

Third District Court of Appeal
State of Florida, July Term, A.D. 2010

Opinion filed January 5, 2011.
Not final until disposition of timely filed motion for rehearing.

No. 3D10-1635
Lower Tribunal No. 08-19368

Charles L. Dawkins, Jr.,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, David C. Miller,
Judge.

Charles L. Dawkins, Jr., in proper person.

Pamela Jo Bondi, Attorney General, for appellee.

Before SHEPHERD, SUAREZ, and ROTHENBERG, JJ.

SHEPHERD, J.

Charles L. Dawkins appeals from the trial court's order denying his petition for writ of habeas corpus for a belated appeal. In his petition, filed with the Eleventh Judicial Circuit, Dawkins swore he submitted to a South Florida Reception Center officer a timely notice of appeal for his conviction and sentence entered on October 15, 2009, for mailing on November 11, 2009, but through no fault of his own, was never received by the circuit court. The trial court denied Dawkins' petition on the merits. This was error. The trial court should have denied his petition based on the trial court's lack of jurisdiction to determine the petition and instruct Dawkins to file the motion with the Third District Court of Appeal. See Fla. R. App. P. 9.141(c)(2) ("Petitions seeking belated appeal . . . shall be filed in the appellate court to which the appeal was or should have been taken.").

Because Dawkins filed his petition for writ of habeas corpus for a belated appeal in the wrong court, we treat this appeal as a petition for writ of habeas corpus for a belated appeal, and grant the petition. See Fla. R. App. P. 9.040(c) ("If a party seeks an improper remedy, the cause shall be treated as if the proper remedy had been sought.").

We reverse the trial court's order denying Dawkins' petition for writ of habeas corpus. In accordance with Florida Rule of Appellate Procedure 9.141(c)(5)(D), this opinion shall be filed with the lower tribunal and treated as the

notice of appeal for Dawkins' conviction and sentence rendered on October 21, 2009.

We also appoint the Office of the Public Defender to determine the indigent status of the defendant for this appeal.