

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

JANUARY TERM 2003

STEVEN CHESHIRE,
Appellant,

v.

Case No. 5D03-620

STATE OF FLORIDA,
Appellee.

_____ /

Opinion filed June 27, 2003.

3.853 Appeal from the Circuit Court
for Putnam County,
Edward E. Hedstrom, Judge.

Steven Cheshire, Indiantown,
pro se.

Charles J. Crist, Jr., Attorney General,
Tallahassee, and Timothy D. Wilson,
Assistant Attorney General, Daytona
Beach, for Appellee.

THOMPSON, C.J.

Steven Cheshire appeals the summary denial of his motion for post conviction DNA testing filed pursuant to Florida Rule of Criminal Procedure 3.853. We dismiss the appeal for lack of jurisdiction.

The order denying Cheshire's Rule 3.853 motion was rendered on 21 November 2002. Cheshire served his motion for rehearing on 5 December 2002. The motion for rehearing was denied by order rendered on 17 December 2002, but Cheshire did not serve his notice of appeal until 7 February 2003, as evidenced by his certificate of service. Cheshire's notice of appeal was filed more than thirty days after

the order denying rehearing was rendered and was untimely because Cheshire had filed a second, unauthorized motion for rehearing, which was denied as successive. Because the notice of appeal was untimely, this court issued a show cause order. In response thereto, Cheshire alleged that he never received a copy of the order denying his first motion for rehearing. However, that order indicated that a copy was sent to Cheshire at his address of record, and Cheshire did not proffer as evidence the incoming mail log to show that legal mail was not delivered to his address following rendition of the order denying his first motion for rehearing. We therefore must dismiss the appeal for lack of jurisdiction without prejudice to Cheshire to seek a belated appeal pursuant to Florida Rule of Appellate Procedure 9.141(c). See Jones v. State, 838 So. 2d 659 n.1 (Fla. 5th DCA 2003).

DISMISSED.

PETERSON and MONACO, JJ., concur.