

Third District Court of Appeal

State of Florida, July Term, A.D. 2008

Opinion filed December 17, 2008.
Not final until disposition of timely filed motion for rehearing.

No. 3D08-2916
Lower Tribunal No. 03-20757

Alex T. Bell,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Julio E. Jimenez, Judge.

Alex T. Bell, in proper person.

Bill McCollum, Attorney General., for appellee.

Before CORTIÑAS, ROTHENBERG, and LAGOA, JJ.

ROTHENBERG, J.

In 2003, the defendant, Alex T. Bell, was charged with robbery using a deadly weapon or firearm. In August 2006, the defendant entered into a guilty plea, and he was sentenced to twenty-five years' imprisonment with a fifteen-year minimum mandatory, followed by five years of probation.

In August 2007, the defendant filed a petition for writ of habeas corpus, arguing that his trial counsel was ineffective for waiving his "right to dismiss defective information." On October 9, 2007, the trial court denied the defendant's petition, finding that the plea colloquy conclusively refuted the defendant's claim. The defendant appealed the denial of his petition to this Court in case number 3D07-2869. In response, the State argued that (1) this Court lacked jurisdiction because the defendant did not file his notice of appeal within thirty days from the rendition of the order, as required by Florida Rule of Appellate Procedure 9.140(b)(3); and (2) a petition for writ of habeas corpus cannot be used as a substitute for an appropriate postconviction motion. This Court issued a per curiam affirmance on August 13, 2008, see Bell v. State, 990 So. 2d 1070 (Fla. 3d DCA 2008), and mandate was issued on October 10, 2008.

In the instant case, the defendant filed a "Petition for Writ of Certiorari" in this Court, seeking to review the trial court's October 9, 2007 order, arguing that the order is a "non-final" order and that the trial court "abused it's [sic] discretion in failing to give the Petitioner a proper ruling on his Motion/Petition Rule

3.850(H) [sic].” We treat the defendant’s “Petition for Writ of Certiorari” as an appeal of the trial court’s order dated October 9, 2007. Therefore, as this is the defendant’s second appeal of the trial court’s October 9, 2007 order, we hereby dismiss the instant appeal.

Dismissed.