

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT  
*July Term 2007*

**PASCUAL JUAN MARTINEZ, JR.,**  
Petitioner,

v.

**STATE OF FLORIDA,**  
Respondent.

No. 4D07-187

[August 1, 2007]

***ON MOTION FOR REHEARING***

PER CURIAM.

Pascual Martinez petitioned this court for a writ of certiorari seeking review of an order striking as untimely his motion to mitigate sentence pursuant to Florida Rule of Criminal Procedure 3.800(c). This petition was previously denied by order. We vacate the order denying the petition, grant the motion for rehearing, and issue this opinion.

Within the sixty-day time limit, counsel filed a rule 3.800(c) motion to mitigate petitioner's sentence seeking a youthful offender sentence to avoid a mandatory ten-year term under the 10-20-Life statute. At the same time, counsel asked the court to grant an extension of time for a hearing on the motion to mitigate. The State did not object to granting the extension. Because the 3.800(c) motion was not delivered to the judge until after the time had expired, the motion was struck as untimely, and the judge did not rule on the request for an extension of time.

We vacate the trial court's order and remand for the court to rule on petitioner's request for an extension of time. *See Abreu v. State*, 660 So. 2d 703 (Fla. 1995) (holding that, pursuant to Florida Rule of Criminal Procedure 3.050, the court may extend the sixty-day time limit for a motion to mitigate sentence as long as the motion to mitigate is resolved within a reasonable time).

FARMER, STEVENSON and TAYLOR, JJ., concur.

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Petition for writ of certiorari to the Circuit Court for the Nineteenth Judicial Circuit, Martin County; Larry Schack, Judge; L.T. Case Nos. 432006CF000360A, 432006CF000696A & 432006CF000697A.

R. Patrick Beatty, Stuart, for petitioner.

Bill McCollum, Attorney General, Tallahassee, and Don M. Rogers, Assistant Attorney General, West Palm Beach, for respondent.