

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

JULY TERM 2008

DANIEL FELICIANO,

Petitioner,

v.

Case No. 5D08-2657 & 5D08-2734

STATE OF FLORIDA,

Respondent.

/

Opinion filed October 24, 2008

Petition for Writ of Mandamus,
Jose R. Rodriguez, Judge.

Daniel Feliciano, Jasper, pro se.

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

PLEUS, J.

Daniel Feliciano filed a petition for writ of certiorari due to the delay in receiving a ruling on his motion for post-conviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850. Feliciano subsequently filed a petition for writ of mandamus on the same grounds. By order entered on August 19, 2008, this Court treated the petition for writ of certiorari as a petition for writ of mandamus, and consolidated the two mandamus proceedings.

On August 20, 2007, Feliciano filed his Rule 3.850 motion for post-conviction relief in the Circuit Court of the Ninth Judicial Circuit. On June 3, 2008, the Circuit Court

ordered the State to show cause within 45 days why the motion should not be granted. On July 16, 2008, the State was granted an extension of 120 days to file its response.

Because of the unreasonable delay, this Court issued a show cause order. The State in response suggests that the petition for writ of mandamus should be denied, as the Circuit Court is aware of the pending motion.

As the Rule 3.850 motion has been pending for over a year, the petition for writ of mandamus is granted. The Circuit Judge to whom this matter is assigned is directed to rule on Feliciano's Rule 3.850 motion within 30 days following the receipt of this opinion, with an additional 60 days allowed if an evidentiary hearing is required. See Aumiller v. State, 988 So. 2d 1239 (Fla. 5th DCA 2008).

PETITION GRANTED.

ORFINGER and TORPY, JJ., concur.