

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

JANUARY TERM 2005

TIMOTHY LEVON SHEPPARD,

Petitioner,

v.

JAMES V. CROSBY, JR., Secretary of
Department of Corrections,

Respondent.

CASE NO. 4D04-3241

Opinion filed January 26, 2005

Petition for writ of certiorari to the Circuit Court for the Nineteenth Judicial Circuit, Martin County; William L. Roby, Judge; L.T. Case No. 04-215 CA.

Timothy Levon Sheppard, Indiantown, pro se.

Charles J. Crist, Jr., Attorney General, Tallahassee, and Charles M. Fahlbusch, Senior Assistant Attorney General, Fort Lauderdale, for respondent.

PER CURIAM.

Timothy Sheppard, petitions this court for a writ of certiorari seeking review of a circuit court order denying his petition for writ of mandamus. *Sheley v. Florida Parole Com'n*, 720 So. 2d 216 (Fla. 1998).

The circuit court issued an order directing the Florida Department of Corrections to file a response to the mandamus petition and allowing Sheppard 30 days to reply. However, the circuit court denied the petition shortly after receiving the Department's response without allowing Sheppard time to reply. Sheppard timely filed his reply, which was not considered by the circuit court.

Petitioner was entitled to file a reply and have it considered by the court. *See Johnson v. Florida Parole Com'n*, 873 So. 2d 611 (Fla. 1st DCA 2004) (remanding because the circuit court entered a final order before the expiration of the time for filing a reply); *Haralson v. State*, 844 So. 2d 817 (Fla. 5th DCA 2003) (citing rule 9.100(k) and recognizing the circuit court should have given petitioner an opportunity to reply to the Department's response before denying the habeas petition); *Salow v. State*, 766 So. 2d 1222 (Fla. 5th DCA 2000) (concluding where the circuit court's show cause order expressly authorized the petitioner to file a reply, denying the habeas petition without waiting for a reply undermines confidence in the judicial system).

Accordingly, the order denying the petition for writ of mandamus is quashed and the case is remanded for the circuit court to consider petitioner's reply.

GUNTHER and TAYLOR, JJ., concur.
FARMER, C.J., dissents without opinion.

***NOT FINAL UNTIL DISPOSITION OF ANY
TIMELY FILED MOTION FOR REHEARING.***