

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

VINCENT JOHNSON,

Petitioner,

v.

FLORIDA PAROLE COMMISSION,

Respondent.

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION AND
DISPOSITION THEREOF IF FILED.

CASE NO. 1D03-4113

Opinion filed November 26, 2003.

Petition for Writ of Certiorari -- Original Jurisdiction.

Vincent Johnson, pro se, petitioner.

No appearance for respondent.

PER CURIAM.

Vincent Johnson petitioned this court for a belated appeal from an order of the circuit court which denied his petition for writ of habeas corpus. The petition was

denied in Johnson v. Florida Parole Commission, 854 So. 2d 808 (Fla. 1st DCA 2003) with a citation to Powell v. Florida Department of Corrections, 727 So. 2d 1103 (Fla. 1st DCA 1999). Johnson has now filed a petition for writ of certiorari with this court, interpreting our earlier opinion as signifying that this is the proper remedy and arguing that the circuit court erred in denying the habeas corpus petition.

We again direct Mr. Johnson's attention to Powell, where we stated that a belated appeal would not lie from an order in a circuit court civil proceeding such as habeas corpus. Instead, petitioner must seek relief by way of a motion for relief from judgment pursuant to Florida Rule of Civil Procedure 1.540(b). The instant petition for writ of certiorari is therefore denied without prejudice to petitioner's right to file a Rule 1.540(b) motion in the appropriate circuit court.

PETITION DENIED.

ERVIN, BOOTH and KAHN, JJ., concur.