

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

JULY TERM 2007

ALFREDO ROCA-MORENO, III,

Appellant,

v.

Case No. 5D07-3261

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed January 4, 2008

3.850 Appeal from the Circuit
Court for Brevard County,
John M. Harris, Judge.

Alfredo Roca-Moreno, III, Chipley, pro se.

No Appearance for Appellee.

PER CURIAM.

Defendant, Alfredo Roca-Moreno, III, appeals the denial of his rule 3.850 motion. This court entered an order to show cause why his appeal should not be dismissed because his notice of appeal was untimely. He responds that although he filed a timely motion for rehearing, the clerk of the trial court advised him that they had not received any such motion. Mr. Roca-Moreno has provided us with a copy of what appears to be a timely motion for rehearing that would have tolled the time for filing a notice of appeal.

Regardless, this appeal must still be dismissed as untimely. The dismissal, however, is without prejudice to the filing of a petition for belated appeal that is under

oath and that complies with Florida Rules of Appellate Procedure 9.141(c). Although the rule does not require it, if Mr. Roca-Morena again provides documentation to establish that he filed an earlier, timely motion for rehearing, which was somehow overlooked due to the State's actions, it would facilitate his request for a belated appeal. See *Thomas v. State*, 905 So. 2d 1037, 1038 (Fla. 5th DCA 2005), citing *Latimore v. State*, 696 So. 2d 1290 (Fla. 4th DCA 1997) (stating defendant entitled to belated appeal when his right to appeal has been frustrated by the circuit court clerk's "state action").

DISMISSED without prejudice.

THOMPSON, MONACO and TORPY, JJ., concur.