

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

JANUARY TERM 2009

SCOTTY SANTOS DIAZ,

Petitioner,

v.

Case No. 5D08-2521

STATE OF FLORIDA,

Respondent.

_____ /

Opinion filed January 23, 2009

Petition for Writ of Mandamus,
James R. Clayton, Respondent Judge.

Scotty Santos Diaz, Perry, Pro Se.

Bill McCollum, Attorney General,
Tallahassee, and Wesley Heidt, Assistant
Attorney General, Daytona Beach, for
Respondent.

PER CURIAM.

Scotty Santos Diaz filed a petition for writ of mandamus, seeking to compel the circuit court of the Seventh Judicial Circuit to rule on his motion to withdraw plea filed on March 6, 2008. In response to this Court's order, the State advised that an evidentiary hearing on Diaz's motion was scheduled for October 16, 2008. For reasons not apparent from the record, that hearing was continued, and, according to the trial court minutes, is now scheduled to be heard on some unspecified date in 2009.

Mandamus lies to compel a trial court to rule on a motion or petition within a reasonable time. Matthews v. Circuit Court, 515 So. 2d 1065 (Fla. 5th DCA 1987).

While we are loath to interfere with a trial judge's management of his or her docket, we are concerned that the failure to rule on Diaz's motion impairs his right of access to the courts and due process. See Johnson v. State, 938 So. 2d 639, 640 (Fla. 5th DCA 2006). We recognize that the circuit court has an enormous caseload. However, we believe that an unreasonable delay has ensued in the consideration of Diaz's motion.

Accordingly, we direct the judge to whom this matter is assigned to rule on Diaz's motion within sixty days following issuance of this opinion.

PETITION GRANTED; WRIT ISSUED.

GRIFFIN, ORFINGER and EVANDER, JJ., concur.