

IN THE \_\_\_\_\_ DISTRICT COURT OF APPEAL  
IN AND FOR THE STATE OF FLORIDA

\_\_\_\_\_,  
Petitioner,

vs.

CASE NO.: \_\_\_\_\_

L.T. Case No.: \_\_\_\_\_

\_\_\_\_\_ JUDICIAL CIRCUIT COURT,  
Respondent.

\_\_\_\_\_/

**PETITION FOR WRIT OF MANDAMUS**

COMES NOW, the Petitioner, \_\_\_\_\_, and petitions this Honorable Court for a writ of mandamus compelling the respondent, the Honorable \_\_\_\_\_, Circuit Judge, of the \_\_\_\_\_ Judicial Circuit, to make a final ruling in the collateral proceeding now before it pursuant to Fla.R.App.P. 9.100(a).

In support thereof the Petitioner provides the following:

## **BASIS FOR INVOKING JURISDICTION**

This Court has jurisdiction to issue a writ of mandamus under Article V §4(b) (3), Florida Constitution, (1980). Mandamus lies to compel trial courts to rule on a motion or petition after reasonable time, Mason v. Circuit Court, Fifth Judicial Circuit, 603 So.2d 94, 95 (Fla. 5<sup>th</sup> DCA 1992).



## **NATURE OF RELIEF SOUGHT**

The Petitioner is seeking a writ of mandamus from this Court compelling the Respondent Court to make a ruling and issue its final order on the pending postconviction motion below.

## **ARGUMENT**

Pursuant to Fla.R.Jud.Admin. 2.215(f) “[e]very judge has a duty to rule upon and announce an order or judgment on every matter submitted to that judge within a reasonable time. What is a “reasonable time” depends upon the context in which the term is used, Houston v. Whitworth, 444 So.2d 1095 (Fla. 4<sup>th</sup> DCA 1984).

The Petitioner contends that \_\_\_\_\_ months is more than a “reasonable time” in which to rule on a petition or motion. See Harris v. State, 914 So.2d 456 (Fla. 4<sup>th</sup> DCA 2005) (a one and a half (1 ½) year delay in Rule 3.800(a) proceeding is unacceptable and mandamus will issue to require a final ruling); Hellum v. State, 869 So.2d 759 (Fla. 1<sup>st</sup> DCA 2004) (a nine (9) month delay in ruling is an unreasonable amount of time for Rule 3.850 proceeding’s pendency and mandamus will issue to require a final ruling); Bernard v. State, 734 So.2d 606 (Fla. 1<sup>st</sup> DCA 1999) (an eighteen (18) month delay in ruling is clearly unreasonable so that writ would issue to lower court to rule on pending postconviction motion)

and; Mason, supra, citing Davis v. Twentieth Judicial Circuit Court, Lee County, Florida, 491 So.2d 1232 (Fla. 2d DCA 1986) (under appropriate circumstances a prisoner may be entitled to a writ of mandamus if a trial court unreasonably delays the resolution of a motion).

Finally the Fourth District addressed the potential for unreasonable delays in postconviction proceedings and suggested a remedy therefore in Brayboy v. The Honorable Howard M. Zeidwig, \_\_\_ So.2d \_\_\_, 19 Fla.L.Weekly D 275 (Fla. 4<sup>th</sup> DCA 1994) by stating:

The adoption of a procedure in each circuit for the timely consideration of these motions and adherence to Florida Rule of Administrative Procedure 2.050(f) would seem to be a method of avoiding the volume of the petitions and the concomitant time of this court, the Attorney General's Office, and the trial court, in responding to them, time in which would be better spent on more substantive matters.

Therefore, based upon the foregoing facts and argument, the Petitioner has shown entitlement to the relief as set forth herein.

**CONCLUSION**

WHEREFORE, the Petitioner prays this Honorable Court to issue the requested writ compelling the Respondent to issue a final order in the pending motion as set forth herein.

Respectfully submitted,

\_\_\_\_\_  
\_\_\_\_\_  
Petitioner, Pro Se

**OATH**

Under the penalties of perjury, I declare and certify that I do understand English and that I have read the foregoing document and that the facts stated in it are true and correct.

Done this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
Petitioner, Pro Se

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing document has been furnished to the **Office of the State Attorney**, \_\_\_\_\_ County, at: \_\_\_\_\_, and the **State Attorney General**, at: \_\_\_\_\_

\_\_\_\_\_ and the **Honorable** \_\_\_\_\_, Circuit Court Judge of the \_\_\_\_\_ Judicial Circuit at \_\_\_\_\_

by handing said document to prison officials for mailing by first class U.S. Mail on this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
Petitioner, Pro Se  
DC# \_\_\_\_\_  
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\_\_\_\_\_  
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## INDEX TO APPENDIX

<u>EXHIBIT</u>	<u>DOCUMENT</u>	<u>DATE</u>
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B		
C		
D		