

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

JANUARY TERM 2011

CHARLES DOLBY,

Appellant.,

v.

Case No. 5D09-2140

DEPARTMENT OF ENVIRONMENTAL
PROTECTION,

Appellee.

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Opinion filed May 6, 2011.

Administrative Appeal from the
Department of Environmental Protection.

Charles Dolby, Homosassa, pro se.

Jeffery C. Close, State of Florida
Department of Environmental Protection,
Tallahassee, for Appellee.

PER CURIAM.

In this appeal, Charles Dolby challenges the Final Order of the Administrative Law Judge sustaining the allegations of the Notice of Violation, Orders for Corrective Action, and Administrative Penalty Assessment filed by the Florida Department of Environmental Protection. The charges against Mr. Dolby in the Notice of Violation were based on his actions in dredging and filling a portion of the wetlands on his property without a permit. Having thoroughly reviewed the record and relevant

authorities, we conclude the issues raised by Mr. Dolby on appeal are without merit. We therefore affirm, with one exception.

We find it necessary to reverse in part and remand for the correction of what appears to us to be a scrivener's error in the Final Order. This is an error pointed out by the Department in its Answer Brief. Specifically, the \$2,000 penalty assessed for the "filling" violation charged in Count II of the Notice of Violation should be reduced to \$1,000 because less than one-quarter of an acre was filled; in contrast, the \$2,000 penalty for the "dredging" violation charged in Count I was appropriate because more than one-quarter of an acre, but less than a half acre, was dredged. See § 403.121(3)(c), Fla. Stat. (2008). The ALJ cited the correct statute, but then assessed the wrong penalty amount with regard to Count II. Accordingly, we reverse the \$2,000 penalty assessment on Count II and remand for reduction of that penalty to \$1,000 in accordance with section 403.121(3)(c). The Final Order and penalties assessed therein are affirmed in all other respects.

AFFIRMED in part; REVERSED in part; and REMANDED with instructions.

GRIFFIN, COHEN, and JACOBUS, JJ., concur.