

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

BYRON LOWERY,

Appellant,

v.

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED.

CASE NO. 1D05-4330

JAMES R. McDONOUGH, Secretary,
Florida Department of Corrections,

Appellee.

Opinion filed October 26, 2006.

An appeal from the Circuit Court for Leon County.
Nikki Ann Clark, Judge.

Byron Lowery, pro se, Appellant.

Charlie Crist, Attorney General, and Joy A. Stubbs, Assistant Attorney General,
Tallahassee, for Appellee.

PER CURIAM.

We affirm the circuit court's order denying appellant's petition for writ of mandamus. However, to the extent that appellant contests the circuit court's

imposition of a lien for appellate costs, we treat this request as if it had been properly filed as a motion for review pursuant to Florida Rule of Appellate Procedure 9.430. See Wagner v. McDonough, 930 So. 2d 710 (Fla. 1st DCA 2006); Wagner v. McDonough, 927 So. 2d 216 (Fla. 1st DCA 2006); Fla. R. App. P. 9.040(c) (providing that if a party seeks an improper remedy, the cause will be treated as if the proper remedy had been sought). We grant the motion to review and quash the portion of the circuit court's order dated September 27, 2005, which authorized the Department of Corrections to impose a lien on appellant's inmate trust account. This proceeding is a collateral criminal proceeding, and, therefore, there is no statutory authority for the circuit court to impose a lien to recover costs and fees. See Wagner, 927 So. 2d at 217.

BARFIELD, WEBSTER, and POLSTON, JJ., CONCUR.