

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

JANUARY TERM 2009

KENNETH M. ROBINSON,

Petitioner,

v.

Case No. 5D09-1455

STATE OF FLORIDA,

Respondent.

_____ /

Opinion filed June 19, 2009

Petition for Writ of Mandamus,
Mark J. Hill, Respondent Judge.

Kenneth Robinson, Tavares, pro se.

Bill McCollum, Attorney General,
Tallahassee, and Carmen F. Corrente,
Assistant Attorney General, Daytona
Beach, for Respondent.

PER CURIAM.

The petition for writ of mandamus is granted. The trial court's failure to rule upon Petitioner's motion to disqualify within 30 days of its service resulted in the motion being deemed granted by rule. See Fla. R. Jud. Admin. 2.330(j) ("If not ruled on within 30 days of service, the motion [to disqualify] shall be deemed granted and the moving party may seek an order from the court directing the clerk to reassign the case."). Petitioner is entitled to the reassignment of his case to a different judge, which, at this point, constitutes nothing more than a ministerial duty of the lower court. See Schisler v.

State, 958 So. 2d 503 (Fla. 3d DCA 2007); see also Berube v. State, 978 So. 2d 893 (Fla. 2d DCA 2008) (reversing denial of rule 3.850 motion; trial court had no authority to hear motion because appellant's prior motion to disqualify had been deemed granted by trial court's failure to timely rule upon same). Accordingly, the matter is remanded to the lower court with instruction to reassign the case to a different judge.

PETITION GRANTED.

SAWAYA, MONACO and LAWSON, JJ., concur.