

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

SHAWN Q. WHIPPLE,

Appellant,

v.

CASE NO. 1D03-3997

STATE OF FLORIDA,

Appellee.

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Opinion filed February 2, 2004.

An appeal from the Circuit Court for Columbia County.

Paul S. Bryan, Judge.

Appellant, pro se.

Charlie Crist, Attorney General, and Trisha Meggs Pate, Assistant Attorney General, Tallahassee, for Appellee.

ORDER

PER CURIAM.

On September 11, 2003, the appellant filed a notice of appeal seeking review of an Order on “Motion for Post Conviction Relief,” which had been entered and served on the appellant by mail on June 3, 2003. Because this notice was not filed within 30 days of the order on appeal, we issued an order to show cause why this appeal should

not be dismissed as untimely. The appellant filed a response along with a copy of his motion for rehearing, filed on June 23, 2003, which was denied on August 25, 2003.

Having considered the appellant's response, the show cause order is hereby discharged. See Fla. R. App. P. 9.020(h). A motion for rehearing directed at an order on a 3.850 motion for post-conviction relief must be filed within 15 days of the date of service of the order. See Fla. R. Crim. P. 3.850(g). However, when the order is served by mail, Rule 3.070 provides that three days shall be added to this time period. See King v. State, 504 So. 2d 405 (Fla. 1st DCA 1987). In this case, the appellant had 18 days from the June 3, 2003 service date to file a motion for rehearing. The end of this period fell on Saturday, June 21, 2003. Therefore, the appellant had until Monday, June 23, 2003 to file his motion for rehearing. See Fla. R. Crim. P. 3.040. As the motion was filed on June 23, 2003, it was timely and delayed rendition of the order on appeal until the motion was disposed of on August 25, 2003. Thus, the notice of appeal filed on September 11, 2003, was also timely and effective to vest jurisdiction in this Court.

On December 15, 2003, the appellant filed a Petition for Writ of Habeas Corpus for a Belated Appeal. However, because this appeal was timely filed, the petition for

belated appeal is denied as moot. Accordingly, this appeal shall proceed from the Order on “Motion for Post Conviction Relief,” filed on June 3, 2003.

ALLEN, DAVIS and HAWKES, JJ., CONCUR.