

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

TODD McCRAY,)
)
 Appellant,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Appellee.)
)
 _____)

Case No. 2D06-3603

Opinion filed November 22, 2006.

Appeal pursuant to Fla. R. App. P.
9.141(b)(2) from the Circuit Court for
Pinellas County; Richard A. Luce,
Judge.

NORTHCUTT, Judge.

This is an appeal from a summary denial of Todd McCray's motion to proceed in forma pauperis. Appellee has conceded that the postconviction court erred in its application of section 57.085, Florida Statutes (2005), because McCray's petition for writ of habeas corpus is a collateral criminal proceeding which, pursuant to section 57.085(10), is exempt from section 57.085. In his motion, McCray was not seeking deferral of prepayment of court costs and fees pursuant to section 57.085. Accordingly,

we reverse the postconviction court's denial and remand for the postconviction court to reconsider McCray's motion to proceed in forma pauperis under section 57.081, Florida Statutes (2005).

Reversed and remanded.

CASANUEVA and DAVIS, JJ., Concur.