

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT  
*January Term 2005*

**JOHN MARESE,**  
Petitioner,

v.

**STATE OF FLORIDA,**  
Respondent.

No. 4D05-981

[July 6, 2005]

PER CURIAM.

Petitioner seeks certiorari review of an order denying his rule 3.800(c) motion to mitigate sentence. The trial court concluded it did not have jurisdiction because the hearing date was scheduled beyond the sixty day time limit. We conclude petitioner has adequately shown that he is not responsible for the hearing having been set beyond the sixty day limit, and grant the petition. The fifth district granted a petition under similar circumstances. *Timmer v. State*, 840 So. 2d 1160 (Fla. 5th DCA 2003). *See also Abreu v. State*, 660 So. 2d 703 (Fla. 1995). We remand for the trial court to rule on the motion to mitigate.

POLEN, KLEIN and TAYLOR, JJ., concur.

\* \* \*

Petition for writ of certiorari to the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Ilona M. Holmes, Judge; L.T. Case No. 03-16738 CF10A.

Eric Schwartzreich of Carter, Schwartzreich & Yates, P.A., Fort Lauderdale, for petitioner.

Charles J. Crist, Jr., Attorney General, Tallahassee, and Monique E. L'Italien, Assistant Attorney General, West Palm Beach, for respondent.

***Not final until disposition of timely filed motion for rehearing***