

# Third District Court of Appeal

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

Opinion filed February 7, 2008.

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No. 3D08-231  
Lower Tribunal No. 01-1770

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**Omar Fletcher,**  
Petitioner,

vs.

**The State of Florida,**  
Respondent.

A Case of Original Jurisdiction – Mandamus.

Omar Fletcher, in proper person.

Bill McCollum, Attorney General, for respondent.

Before WELLS, ROTHENBERG, and SALTER, JJ.

WELLS, Judge.

The defendant seeks a petition for writ of mandamus, compelling the lower court to hold a hearing and to rule on his post-conviction motion filed almost nineteen months ago. We grant the petition and issue the writ. See Johnson v.

State, 938 So. 2d 639, 640 (Fla. 5th DCA 2006) (“Mandamus lies to compel a trial court to rule on a motion or petition after a reasonable time.”).

The defendant filed a post-conviction motion under Florida Rule of Criminal Procedure 3.850 on July 13, 2006. The trial court set the motion for a hearing in August 2006, which was then re-set six more times between then and April 2007, only to be postponed again. On May 9, 2007, the defendant filed a petition for writ of mandamus in this court to compel the lower court to rule on his motion. However, upon the State’s representation that the motion was set for hearing on June 29, 2007, the petition was denied. The matter was not heard in June 2007, but was re-set another twelve times between July 2007 and January 2008. Because the motion has still not been heard, the defendant filed a second petition for writ of mandamus in this court. According to the criminal court docket, the motion is now set for hearing on February 29, 2008.

The petition for writ of mandamus is granted. The trial court shall hear and rule upon the post-conviction motion at the February 29, 2008 hearing, and provide this court a copy of the order thereon.

Petition granted; writ issued. This opinion shall take effect immediately and will not be delayed by the filing of any motion for rehearing or other post-decision motion.