

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

DUANE E. OWEN and BRANDY
B. JENNINGS,

Appellants,

v.

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

CASE NO. 1D01-3006

M I C H A E L M O O R E ,
SECRETARY OF FLORIDA
D E P A R T M E N T O F
CORRECTIONS, and STATE OF
FLORIDA,

Appellees.

Opinion filed August 14, 2003.

An appeal from Circuit Court for Union County.
Stan R. Morris, Judge.

Duane E. Owen, pro se; and Brandy B. Jennings, pro se.

Charlie Crist, Attorney General; Robert P. Elson, Assistant Attorney General,
Tallahassee, for Appellees.

PER CURIAM.

We reverse the dismissal of appellants' complaint. Pursuant to our ruling in
Osterback v. Turner, 837 So. 2d 604 (Fla. 1st DCA 2003), the trial court erred in
dismissing the complaint prior to adjudicating the inmate to be indigent.

ERVIN and BENTON, JJ., CONCUR; WOLF, C.J., DISSENTS with opinion.

WOLF, C.J., Dissents.

While the trial court did not follow the law, any error was harmless. Pursuant to § 59.041, Fla. Stat. (2002), no judgment shall be set aside or reversed for any error as to any matter of pleading or procedure, unless it appears that such errors injuriously affect the substantial rights of the complaining party or results in a miscarriage of justice. See also Mathers v. Botsford, 86 Fla. 40, 43, 97 So. 282, 283 (Fla. 1923).

There is nothing to be gained by sending this ludicrous case back to the trial court. Whether or not these death row inmates are indigent, they have no substantial rights to, nor will they ever be entitled to, pornography in their prison cells. The alleged First Amendment violation will never be actionable. We are wasting the trial court's time and resources by requiring it to deal further with this case.