

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

THOMAS EARL SMAIL,

Appellant,

v.

Case No. 5D18-2403

CORRECTED

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed November 16, 2018

3.800 Appeal from the Circuit Court
for Citrus County,
Richard A. Howard, Judge.

Thomas Earl Smail, Raiford, pro se.

Pamela Jo Bondi, Attorney General,
Tallahassee, and Marjorie Vincent-Tripp,
Assistant Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

Appellant, Thomas Earl Smail, appeals the summary denial of his motion to correct illegal sentence. Smail alleges that the prison sentence he received for violating his community control was illegal because the court had no jurisdiction to impose a prison sentence where his community control had been terminated early. While the trial court correctly found that the VOP affidavit and arrest warrant were filed prior to the scheduled expiration of Smail's two-year community control period, Smail actually argued that his

community control supervision had terminated prior to its originally scheduled expiration date. In its summary denial of Smail's motion, the trial court failed to address that specific portion of the claim. We therefore reverse the summary denial of Smail's motion to correct illegal sentence and remand for the trial court to attach portions of the record that conclusively refute these claims.

REVERSED and REMANDED.

WALLIS, EDWARDS and HARRIS, JJ., concur.