

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2008

DOUGLAS ALAN McCrory,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D07-2027

[September 10, 2008]

PER CURIAM.

Douglas McCrory appeals from a civil commitment proceeding initiated by the Department of Children and Families under the Jimmy Ryce Act. We reverse the trial court's assessment of fees and costs against McCrory in accordance with this court's recent opinion in *Chapman v. State*, 974 So. 2d 625, 626–27 (Fla. 4th DCA 2008), in which we held that “the trial court lacks the power to impose costs or fees in a Jimmy Ryce proceeding, because the authority to tax them as costs against the involuntarily committed defendant is not authorized by statute.”

We affirm on all other grounds raised by McCrory and note that McCrory's ineffective assistance of counsel argument is not cognizable in this court. We are in agreement with the first and second districts in concluding that claims of ineffective assistance of trial counsel in a Jimmy Ryce proceeding must be raised by petition for writ of habeas corpus, filed in the circuit where custody lies, absent a procedural rule equivalent to Florida Rule of Criminal Procedure 3.850. See *Ivey v. Dep't of Children & Family Servs.*, 974 So. 2d 480, 483 (Fla. 2d DCA 2008) (citing *Manning v. State*, 913 So. 2d 37, 38 (Fla. 1st DCA 2005)).

Affirmed in Part; Reversed in Part.

WARNER, STEVENSON and MAY, JJ., concur.

* * *

Appeal from the Circuit Court for the Nineteenth Judicial Circuit,
Okeechobee County; William L. Hendry, Judge; L.T. Case No. 99-161.

Douglas Alan McCrory, Arcadia, pro se.

Bill McCollum, Attorney General, Tallahassee, and Sue-Ellen Kenny,
Assistant Attorney General, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing.