

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

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

CARNELL GRAYER,

Appellant,

v.

CASE NO. 1D06-0553

STATE OF FLORIDA,

Appellee.

Opinion filed October 3, 2006.

An appeal from the Circuit Court for Leon County.
Thomas H. Bateman, III, Judge.

Carnell Grayer, pro se, Appellant.

Charlie Crist, Attorney General, and Sean F. Callaghan, Assistant Attorney General,
Tallahassee, for Appellee.

PER CURIAM.

The appellant, an inmate, challenges the order by which the trial court imposed a lien against his inmate account pursuant to section 57.081, Florida Statutes, in connection with his trial court mandamus petition. Because such liens are not

authorized under section 57.081, we reverse the order under review. Cason v. Crosby, 892 So. 2d 536 (Fla. 1st DCA 2005).

We reject the appellee's argument on appeal that the order should be affirmed upon the theory that the trial court might have imposed the lien pursuant to section 57.085, Florida Statutes. The trial court specifically ruled in its order to show cause that, "[u]nder Schmidt v. Crusoe, 878 So. 2d 361 (Fla. 2003), this case is a 'collateral criminal proceeding' not subject to the fee deferral provisions of section 57.085, Florida Statutes[,]” and the appellee neither contested this ruling in the trial court nor filed a cross-appeal of the ruling in this court. And, in any event, the record in this case is not sufficiently developed for conclusive determination that the trial court's ruling respecting the inapplicability of section 57.085 to this proceeding was erroneous. See, e.g., State Dept. of Revenue ex rel. Rochell v. Morris, 736 So. 2d 41 (Fla. 1st DCA 1999).

The order under review is accordingly reversed, and this case is remanded to the trial court with instructions that the trial court direct a refund of any monies deducted from the appellant's inmate account pursuant to the order under review.

BARFIELD and ALLEN, JJ., CONCUR; KAHN, C. J., DISSENTS WITH OPINION.

KAHN, C.J., dissenting.

The circuit court erred by finding that section 57.081 would authorize a lien in the present case. See Cason v. Crosby, 892 So. 2d 536 (Fla. 1st DCA 2005). I would, nevertheless, conclude that the circuit court's treatment of the lien is harmless error. In his petition, Grayer failed to argue that the disciplinary charge at the heart of the petition directly affected the length of his sentence. Accordingly, pursuant to Schmidt v. Crusoe, 878 So. 2d 361, 367 (Fla. 2003), I would conclude that the matter at hand is not a criminal collateral matter. Because the matter, as it now stands before us, is not a criminal collateral matter, the petition was subject to section 57.085(5), Florida Statutes, which authorizes liens on inmate accounts. I would, therefore, affirm without prejudice to Grayer's right to file an amended petition that might satisfy the Schmidt standard, if he can do so.