

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

JULY TERM 2011

JESTIN CLEVELAND,

Appellant,

v.

Case No. 5D10-3435

STATE OF FLORIDA,

Appellee.

Opinion filed December 2, 2011

Appeal from the Circuit Court
for Orange County,
Roger J. McDonald, Judge.

James S. Purdy, Public Defender,
and Ailene S. Rogers, Assistant
Public Defender, Daytona Beach, for
Appellant.

Pamela Jo Bondi, Attorney General,
Tallahassee, and Pamela J. Koller,
Assistant Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

We conclude that the trial court did not abuse its discretion in denying Cleveland's motion for mistrial and, accordingly, affirm his convictions. However, as the State concedes, the sentencing order erroneously fails to award Cleveland credit for time served on Counts I (aggravated stalking with a credible threat) and IV (retaliating

against a witness by threatening bodily harm).¹ On remand, the trial court shall correct this error.

AFFIRMED in part; REVERSED in part; REMANDED for Correction of Sentencing Order.

ORFINGER, C.J., MONACO, and EVANDER, JJ., concur.

¹The trial court did attempt to correct this sentencing error, but did so after the sixty day time limit set forth in Florida Rule of Criminal Procedure 3.800 had expired. Therefore, the order purporting to grant Cleveland's motion to correct sentence was a nullity. See *McGill v. State*, 878 So. 2d 1270, 1271 (Fla. 5th DCA 2004).