

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

GABRIEL DIAZ,

Petitioner,

v.

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

Respondent.

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

CASE NO. 1D06-2803

_____ /

Opinion filed March 30, 2007.

Petition for Writ of Certiorari - Original Jurisdiction.

Gabriel Diaz, pro se, Petitioner.

Daniel R. Burke, Assistant General Counsel, Department of Corrections, Tallahassee,
for Respondent.

PER CURIAM.

Petitioner's argument that the circuit court erred in denying his petition for writ of mandamus is without merit and is rejected; however, because the underlying action constitutes a "collateral criminal proceeding" pursuant to section 57.085(10), Florida Statutes (2005), the circuit court improperly imposed a lien upon petitioner's inmate

trust account for payment of court costs and fees. See Cox v. Crosby, 31 Fla. L. Weekly D310 (Fla. 1st DCA Jan. 26, 2006), rev. granted sub nom. McDonough v. Cox, 924 So. 2d 809 (Fla. 2006); Schmidt v. Crusoe, 878 So. 2d 361 (Fla. 2003). We accordingly quash that portion of the circuit court's order on indigency imposing a lien as a result of the filing of the petition for writ of certiorari/mandamus below. The circuit court should direct the reimbursement of any funds that have been withdrawn from petitioner's account to satisfy the improper lien order.

DENIED.

BARFIELD, WOLF, and VAN NORTWICK, JJ., CONCUR.