

Third District Court of Appeal

State of Florida, July Term, A.D. 2008

Opinion filed July 16, 2008.

Not final until disposition of timely filed motion for rehearing.

No. 3D07-2930

Lower Tribunal No. 85-29542

Livingston Joseph, a/k/a Joseph Livingston,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Ellen Sue Venzler, Judge.

Livingston Joseph, a/k/a Joseph Livingston, in proper person.

Bill McCollum, Attorney General, and Natalia Costea, Assistant Attorney General, for appellee.

Before SHEPHERD, SUAREZ, and SALTER, JJ.

PER CURIAM.

Livingston Joseph, a/k/a Joseph Livingston, appeals the circuit court's denial of his motion to proceed in forma pauperis ("IFP"). Florida Rule of Appellate

Procedure 9.430(a) states that: “Review of decisions by the lower tribunal shall be by motion filed in the court.” However, pursuant to Florida Rule of Appellate Procedure 9.040(c), we treat Joseph’s appeal as though the correct remedy had been sought. Finding no error in the trial court’s order, we affirm.

In his motion, Joseph asks the circuit court to allow him to proceed IFP “in this ultimate collateral proceeding, of his petition to invoke all writs jurisdiction.” Joseph did not provide this Court with his petition, and we are unable to determine what relief was sought or whether his petition was filed with the proper court. See Fla. R. App. P. 9.430(a) (“[F]or review by original proceedings under rule 9.100, unless the court directs otherwise, the party shall file the motion and affidavit with the court.”). Additionally, Joseph’s motion to proceed IFP did not include a complete and legally sufficient affidavit of indigency. If Joseph does seek to re-file his petition to proceed IFP, he should ensure that he has filed a complete motion and affidavit of indigency in accordance with the appropriate Florida statute. See, e.g., §§ 57.081-.082, 57.085, Fla. Stat. (2007); see also Fla. R. App. P. 9.430(a).

Affirmed.