

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

WILLIE D. UPSON,

Petitioner,

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

v.

CASE NO. 1D11-5502

KENNETH S. TUCKER,
SECRETARY, FLORIDA
DEPARTMENT OF
CORRECTIONS,

Respondent.

_____ /

Opinion filed April 24, 2012.

Petition for Writ of Certiorari -- Original Jurisdiction.

Willie D. Upson, pro se, Petitioner.

Pamela Jo Bondi, Attorney General, and C. Ian Garland, Assistant Attorney General,
Tallahassee, for Respondent.

PER CURIAM.

Willie D. Upson petitions for certiorari review of an order of the circuit court dismissing his petition for writ of mandamus. We agree with petitioner that the circuit court departed from the essential requirements of law when it dismissed his petition without affording him the opportunity to reply to the Department of Corrections' response, which raised for the first time the issue on which the circuit court based its dismissal order. See Bard v. Wolson, 687 So. 2d 254 (Fla. 1st DCA 1996).

Accordingly, the petition for writ of certiorari is GRANTED, the order dismissing Upson's petition is QUASHED, and the matter is REMANDED for reconsideration in light of petitioner's reply.

WOLF, RAY, and MAKAR, JJ., CONCUR.