), the First District stated that the Appellant could seek additional jail credit in a rule 3.800(b)(2) motion. In *Padilla-Padial v. State*, 152 So. 3d 51 (Fla. 5th DCA 2014), it appeared the Fifth District construed rule 3.801 to preclude a defendant from filing a timely rule 3.800(b) motion when jail credit was the only alleged sentencing error. The Fifth District urged the Appellate Court Rules Committee to consider revising rule 9.600. Ms. Charbula informed the Committee it was her understanding the Appellate Court Rules Committee believed no action was necessary given that rule 3.800(b) provides a remedy for jail credit issues during the pendency of an appeal. Both the *Lowe* opinion and the *Padilla-Padial* opinion are in Appendix E.

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Ms. Charbula requested the Committee to address this jail credit issue for two reasons: 1) The Committee was the impetus behind the creation of rule 3.801; and 2) any changes proposed by the Criminal Procedure Rules Committee would have to wait for its next 3-year cycle.

### **C. Committee discussions**

The Committee included liaisons from the Criminal Procedure Rules Committee (Mr. David Gillespie and Ms. Meredith Charbula) in its discussions. The Committee also sought the input of Judge Kevin Emas and Judge James Hankinson, who were members of the Postconviction Subcommittee that originally proposed the creation of Rule 3.801.

Everyone agreed that rule 3.801 was intended to apply to *final* sentences and that defendants should be able to use timely-filed rule 3.800(b) motions to litigate jail credit issues before the sentence became final. Everyone also agreed that it would be quicker for the Committee file a petition than the Criminal Procedure Rules Committee. Accordingly, the Committee voted unanimously to file this petition in an effort to make the rules clearer that a defendant can use rule 3.800(b) to litigate a jail credit issue before the sentence became final.

### **D. Proposal**

The Committee is proposing amendments to three rules – 3.800, 3.801, and 3.9875.

In rule 3.800(b), the Committee proposes the first sentence read: “A motion to correct any sentencing error, including an illegal sentence or incorrect jail credit, may be filed as allowed by this subdivision.” The addition of “or incorrect jail credit” will make the rule clear that rule 3.800(b) can be used to correct jail credit in cases where the sentence is not yet final.

In rule 3.801(a), the Committee proposes adding the word “final” so that the first sentence reads: “A court may correct a final sentence that fails to allow a defendant credit for all of the time he or she spent in the county jail before sentencing as provided in section 921.161, Florida Statutes.” The Committee also proposes adding a note at the end of the rule that states: “The 2016 amendment clarifies that rule 3.801 applies to final sentences. Prior to the sentence being final, defendants may avail themselves of all appropriate proceedings to litigate a jail credit issue, including direct appeal if properly preserved, a motion for rehearing, or a motion pursuant to rule 3.800(b).”

In rule 3.9875, the Committee proposes using the term “final sentence” in the paragraphs labelled “1” and “3” so that defendants will realize that rule 3.801 is designed for correcting jail credit after the sentence is final.

### **E. Technical Changes**

There are a number of technical changes proposed, almost all of which were suggested by Ms. Heather Telfer, the Florida Bar’s staff liaison to the Criminal Procedure Rules Committee. In rule 3.800(b), “supreme court” should not be capitalized. In rule 3.801(b), the sentence about motions being filed before July 2014 is no longer necessary. Commas are added in rules 3.801(c)(2), (c)(3), and (c)(4). In rule 3.801(e), an extra space is deleted. Finally, in rule 3.9875, the words “defendant,” “state,” and “court” are not capitalized.

### **F. Comments**

The Committee published its proposals (without most of the technical changes) in the *Bar News* on February 15, 2016. Four comments were received but none of the comments pertained to the jail credit amendments.

Three of the comments were filed in opposition to a proposal involving rule 3.800(c) that the Committee decided not to pursue in this petition. Instead the majority of the Committee suggests the Criminal Procedure Rules Committee study whether rule 3.800(c) should be amended to reflect the law in cases such as *State v. Gutierrez*, 10 So. 3d 158 (Fla. 3d DCA 2009) and *State v. Swett*, 772 So. 2d 48 (Fla. 5th DCA 2000).

One of the comments requested the Committee propose the addition of a separate section in rule 3.800 to cover motions for rehearing. The Committee voted unanimously not to adopt that suggestion. All four comments are in Appendix C.

**F. Conclusion**

The Committee unanimously recommends the Court adopt the proposals in Appendix A.

**This petition contains the following appendices:**

- Appendix A: The Committee’s rule proposal in legislative format.
- Appendix B: The Committee’s rule proposal in two-column format.
- Appendix C: Four comments.
- Appendix D: AOSC14-44.
- Appendix E: Relevant case law.

Respectfully submitted,

s/ Judge Jay P. Cohen  
Judge Jay P. Cohen  
Florida Bar No. 271160  
Chair, Criminal Court Steering  
Committee  
Fifth District Court of Appeal  
300 South Beach Street  
Daytona Beach, FL 32114-5002  
(386) 947-1530  
cohenj@flcourts.org

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of this Petition and the Appendices has been furnished by e-mail to: Heather Telfer, Attorney Liaison to the Criminal Procedure and Appellate Court Rules Committees at the Florida Bar, at HTelfer@flabar.org; Krys Godwin, Attorney Liaison to the Rules of Judicial Administration Committee at the Florida Bar, at krgodwin@flabar.org; Judge T.K. Wetherell, II, Chair of the Appellate Court Rules Committee at

wetherellk@1dca.org; Amy Borman, Chair of the Rules of Judicial Administration Committee at ABorman@pbcgov.org; Meredith Charbula, Chair of the Criminal Procedure Rules Committee at MCharbula@coj.net; Ms. Julianne Holt, President of the FPDA at jholt@pd13.state.fl.us; Mr. Luke Newman at lukenewmanlaw.com; Mr. Blaise Trettis at btrettis@pd18.net; and by U.S Mail to Mr. Thomas Perry Wells, Jr., DC#427582, 8784 W. U.S. 27, Mayo, Florida 32066, this 14th day of April, 2016.

s/ Bart Schneider  
Bart Schneider  
Florida Bar No.: 0936065  
Office of the State Courts  
Administrator  
General Counsel's Office  
500 S. Duval Street  
Tallahassee, Florida 32399  
(850) 413-7321  
schneidb@flcourts.org

### **CERTIFICATION OF COMPLIANCE**

I certify that Rule 9.140 rule was read against West's Florida Rules of Court – State (revised edition 2015).

I certify that this petition was prepared in compliance with the font requirements of Fla. R. App. P. 9.210(a)(2).

s/ Bart Schneider  
Bart Schneider  
Fla. Bar Number: #0936065