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

STATE OF FLORIDA,

CASE NO.: 2015-CA-1304-O

Petitioner,

v.

DOUGLAS ANDERSON
AKSHA BEDI
ORLANDO S. CARTER
JORGE H. CERVANTES
RAUL CRUZ-RAMOS
WILLIAM R. EDGAR, II
MACENA GAY
ROBIN GREEN
JAMES HEIDE
HERSEY HELTON
RICHARD HILL
TODD HOLBROOK
JAMES PATTERSON
FRANCISCO RIVERA
MARK STILLMAN
CORDNEY WILLIAMS,

Respondents.
_________________________________/

Petition for Writ of Mandamus
from the County Court for Orange County, Florida
Martha A. Adams, County Court Judge

Jeffrey Ashton, State Attorney, and
Rebecca Lynn Addison, Assistant State Attorney,
for Petitioner.

Stuart I. Hyman, Esq.,
for Respondent William Edgar.
Thomas D. Sommerville, Esq.,
for Respondent Mark Stillman.

BEFORE J. KEST, SHEA, MUNYON, J.J.

PER CURIAM.

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

THIS MATTER came before the Court for consideration of the Petitions for Writ of Mandamus, filed February 12, 2015. Petitioner seeks a writ of mandamus to compel County Court Judge Martha Adams to enter a written order on her decision prohibiting Petitioner from introducing breath test results and finding Petitioner in noncompliance with a previous order. This Court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(c)(3).

Several defendants, including Respondents, were arrested for Driving Under the Influence and submitted to breath tests on the Intoxilyzer 8000. On December 5, 6, and 9, 2013 several county court judges held a joint hearing on the defendants' motions to produce requesting an order to allow them to inspect the Intoxilyzer 8000 software, source code and computer programs used in the machine. The county court judges admitted the record of *State v. Atkins*[1], which involved the same issues with the Intoxilyzer 8000 alleged in the motions to produce.

On September 22, 2014, seven county court judges, including Judge Adams, determined that the evidence demonstrated that 1) Petitioner has access to the software and source code because FDLE possesses copies of software versions 26 and 27 of the Intoxilyzer 8000 and own and received the rights to the source code; and 2) the source code and supporting documents and software versions 26 and 27 are material pursuant to Florida Rule of Criminal Procedure 3.220(f). The county court judges granted the defendants' request for production of the source code and software; determined that defendants must be allowed effective access to the source code and corresponding documents within 21 days of the order at CMI in Kentucky, but Petitioner could request a continuance on a showing of good faith; and ruled that if the items were not provided to the defendants, Petitioner could not introduce the breath test results.

[1] *State v. Atkins*, 16 Fla. L. Weekly Supp. 251a (Fla. Cty. Ct. June 20, 2008).

Petitioner claims that on January 29, 2015, the cases were called for a status hearing and Judge Adams announced that she would be following the September Order, Petitioner is not in compliance, Petitioner would not be permitted to introduce the breath test, and denied its request for an evidentiary hearing on the issue of compliance with the September Order. Petitioner argues that the trial court is not free to refuse to rule on a motion and requests this Court direct the trial court to issue a written order on the ruling to exclude the breath test results and finding that it did not comply with the September Order. Petitioner claims that it cannot seek review of the trial court's ruling without a written order, will be denied the opportunity to present evidence of compliance with the September Order, and will be unable to appeal the trial court's decision if it proceeds to trial without the excluded evidence. Petitioner also argues that the trial court was required to determine whether its non-compliance was willful and deliberate before imposing sanctions and claims that the September Order is unclear.

Respondents argue that the September Order was self-executing. Respondents claim that because Petitioner did not produce the material listed in the September Order within 21 days of the Order and did not request a good faith continuance for compliance, the breath test results were properly excluded. Respondents allege that the Petition is an improper attempt to obtain a second opportunity to appeal the September Order.

At the January 29, 2015 status hearing, Petitioner requested an evidentiary hearing to demonstrate that it complied with the September Order. The trial court informed Petitioner that it could file a notice showing that it complied with the Order and provided the discovery materials to Respondents. Petitioner insisted that it could not do that because it does not own or possess those items, although the trial court already determined in the September Order that Petitioner through FDLE possess those items. The trial court stated that it already made its

ruling in the September Order after an evidentiary hearing and another hearing and order was not necessary.

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). A trial court has a duty to rule and to reduce its ruling to writing when a party has a right to appeal an order. *See Sullivan,* 640 So. at 78. "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." *State v. Roberson,* No. 14-CA-3392-O (Fla. 9th Cir. Ct. Oct. 1, 2014) *citing Sullivan,* 640 So. 2d at 78 and *Samuel*, 133 So. 3d at 608.

Petitioner had 21 days from the date of the September Order to comply with the Order or request a continuance to comply with the Order, but it did not request a continuance. Although Petitioner claims that the September Order is unclear, it did not file a motion for clarification before the 21-day deadline expired. Alternatively, Petitioner could have appealed the September Order. *See* § 924.07(1), Fla. Stat. (2014). Petitioner was not entitled to an evidentiary hearing to show compliance or that non-compliance was not willful because Petitioner argued that it could not comply because it did not possess those items. However, the trial court already determined in the September Order that Petitioner possessed those items and the trial court's ruling on that issue could have been raised in an appeal of the September Order. The trial court was not required to hold a second hearing to rehash issues already addressed at a hearing or to enter a

second written order restating the decision in its prior appealable order. *See Decktight Roofing Services, Inc. v. Amwest Sur. Ins.*, 841 So. 2d 667, 668 (Fla. 4th DCA 2003) ("A party cannot circumvent the 'strict' thirty-day time limitation imposed for non-final orders by filing a second motion addressing the same issue raised and decided in an earlier motion, and then seek review of the second motion by certiorari."); *see also Bensonhurst Drywall, Inc. v. Ledesma,* 583 So. 2d 1094 (Fla. 4th DCA 1991) ("Petitioner cannot evade the time requirements of Florida Rule of Appellate Procedure 9.100(c) by filing successive motions addressed to the same issue."); *Smith v. State*, 685 So. 2d 912 (Fla. 5th DCA 1996) ("While it may be correct that Rule 3.800 does not prohibit successive motions, we hold that where, as here, a defendant raises an issue under Rule 3.800, the lower court denies relief and the defendant fails to appeal, he may not later raise the same issue in another Rule 3.800 motion."). Accordingly, the Court finds that Petitioner has not demonstrated a preliminary basis for relief and the Petition must be denied.

Based upon the foregoing, it is hereby **ORDERED** and **ADJUDGED** that the Petition for Writ of Mandamus is **DENIED**.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this 10th day of June, 2015.

/S/

JOHN MARSHALL KEST
Presiding Circuit Judge

SHEA and MUNYON, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing order was furnished on this 10th day of June, 2015, to the following: **Rebecca Lynn Addison, Assistant State Attorney**, 415 N. Orange Avenue, Orlando, Florida 32801; **Kimberly Martin, Assistant Public Defender,** 435 N. Orange Avenue, Ste. 400, Orlando, Florida 32801; **Stuart I. Hyman, Esq.**, 1520 E. Amelia Street, Orlando, Florida 32803; **Jorge Jaeger, Esq.**, 217 N.E. Ivanhoe Blvd., Orlando, Florida 32804; **David P. Johnson, Esq.**, 870 East State Road 434, Ste. 103, Longwood, Florida 32750; **Michael Braxton, Esq.**, 1041 Ives Dairy Road, Ste. 137, Miami, Florida 33179; **Thomas D. Sommerville**, **Esq.**, 529 N. Magnolia Avenue, Orlando, Florida 32801; **Frank Bankowitz, Esq.**, P.O. Box 2568, 215 E. Livingston Street, Orlando, Florida 32802; **Honorable Martha A. Adams**, 425 N. Orange Avenue, Orlando, Florida 32801.

/S/_______________________
Judicial Assistant