

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

JANUARY TERM 2010

WILLIAM THOMAS,

Petitioner,

v.

Case No. 5D09-4390

STATE OF FLORIDA,

Respondent.

_____ /

Opinion filed April 1, 2010

Petition for Belated Appeal,
A Case of Original Jurisdiction.

William Thomas, Chipley, pro se.

Bill McCollum, Attorney General,
Tallahassee and Wesley Heidt, Assistant
Attorney General, Daytona Beach, for
Respondent.

PER CURIAM.

William Thomas seeks a belated appeal of his judgment and sentence entered in Marion County case number 2007-CF-004798-A-W. Thomas asserts that he timely requested his trial counsel to file an appeal and his trial counsel failed to do so. Thomas' counsel recalls that Thomas *did not* request an appeal. Since there were disputed facts, this Court appointed a Commissioner to make findings and a recommendation regarding Thomas' entitlement to a belated appeal.

The Commissioner recommends that this Court deny the petition for writ of habeas corpus belated appeal because Thomas did not make a timely request to his

counsel to take a direct appeal and at no time did trial counsel agree to initiate an appeal.

PETITION DENIED.

MONACO, C.J., PALMER and COHEN, JJ., concur.