

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JANUARY TERM 2003

ROBERT R. KELLY,

Petitioner,

v.

CASE NO. 5D02-3680

STATE OF FLORIDA,

Respondent.

Opinion filed March 7, 2003

Petition for Belated Appeal.
A Case of Original Jurisdiction.

James B. Gibson, Public Defender, and
Brynn Newton, Assistant Public Defender,
Daytona Beach, for Petitioner.

Charles J. Crist, Jr., Attorney General, Tallahassee,
and Kellie A. Nielan, Assistant Attorney General,
Daytona Beach, for Respondent.

SHARP, W., J.

Kelly seeks a belated appeal from the denial of his motion filed pursuant to Florida Rule of Criminal Procedure 3.850. Kelly sought to collaterally attack his convictions and sentences for various crimes, which had been affirmed on appeal. *See Kelly v. State*, 795 So. 2d 135 (Fla. 5th DCA 2001). In his current petition, Kelly alleges he sent correspondence to the public defender indicating his desire to appeal the denial of his 3.850 motion and the public defender did not file a timely notice of appeal.

Many criminal defendants such as Kelly appear to be confused by the difference between the appeal process in which they are entitled to public defender representation, if insolvent, and collateral attacks on their criminal convictions and sentences pursued through filing motions under rule 3.850 or rule 3.800, or other proceedings. In those later proceedings, insolvent defendants are not entitled to representation by the public defender, unless the court in its discretion considers it necessary in order to comply with due process concerns. *See Elan v. State*, 689 So.2d (1232 (Fla. 5th DCA 1997)).

Although Kelly requested the trial court to appoint counsel to represent him in his rule 3.850 proceeding, the court declined to do so. Kelly represented himself *pro se*. Thus it was his own responsibility to file a notice of appeal from the trial court's denial of his motion. The public defender had no status or right to do so, since that office was not appointed to represent Kelly in that proceeding or its appeal. Oddly, the public defender has filed this petition seeking a belated appeal on Kelly's behalf, but it is too late.

Petition for Belated Appeal DENIED.

PALMER, J., and COBB, W.H., Senior Judge, concur.