NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

GARY LEROY LUCAS,)
Appellant,)
V.)) Case No. 2D17-27
STATE OF FLORIDA,)
Appellee.)

Opinion filed November 1, 2017.

Appeal pursuant to Fla. R. App. P. 9.141(b)(2) from the Circuit Court for Hillsborough County; Lisa D. Campbell, Judge.

Gary Lucas, pro se.

PER CURIAM.

Gary Lucas appeals the dismissal of a filing he made in the circuit court that was styled "Lawsuit for False Imprisonment." The circuit court treated this filing as a motion for postconviction relief in his criminal case, found that Mr. Lucas's proper remedy was to pursue appeals of a previously denied motion under Florida Rule of Criminal Procedure 3.800(a) and a previously denied petition for a writ of habeas corpus, and dismissed it. It is, however, plain that Mr. Lucas intended this filing to be a

civil complaint: he titled it a "lawsuit," named defendants, chose a cause of action, demanded money damages, and used a civil cover sheet. Although we have significant skepticism about the merits of Mr. Lucas's civil suit, it was error to dismiss it on procedural grounds solely applicable to a postconviction motion in a criminal case. See Malave v. Malave, 178 So. 3d 51, 55 (Fla. 5th DCA 2015) ("[T]he filing of an action in the wrong division should be remedied by reassignment to the correct division as opposed to a dismissal of the action."). We therefore reverse that decision and remand with instructions to vacate the order of dismissal and transfer or otherwise ensure assignment of the case to the appropriate civil division of the circuit court.

Reversed and remanded with instructions.

CRENSHAW, BLACK, and SALARIO, JJ., Concur.