

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

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

R. CASPER ADAMSON,

Appellant,

v.

CASE NO. 1D06-1201

JAMES R. MCDONOUGH,

Appellee.

---

Opinion filed July 20, 2007.

An appeal from the Circuit Court for Leon County.

Janet E. Ferris, Judge.

R. Casper Adamson, pro se, Appellant.

Bill McCollum, Attorney General, and Joy A. Stubbs, Assistant Attorney General,  
Tallahassee, for Appellee.

BROWNING, C.J.

We AFFIRM the dismissal of the mandamus petition as frivolous, without further comment. We hold that section 944.279, Florida Statutes, which provides that an inmate found to have brought a frivolous or malicious collateral criminal

proceeding filed after September 30, 2004, is subject to discipline by the Department of Corrections, is not an *ex post facto* law because Appellant's petition was filed after September 30, 2004; does not necessarily result in lost gain time; and does not increase the punishment for the crime of which Appellant was convicted, but only promotes punishment for filing frivolous claims.

We REVERSE, however, the finding that Appellant is a vexatious litigant under section 68.093, Florida Statutes, because there was no competent substantial evidence to support the finding that Appellant had commenced five or more *pro se* actions in the immediately preceding five years that had been finally and adversely determined against him. The State has wisely conceded this point.

We AFFIRM the imposition of the original lien, because Appellant did not preserve his challenge to it by arguing the point below. See Kemp v. McDonough, 32 Fla. L. Weekly D1126 (Fla. 1st DCA Apr. 30, 2007).

However, we REVERSE the imposition of the appellate lien, and QUASH the March 23, 2006, order authorizing the DOC to place an appellate lien of \$126.50 on Appellant's account. We REMAND with directions that the trial court order the DOC to dissolve that lien and direct reimbursement of any monies already removed from Petitioner's account towards payment of that lien.

BARFIELD and ROBERTS, JJ., CONCUR.