

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

JAMES D. SMITH,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

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

CASE NO. 1D04-1775

Opinion filed August 10, 2004.

Petition for Belated Appeal -- Original Jurisdiction.

James D. Smith, pro se, petitioner.

Charlie Crist, Attorney General, and Shasta W. Kruse, Assistant Attorney General,
Tallahassee, for respondent.

PER CURIAM.

Petitioner's appeal in case number 1D02-2419 from an order denying a motion
for postconviction relief was dismissed for failure to file an amended notice of appeal

with a certificate of service showing service on the Attorney General. In the present petition, petitioner argues that he filed the amended notice of appeal within the time allowed by this court. However, this court did not receive the amended notice of appeal until after the appeal had been dismissed. In response to an order to show cause, the state concedes that petitioner's appeal should not have been dismissed because petitioner alleged that he handed the required amended notice of appeal to prison officials within the permitted time frame. Therefore, we grant the instant petition and reinstate the appeal in case number 1D02-2419.

WOLF, C.J., DAVIS and HAWKES, JJ., concur.