

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

MICHAEL HURLEY,

Appellant,

v.

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

CASE NO. 1D07-5909

WALTER A. McNEIL,
SECRETARY, FLORIDA
DEPARTMENT OF
CORRECTIONS, ET AL.,

Appellee.

Opinion filed October 10, 2008.

An appeal from the Circuit Court for Leon County.
William L. Gary, Judge.

Michael Hurley, pro se, Appellant.

Bill McCollum, Attorney General, and Sherry Anita Toothman, Assistant Attorney
General, Tallahassee, for Appellee.

PER CURIAM.

Appellant, Michael Hurley, filed a civil rights claim on August 20, 2007. On
September 6, 2007, the trial court found appellant to be indigent. The trial court
ordered appellant to submit a partial prepayment of \$19 within 30 days. The trial
court dismissed the action because appellant failed to make such payment. Appellant

claims he could not make the payment because the Department of Corrections has a hold on his prison account.

We reverse and remand for the trial court to determine whether appellant had the ability to make the payment. See Harper v. Moore, 737 So. 2d 1232 (Fla. 1st DCA 1999) (explaining that dismissal for failure to make the initial payment would be error where an inmate is unable to make prepayment because the Department of Corrections had placed a hold on the inmate's account).

WOLF, DAVIS, and ROBERTS, JJ., CONCUR.