

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

DWIGHT ROSS,

Appellant,

v.

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

CASE NO. 1D06-4670

FLORIDA PAROLE
COMMISSION,

Appellee.

Opinion filed August 14, 2007.

An appeal from the Circuit Court for Leon County.
Janet E. Ferris, Judge.

Dwight Ross, pro se, Appellant.

Kim Fluharty, General Counsel, and Bradley R. Bischoff, Assistant General
Counsel, Florida Parole Commission, for Appellee.

On The Court's Own Motion

We *sua sponte* withdraw our pre-mandate opinion in this case and substitute
the following.

PER CURIAM.

Appellant Dwight Ross seeks review of a circuit court order denying his
petition for writ of mandamus. He asserts on appeal that the court erred in denying

his mandamus petition as untimely, and further, in authorizing the Department of Corrections to place a lien on his inmate account. We affirm the court's order relating to the merits without further comment. However, we reverse as to the lien and remand the case to the circuit court with instructions. A proceeding which affects a prisoner's gain-time or length of sentence, is exempt from section 57.085, Florida Statutes. See Cason v. Crosby, 892 So. 2d 536, 537 (Fla. 1st DCA 2005) ("Recently, the supreme court in [Schmidt v. Crusoe, 878 So. 2d 361 (Fla. 2003)] held that cases such as the instant one, where the prisoner challenges the loss of gain-time, are exempt from section 57.085."). Therefore, we quash the trial court's order imposing a lien on petitioner's inmate account, and remand for entry of an order directing the reimbursement of any funds withdrawn pursuant to the lien.

AFFIRMED in part, REVERSED in part, and REMANDED.

ALLEN, WOLF, and POLSTON, JJ., CONCUR.