

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

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

DEBONAIRE BROOKS,

Petitioner,

v.

Case No. 5D16-262

STATE OF FLORIDA,

Respondent.

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Opinion filed February 26, 2016

Petition for Writ of Prohibition,  
Marc Lubet, Respondent Judge.

Robert Wesley, Public Defender,  
and Carolyn Schlemmer, B.C.S.,  
Assistant Public Defender,  
Orlando, for Petitioner.

Pamela Jo Bondi, Attorney General,  
Tallahassee, and Andrea K. Totten,  
Assistant Attorney General,  
Daytona Beach, for Respondent.

EVANDER, J.

Through a petition for writ of prohibition, Debonaire Brooks seeks review of an order denying his motion to disqualify Judge Marc Lubet from presiding over his resentencing hearing upon remand. *Brooks v. State*, 40 Fla. L. Weekly D2696 (Fla. 5th DCA Dec. 11, 2015). In his motion to disqualify, Brooks referenced pre-trial statements

made by Judge Lubet as well as matters occurring post trial. The trial court denied the motion as both legally insufficient and untimely.

We agree with Brooks that his motion was legally sufficient because some of Judge Lubet's pre-trial comments would establish a "well-grounded fear" on Brooks' part that he would not receive a fair sentencing hearing. *Correll v. State*, 698 So. 2d 522, 524 (Fla. 1997). We agree, however, with the State that Brooks' motion was untimely. *Asay v. State*, 769 So. 2d 974, 980 (Fla. 2000).

PETITION FOR WRIT OF PROHIBITION DENIED.

BERGER and EDWARDS, JJ., concur.