

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

ROGER SMITH,

Petitioner,

v.

FLORIDA DEPARTMENT OF
CORRECTIONS and FLORIDA
PAROLE COMMISSION,

Respondents.

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

CASE NO. 1D04-0817

Opinion filed September 22, 2004.

Petition for Writ of Certiorari -- Original Jurisdiction.

Roger Smith, petitioner, pro se.

Louis Vargas, General Counsel, and Judy Bone, Assistant General Counsel, for respondent Department of Corrections; Kim M. Fluharty, General Counsel, and Susan Schwartz, Assistant General Counsel, for respondent Florida Parole Commission.

PER CURIAM.

As the Parole Commission concedes, the circuit court erred in denying Smith's petition for writ of habeas corpus without affording him the opportunity to

reply to the Commission's response. See Fla. R. App. P. 9.100(k); Cf., Bard v. Wolson, 687 So. 2d 254 (Fla. 1st DCA 1997). Accordingly, the circuit court's order is quashed and this cause is remanded with directions to reconsider the matter after affording petitioner the opportunity to file a reply. In light of this disposition, we decline to address the other arguments presented by petitioner.

ERVIN, PADOVANO and LEWIS, JJ., concur.