

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT OF
FLORIDA, IN AND FOR LAKE COUNTY

2023 MAY 26 PM 4:22
CLERK OF CIRCUIT
AND COUNTY COURT
LAKE COUNTY
FLORIDA

LARRY HENDERSON,

Petitioner,

VS.

CASE NO.: 2023-CA-00 **393**

FLORIDA DEPARTMENT OF
CORRECTIONS,

Respondent.

**ORDER DENYING DEFENDANT'S PETITION FOR ISSUANCE OF WRIT OF
MANDAMUS OR IN THE ALTERNATIVE OF AN ISSUANCE FOR AN ORDER TO
SHOW CAUSE OPPORTUNITY AND/OR ISSUANCE OF WRIT OF HABEAS CORPUS
TO THE FIFTH JUDICIAL CIRCUIT**

THIS CAUSE came before the Court pursuant to Defendant's Petition for Issuance of Writ of Mandamus or in the Alternative of an Issuance for an Order to Show Cause Opportunity and/or Issuance of Writ of Habeas Corpus to the Fifth Judicial Circuit filed March 7, 2023 ("Petition"), and the Respondent Florida Department of Corrections' Response to Court's April 26, 2023 Order filed May 18, 2023 ("Response"). The Court, having reviewed the Defendant's Petition, the Response from the Florida Department of Corrections ("FDOC"), and other pertinent documents in the Court file, reviewed the relevant legal authorities, and being otherwise fully advised in the premises, finds and concludes as follows:

1. On March 30, 2021 Petitioner was sentenced to thirty-six (36) months incarceration with FDOC, and with three hundred forty-six (346) days jail credit.
2. The Petitioner claims he should have been released from the FDOC in October 2022, but due to a miscalculation of his awarded jail credit he was not released.
3. The Petitioner filed his Petition with the Circuit Court of the Thirteenth Judicial Circuit in and for Hillsborough County on January 17, 2023.
4. The Petition was transferred to the Circuit Court of the Fifth Judicial Circuit in and for Lake County on March 7, 2023, pursuant to Section 79.09, Florida Statutes.
5. On April 26, 2023, the Court ordered the Respondent, FDOC, to show cause on

why the Petitioner's requested relief should not be granted.

6. On May 18, 2023, the Respondent filed a response to the Order to Show Cause stating that "Concurrent sentences of equal length may end on different dates depending on how much jail credit and gain-time is associated with each sentence." *Respondent Florida Department of Corrections' Response to Court's April 26, 2023 Order*, a true copy of which is attached as Exhibit A.

7. The Respondent also responded "Defendant's sentences are all the same length; however the amount of jail credit on each differs. DOC is required to apply jail credit to each sentence exactly as ordered by the Court." *Id.*

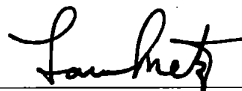
8. Additionally, the Respondent showed "The sentence in Case No. 20-14747 was reduced by only 115 days jail credit. Since this case has the least amount of jail credit, it will end last and control his release date." *Id.*

9. The Respondent exhibited an accurate and correct release date of June 24, 2023 for the Petitioner.

In view of the foregoing findings, the pertinent portions of the record, and applicable law, it is **ORDERED** and **ADJUDGED** that the Defendant's Petition for Issuance of Writ of Mandamus or in the Alternative of an Issuance for an Order to Show Cause Opportunity and/or Issuance of Writ of Habeas Corpus to the Fifth Judicial Circuit filed March 7, 2023, is **DENIED**.

DONE AND ORDERED in Chambers at Tavares, Lake County, Florida, this 26th day of May 2023.

DEFENDANT HAS THIRTY (30) DAYS FROM THE DATE OF RENDITION OF THIS ORDER TO FILE A NOTICE OF APPEAL. FAILURE TO TIMELY FILE A NOTICE OF APPEAL MAY RESULT IN THE FORFEITURE OF THAT RIGHT.



LARRY METZ, CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies hereof have been furnished to the addressees listed below this 30 of May 2023.

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Larry Henderson
DC Number: 099337
Lake Correctional Institution (Male)
19225 U.S. Highway 27
Clermont, Florida 34715-9025



DEPUTY CLERK

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT,
IN AND FOR LAKE COUNTY, FLORIDA

LARRY HENDERSON,

Petitioner,

vs.

CASE NO:2023-CA-000393

FLORIDA DEPARTMENT OF
CORRECTIONS,

Respondent.

_____ /

EXHIBIT A
TO
ORDER DENYING DEFENDANT'S PETITION FOR ISSUANCE OF WRIT OF
MANDAMUS OR IN THE ALTERNATIVE OF AN ISSUANCE FOR AN ORDER TO
SHOW CAUSE OPPORTUNITY AND/OR ISSUANCE OF WRIT OF HABEAS CORPUS
TO THE FIFTH JUDICIAL CIRCUIT

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IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
IN AND FOR LAKE COUNTY, FLORIDA

LARRY HENDERSON, DC#099337,

Petitioner,

v.

Case No.: 2023-CA-000393

FLORIDA DEPARTMENT OF
CORRECTIONS,

Respondent.

RESPONDENT FLORIDA DEPARTMENT OF CORRECTIONS' RESPONSE TO
COURT'S APRIL 26, 2023 ORDER

COMES NOW, Respondent Florida Department of Corrections, by and through its undersigned counsel, to respond to this Honorable Court's Order to Show Cause entered on April 26, 2023, and in support hereof states:

1. Petitioner Larry Henderson, DC#099337, ("Petitioner"), is a person incarcerated in the custody of the Florida Department of Corrections at Lake Correctional Institution with a scheduled release date of June 24, 2023.
2. Petitioner Larry Henderson, DC#099337, filed his Petition for Issuance of Writ of Mandamus or in the Alternative of an Issuance for an Order to Show Cause Opportunity and/or Issuance of Writ of Habeas Corpus to the Fifth Judicial Circuit on March 7, 2023¹ ("Petition"), challenging the calculation of his commitment time in the Florida Department of Corrections.

¹ This Petition was originally filed by Inmate Henderson on January 17, 2023 in the Thirteenth Judicial Circuit for Hillsborough County, but was subsequently transferred to this Circuit pursuant to Florida Statute 79.09 as he is detained in Lake County.

3. Petitioner's sentence stems from four criminal felony cases brought in the Thirteenth Judicial Circuit Court of Hillsborough, County, Florida – 2019-CF-4106, 2019-CF-5151, 2020-CF-737 and case 2020-CF-14747. See State Credit Time Logs, Composite **Exhibit A**.
4. On March 30, 2021, in cases 2019-CF-4106, 2019-CF-5151 and 2020-CF-737, an order was entered revoking Petitioner's probation for violations of Condition 1, 3 and 5 and was found guilty by the Court with probation revoked and Petitioner sentenced in all cases to 36 months to run concurrently in Florida State Prison with jail credit of 633 days in case 2019-CF-4106 and 2019-CF-5151 and with jail credit of 346 days in case 2020-CF-737 and 115 days jail credit in Case No. 20-14747. See **Exhibit B**.
5. Concurrent sentences of equal length may end on different dates depending on how much jail credit and gain-time is associated with each sentence. Defendant's sentences are all the same length; however, the amount of jail credit on each differs. DOC is required to apply jail credit to each sentence exactly as ordered by the court. See, *Wilson v. State*, 603 So.2d 93 (Fla.5th DCA 1992) (award of jail credit is a judicial task) The sentence in Case No. 20-14747 was reduced by only 115 days jail credit. Since this case has the least amount of jail credit, it will end last and control his release date.
6. As stated in *Daffin v. State*, 31 So. 3d 867 (Fla. 1st DCA 2010):

Concurrent sentences have been defined as '[t]wo or more sentences of jail time to be served simultaneously.' But '[c]oncurrent sentences do not necessarily begin at the same time, and unless they are ordered to be coterminous, they will expire on different dates.' *Id.* at 870 (internal citations omitted). 'A defendant is not, of course, entitled to jail credit for concurrent sentences when the defendant was not actually in jail before sentencing in connection with the offenses for which the concurrent sentences are imposed. *Id.* at 870 (internal citations omitted). See also, *Salazar v. State*, 995 So. 2d 1058 (Fla. 4th DCA 2008) (fact that a defendant receives concurrent sentences at the same time does not

mandate that the longest of the jail time credits will be applied against all of the sentences); *Washington v. State*, 873 So.2d 609, 610 (Fla. 2d DCA 2004).

7. Petitioner's current tentative release date is based on the sentence in Case No. 20-14747, and is calculated as follows:

Date of sentence:	March 30, 2021
Three years in days:	+ 1095 days
Jail credit:	- 115 days
Gain-time:	- 164 days
Tentative release date:	June 24, 2024

8. Petitioner has previously challenged his jail credit in cases 2019-CF-4106, 2020-CF-737, and 2020-CF-14747, and each time Petitioner's Motion for Correction of Jail Credit was denied. See **Exhibit C**.

9. The Florida Department of Corrections keeps a sentence structure record for each inmate and the sentence structure for Petitioner is attached with a Certification of Business Record. See **Exhibit D**.

10. The Florida Department of Corrections has Petitioner correctly scheduled for release upon completion of 85% of his sentence and Petitioner will be released on **June 24, 2023**.

WHEREFORE, Respondent, Florida Department of Corrections prays this Court deny Petitioner's Petition for Issuance of Writ of Mandamus or in the Alternative of an Issuance for an Order to Show Cause Opportunity and/or Issuance of Writ of Habeas Corpus and for any further such further relief deemed appropriate.

Respectfully submitted,

ASHLEY MOODY
ATTORNEY GENERAL

/s/Samantha-Josephine Baker
Samantha-Josephine Baker
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 18, 2023, I electronically filed the foregoing document with the Clerk of Court using the Florida Courts E-Filing Portal. I also certify that the foregoing document is being served this day on all counsel of record and interested parties, via transmission generated by the Florida Courts E-Filing Portal. I further certify that I caused a true and correct copy of the foregoing document to be sent via First-Class U.S. Mail to Petitioner, pro se, Larry Henderson, DC#099337, Lake Correctional Institution, 19225 U.S. Highway 27, Clermont, Florida 34715-9025.

/s/ Samantha-Josephine Baker
Samantha-Josephine Baker
Senior Assistant Attorney General