

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

AMBER ANN ROBERSON,

Respondent.

CASE NO.: 2014-CA-3392-O

Lower Court Case No.: 2013-CT-582-A-E

Petition for Writ of Mandamus
from the County Court for
Orange County, Florida
Deborah B. Ansbro, County Court Judge

Jeffrey Ashton, State Attorney
David A. Fear, Assistant State Attorney
Cherish Adams, Assistant State Attorney
for Petitioner

Andrew B. Greenlee, Esq.
for Respondent.

BEFORE LAUTEN, LEBLANC, MURPHY, J.J.

PER CURIAM.

ORDER DENYING WITHOUT PREJUDICE PETITION FOR WRIT OF MANDAMUS

THIS MATTER came before the Court for consideration of the Petition for Writ of Mandamus, filed April 1, 2014. Petitioner, State of Florida, seeks a writ of mandamus to compel County Court Judge Deborah Ansbro to enter a written order on her decision to follow an en banc County Court order. This Court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(c)(3).

The State of Florida petitioned for a Writ of Mandamus pertaining to a hearing allegedly conducted on March 14, 2014. It claims the trial judge announced that she would be following *Atkins*¹ and would not allow the breath test evidence or the video recording of Respondent in a Driving Under the Influence case. Petitioner alleges that it requested a written ruling and the trial court stated it would not put that ruling in writing. Petitioner argues that without a written order, it cannot seek review of the ruling and mandamus is the proper method to compel a trial court to enter a written order needed for appeal.

Mandamus compels the performance of a ministerial act that the public official has a clear legal duty to perform. *Pace v. Singletary*, 633 So. 2d 516, 517 (Fla. 1st DCA 1994). The petitioner must have a clear legal right to the performance of the duty and “no other legal method for redressing the wrong or of obtaining the relief to which [the petitioner] is entitled.” *Id.* at 517; *Holland v. Wainwright*, 499 So. 2d 21(Fla. 1st DCA 1986). Mandamus is appropriate to compel a judge to enter a written order that is needed for appeal. *State v. Sullivan*, 640 So. 2d 77, 78 (Fla. 2d DCA 1994), *cited with approval in Samuel v. State*, 133 So. 3d 608 (Fla. 1st DCA 2014). An order is not appealable until it is reduced to writing, signed, and filed with the clerk. *State v. Moore*, 563 So. 2d 115 (Fla. 2d DCA 1990); Fla. R. App. P. 9.020(i).

Petitioner failed to file a transcript of the hearing until oral argument at which time it sought to introduce a transcript of a March 19, 2014 hearing. The Court disapproves of filing a transcript at oral argument and notes that the alleged hearing date in the Petition and the actual hearing date differ. This imprecision alone would support denial of the Petition; however, the

¹ *State v. Atkins*, 16 Fla. L. Weekly Supp. 251a (Fla. Cty. Ct. June 20, 2008) (The County Court issued an en banc order holding that if the source code, release notes, and supporting documents of the Intoxilyzer 8000 were not provided, the State must lay the proper traditional scientific predicate as to the admissibility of the breath test results before the results would be admitted into evidence.)

Respondent stipulated to the admission of the transcript in order to have the Petition heard on its merits.

A transcript of the March 19, 2014 hearing reveals that the Court indicated, in response to defense counsel's question, that it was following *Atkins* and that the breath test was out. No motion to exclude breath test results appears in the record, nor does the appellate court have a record from the *Atkins* case or even a copy of a purported *Atkins* ruling. A trial court cannot adopt policies admitting or excluding evidence based upon a trial court ruling in a separate case. This is particularly true where no record is incorporated into the current case. Nor can the court merely reference another trial court ruling and leave the parties and the appellate court guessing what that ruling was. The trial court's decision in another trial court case has no bearing on the instant case. If a motion to exclude evidence is properly made, and we question whether it was in this case, then the trial court has a duty to rule and to reduce its ruling to writing when the State has a right to appeal an interlocutory order under section 924.07(1), Florida Statutes so the State can appeal if it chooses to do so. *See Moore*, 563 So. 2d at 115. While page 6, line 16 of the transcript provided to the Court references an order in the file, no such order was provided to the Court.

While it is true that mandamus is appropriate to require a judge to enter a written order that is needed for an appeal, Petitioner never communicated to the trial court that it sought a written order so that it could explore its appellate remedies. It is the failure to enter a written order that is needed for an appeal that makes mandamus appropriate, not the mere failure of a trial court to put a ruling in writing. *Sullivan*, 640 So. 2d at 78; *Samuel*, 133 So. 3d at 608. Since the case has been reset for trial, Petitioner has an opportunity to request the trial court enter a written order for the purposes of appeal, and therefore has another legal method for obtaining the

relief Petitioner requests. *Pace*, 633 So. 2d at 517. If the trial court still declines to issue a written order, then mandamus would be appropriate.

Based upon the foregoing, it is hereby **ORDERED** and **ADJUDGED** that the Petition for Writ of Mandamus is **DENIED without prejudice** to Petitioner to request the trial court issue a written order on its ruling excluding the breath test evidence. We trust the trial court will follow the directions of this Court and it will not be necessary for Petitioner to file a subsequent Petition for Mandamus on this issue.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this 1st day of October, 2014.

/S/

FREDERICK J. LAUTEN
Presiding Circuit Judge

LEBLANC and MURPHY, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing order was furnished on this 1st day of October, 2014, to the following: **Andrew B. Greenlee, Esq.**, Brownstone, P.A., 201 N. New York Avenue, Ste. 200, P.O. Box 2047, Winter Park Florida 32790; **David A. Fear, Assistant State Attorney**, 415 N. Orange Avenue, Ste. 300, Orlando, Florida 32801; **Cherish Adams, Assistant State Attorney**, 415 N. Orange Avenue, Ste. 300; Orlando, Florida 32801; **Honorable Deborah B. Ansbro**, 425 N. Orange Avenue, Orlando, Florida 32801.

/S/

Judicial Assistant