

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

JULY TERM 2006

JUAN ITTURALDES,

Petitioner,

v.

Case No. 5D06-1500

STATE OF FLORIDA,

Respondent.

_____ /

Opinion filed August 25, 2006

Petition for Writ of Mandamus,
C. Alan Lawson, Respondent Judge.

Juan Itturaldes, Crawfordville, pro se.

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

MONACO, J.

Juan Itturaldes filed a petition for writ of mandamus with this court seeking a belated appeal of his 1999 conviction and sentence and other relief. Mandamus is not the appropriate remedy for seeking a belated appeal, because the granting of that relief is not a ministerial duty. *See Austin v. Crosby*, 866 So. 2d 742 (Fla. 5th DCA 2004). Thus, as required by rule 9.040(c), Florida Rules of Appellate Procedure, we consider his filing as a petition for belated appeal under rule 9.141(c), Florida Rules of Appellate Procedure, which is the proper remedy.

It appears that Mr. Itturaldes filed a *pro se* notice of appeal from this very same conviction and sentence in 1999. Because he failed to prosecute his appeal, however, it was dismissed. Moreover, Mr. Itturaldes has failed to point out any exception to the two-year time limit contained in rule 9.141(c)(4) under which he could seek a belated appeal. Accordingly, we deny the petition.

DENIED.

PALMER and EVANDER, JJ., concur.