

# Third District Court of Appeal

State of Florida, January Term, A.D. 2009

Opinion filed February 4, 2009.  
Not final until disposition of timely filed motion for rehearing.

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No. 3D08-2613  
Lower Tribunal No. 01-15483

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**Dargoberto Martinez,**  
Petitioner,

vs.

**The State of Florida,**  
Respondent.

A Case of Original Jurisdiction – Petition for Writ of Mandamus.

Dargoberto Martinez, in proper person.

Bill McCollum, Attorney General, and Richard L. Polin, Assistant Attorney General, for respondent.

Before COPE, RAMIREZ, and SALTER, JJ.

PER CURIAM.

Dargoberto Martinez filed a Petition for Writ of Mandamus with our Court on October 14, 2008, alleging that he had filed a motion for post-conviction relief on January 19, 2005. We ordered the State to file a response, which it did on

November 13, 2008, informing us that the circuit judge's office had ordered the file and would be reviewing the matter. We ordered a supplemental response, which now informs us that the judge was transferred out of the criminal division on January 9, 2009. He evidently left the division without ruling on Martinez's motion. We must now await the new judge, who took over the division on January 12, 2009. The matter would then be brought to the new judge's attention.

We believe four years is enough time to review and rule on a post-conviction motion, and therefore issue the writ of mandamus, ordering the circuit court to rule on this motion forthwith.