

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

RANDOLPH JOSEPH DANDRY,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

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

CASE NO. 1D04-0201

Opinion filed April 28, 2004.

Petition Seeking Belated Appeal -- Original Jurisdiction.

Jack Behr, Public Defender, and Robin Miller, Assistant Public Defender, Shalimar,  
for petitioner.

Charlie Crist, Attorney General, and Anne C. Conley, Assistant Attorney General,  
Tallahassee, for respondent.

PER CURIAM.

Speaking through his trial counsel, petitioner seeks a belated appeal of the  
judgment and sentence rendered on or about September 15, 2003, in Okaloosa County

Circuit Court case number 03-698-CF. Counsel states in the sworn petition that petitioner made a timely request for an appeal, and candidly acknowledges that the failure to timely file an appeal was attributable solely to her negligence. In response to an order to show cause, the state has not established a good faith basis for disputing counsel's sworn assertion. Moreover, despite the state's argument to the contrary, our dismissal of and refusal to reinstate the prior untimely appeal filed by counsel did not constitute an adjudication of the question of whether petitioner is entitled to a belated appeal. See Hickey v. State, 831 So. 2d 262 (Fla. 1st DCA 2002). Accordingly, the petition seeking belated appeal is granted.

Upon issuance of mandate in this cause, a copy of this opinion shall be provided to the clerk of the circuit court for treatment as a notice of appeal. See Fla. R. App. P. 9.141(c)(5)(D). If petitioner qualifies for the appointment of counsel at public expense, the trial court shall appoint counsel to represent petitioner on appeal.

KAHN, VAN NORTWICK and POLSTON, JJ., concur.