

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

BYRON LOWERY,

Appellant,

v.

STATE OF FLORIDA, ET AL.,

Appellees.

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

CASE NO. 1D10-5742

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Opinion filed February 28, 2011.

An appeal from the Circuit Court for Jefferson County.

L. Ralph Smith, Jr., Judge.

Byron Lowery, pro se, Appellant.

Pamela Jo Bondi, Attorney General, Tallahassee, for Appellees.

PER CURIAM.

Upon consideration of the appellant's response to the Court's order of December 3, 2010, as well as the record on appeal, the Court has determined that

the appeal is premature. The appellant seeks review of the lower tribunal's September 1, 2010, Order Deeming Action One for Non-Habeas Corpus Relief. Contrary to the appellant's assertion, this order does not dismiss the petition for writ of habeas corpus. Rather, the order merely determines that the relief sought is not in the nature of habeas corpus relief and that it shall be treated as seeking non-habeas corpus relief. The petition apparently remains pending in the lower tribunal. This interlocutory order is not subject to review at this time. Cf. Banks v. State, 916 So. 2d 35 (Fla. 1st DCA 2005) (dismissing without prejudice to the right to seek review of interlocutory order upon entry of a final order). Accordingly, the appeal is dismissed.

LEWIS, CLARK, and ROWE, JJ., CONCUR.