

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

FRANCISCO FUSTER-ESCALONA,

Appellant,

v.

FLORIDA DEPARTMENT OF  
CORRECTIONS,

Appellee.

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

CASE NO. 1D04-2213

Opinion filed January 27, 2005.

An appeal from an order of the Circuit Court for Leon County.  
Charles A. Francis, Judge.

Francisco Fuster-Escalona, pro se, appellant.

Charlie Crist, Attorney General, and Joy A. Stubbs, Assistant Attorney General,  
Tallahassee, for appellee.

PER CURIAM.

The order of dismissal is reversed on the authority of Burgess v. Crosby, 870  
So. 2d 217 (Fla. 1st DCA 2004). The case is remanded to the Circuit Court for Leon  
County for a decision on the merits.

REVERSED.

BENTON and LEWIS, JJ., concur. THOMAS, J., concurs in result by written  
opinion.

THOMAS, J., CONCURS.

I concur in the result based on Burgess v. Crosby, 870 So. 2d 217 (Fla. 1<sup>st</sup> DCA 2004), and Davidson v. Crosby, 883 So. 2d 866 (Fla. 1<sup>st</sup> DCA 2004). If this issue had not been previously and definitively resolved, I would vote to affirm based on the dissenting opinion in Burgess, which I believe correctly applies the holding in Schmidt v. Crusoe, 878 So. 2d 361 (Fla. 2003).