

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

WILLIAM McCARTHY,

Petitioner,

v.

FLORIDA PAROLE COMMISSION,

Respondent.

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

CASE NO. 1D04-2829

Opinion filed January 5, 2005.

Petition for Writ of Certiorari -- Original Jurisdiction.

William McCarthy, petitioner, pro se.

Kim M. Fluharty, General Counsel, and Bradley R. Bischoff, Assistant General Counsel, Florida Parole Commission, for respondent.

PER CURIAM.

As the Parole Commission concedes, the circuit court erred in denying McCarthy's petition for writ of habeas corpus prior to expiration of the time afforded

for him to reply to the Commission's response. See Smith v. Florida Department of Corrections, 882 So. 2d 1090 (Fla. 1st DCA 2004); cf., Bard v. Wolson, 687 So. 2d 254 (Fla. 1st DCA 1997). We note that McCarthy tendered a reply contemporaneously with the filing of his motion for rehearing below. Accordingly, the circuit court's order is quashed and this cause is remanded with directions to reconsider the matter in light of McCarthy's reply. Based on this disposition, we decline to address the other arguments presented by petitioner, as those matters should be considered in the first instance by the lower tribunal.

ALLEN, VAN NORTWICK and PADOVANO, JJ., concur.