

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

RICKY LAMAR LEWIS,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

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

CASE NOS. 1D03-1486 and
1D03-2579

Opinion filed December 31, 2003.

Petition for Writ of Mandamus; Petition for Writ of Prohibition -- Original Jurisdiction.

Ricky Lamar Lewis, pro se, petitioner.

Charlie Crist, Attorney General, and Alan R. Dakan, Assistant Attorney General,
Tallahassee, for respondent.

PER CURIAM.

Ricky Lamar Lewis petitions this court for a writ of mandamus to compel the circuit court to act on his motion for postconviction relief, and for a writ of prohibition to order the disqualification of the trial judge in the proceedings before the circuit court. For the reasons set forth below, we grant the mandamus petition but deny the prohibition petition.

Lewis filed a motion for postconviction relief, an amended supplemental motion for postconviction relief, and a second amended supplemental motion for postconviction relief in the Circuit Court for Santa Rosa County. By order of May 29, 1998, the court entered an order which directed that a hearing would be held on 13 of the 14 claims raised by Lewis in the above-described motions.

In August of 1997, Lewis also filed a 3.850 motion/habeas corpus petition in the same case number. Three months later, he filed a notice of voluntary dismissal which, according to Lewis, applied only to the 3.850 motion/habeas petition of August 1997. The circuit court has taken the position that the entire postconviction case is closed and that no further proceedings are warranted. We have carefully reviewed the petition for writ of mandamus, the documents in the appendix, and considered the arguments of respondent in opposition to the requested relief. We agree with petitioner that he only dismissed the 3.850 motion/habeas petition which was filed in August of 1997. Therefore, the other claims for postconviction relief, including those upon which an evidentiary hearing was previously ordered, remain pending.

The circuit court has declined to rule on Lewis' motion for disqualification, taking the position that it was unnecessary to do so because the case was closed. Because we have now concluded that the judge was incorrect in that regard, the judge shall promptly consider and rule upon the motion. The petition for writ of prohibition is premature, however, until that ruling is made, and is denied for that reason.

PETITION FOR WRIT OF MANDAMUS GRANTED; PETITION FOR
WRIT OF PROHIBITION DENIED.

KAHN, WEBSTER and DAVIS, JJ., concur.