

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2007

GLENN SMITH,
Appellant,

v.

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

No. 4D06-4898

[May 2, 2007]

TAYLOR, J.

In this action challenging disciplinary confinement and gain time reduction imposed by officials at the Okeechobee Correctional Institution, Glenn Smith appeals the trial court's *sua sponte* order transferring the venue of his action from Okeechobee County to Leon County, where the Department of Corrections has its headquarters.

The trial court entered the order transferring venue without affording Smith any notice or opportunity to be heard. The Department has confessed error based on this procedural ground. *See Wells v. Harris*, 884 So. 2d 1030, 1031 (Fla. 4th DCA 2004); *Government Employees Ins. Co. v. Burns*, 672 So. 2d 834 (Fla. 3d DCA 1996); *Hewitt Contracting v. Joyner*, 616 So. 2d 190, 190-91 (Fla. 5th DCA 1993); *Morris-Edge Masonry, Inc. v. Tonn & Blank, Inc.*, 461 So. 2d 1036, 1037 (Fla. 4th DCA 1985).

Accordingly, we reverse and remand this cause to the trial court to hold a hearing to determine whether, as Smith argues, his petitions sufficiently allege constitutional violations which qualify for the "sword-wielder" exception to the state's home venue privilege. *See Barr v. Fla. Bd. of Regents*, 644 So. 2d 333, 337 (Fla. 1st DCA 1994); *Hancock v. Wilkinson*, 407 So. 2d 969 (Fla. 2d DCA 1981); *see also Smith v. Williams*, 35 So. 2d 844, 847 (Fla. 1948).

Reversed and Remanded.

SHAHOOD and GROSS, JJ., concur.

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Appeal of a non-final order from the Circuit Court for the Nineteenth Judicial Circuit, Okeechobee County; Elizabeth A. Metzger, Judge; L.T. Case Nos. 2004CA180 and 2004CA181.

Glenn Smith, Indiantown, Pro Se.

Bill McCollum, Attorney General, Tallahassee, and Linda Horton Dodson, Assistant Attorney General, Tallahassee, for appellee.

Not final until disposition of timely filed motion for rehearing