

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JULY TERM 2009

MATTHEW SWINT,

Appellant,

v.

Case No. 5D08-4394

WALTER MCNEIL, ETC. ET AL,

Appellees.

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Opinion filed September 18, 2009

Appeal from the Circuit Court
for Volusia County,
Richard S. Graham, Judge.

Matthew Swint, Daytona Beach,
pro se.

Monica Ryan, Tallahassee, for Appellee.

PER CURIAM.

Appellant challenges the denial of his Petition for Writ of Mandamus, which sought a reinstatement of forfeited gain time. We affirm the lower court's order in all respects except that portion of the order that placed a lien on Appellant's inmate trust account for reimbursement of the filing fee, pursuant to section 57.085, Florida Statutes. As the Department of Corrections properly concedes, the action below was a collateral criminal proceeding and is thereby exempt, pursuant to section 57.085(1), Florida

Statutes (2008). On remand, the trial court shall direct that Appellant be reimbursed for any monies previously taken from his account.

AFFIRMED in part; REVERSED in part and REMANDED.

TORPY, EVANDER and COHEN, JJ., concur.