

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

JULY TERM 2002

JASON MYERS,

Appellant,

v.

CASE NO. 5D02-1842

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed August 16, 2002

3.850 Appeal from the Circuit Court
for Orange County,
A. Thomas Mihok, Judge.

Jason Myers, Indiantown, *pro se*.

No Appearance for Appellee.

SHARP, W., J.

Jason Myers appeals from the summary denial of his second motion filed pursuant to Florida Rule of Criminal Procedure 3.850. This proceeding is successive and improper.

In this motion, Myers alleges his plea was involuntary because he was led to believe by counsel that he would receive 426 days of jail credit for time served. Myers received 140 days credit at time of sentencing. However, Myer's first rule 3.850 motion raised a similar jail credit issue, and the trial court granted relief in part: an additional 191 days credit, for a total of 331 days.

Since the jail credit issue was litigated in the first 3.850 motion proceeding, and the order rendered in that proceeding was affirmed on appeal,¹ this motion is successive and constitutes an abuse of procedure. Although Myers seeks to raise an involuntary plea claim relating to the jail credit issue, it should have been raised in the first 3.850 motion. The facts supporting the claim were known to Myers at the time of his plea and sentencing, or at the latest, at the time of his first 3.850 motion. *See* Fla. R. Crim. P. 3.850(f).

AFFIRMED.

HARRIS and PALMER, JJ., concur.

¹*Myers v. State*, 804 So. 2d 459 (Fla. 5th DCA 2001).