

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-1201

WILLIAM J. MILNE,

Appellant,

v.

MARK S. INCH, Secretary,
Department of Corrections,

Appellee.

On appeal from the Circuit Court for Leon County.
Kevin J. Carroll, Judge.

January 4, 2021

PER CURIAM.

Appellant, a state inmate, challenges the denial of his petition for a writ of mandamus. In his petition, Appellant sought the reinstatement of gain time forfeited after Appellant was found to have committed a battery on another inmate. The circuit court did not err in dismissing the petition as untimely filed. *See Whitfield v. Dep't. of Corr.*, 107 So. 3d 1210, 1212 (Fla. 1st DCA 2013) (holding that “a mandamus petition filed more than 30 days after the final disposition of a disciplinary proceeding must be dismissed”).

However, the circuit court erred in ordering a lien on Appellant’s inmate trust account for court costs and fees for filing

the petition challenging the forfeiture of gain time. *See McNeil v. Cox*, 997 So. 2d 343, 348 (Fla. 2008); *Schmidt v. Crusoe*, 878 So. 2d 361, 367 (Fla. 2003); *Scott v. McDonough*, 946 So. 2d 1161, 1162 (Fla. 1st DCA 2006). Claims brought by an inmate “that, if successful, will directly affect ‘the length of time the inmate will actually spend in prison’” are collateral criminal proceedings which are not subject to the lien provisions in section 57.085, Florida Statutes (2018). *McNeil*, 997 So. 2d at 348 (quoting *Schmidt*, 878 So. 2d at 366); *see also* § 57.085(10). Thus, we vacate the circuit court’s order imposing the lien, and we remand with instructions that the trial court direct that Appellant be reimbursed for any funds removed from his account pursuant to the order. Because this is a ministerial action, Appellant need not be present.

AFFIRMED, in part, and REVERSED, in part.

RAY, C.J., and BILBREY and WINOKUR, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

William J. Milne, pro se, Appellant.

Ashley Moody, Attorney General, and Kelly R. Forren, Assistant Attorney General, Tallahassee, for Appellee.