

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

GEORGE M. DANIELS,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

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

CASE NO. 1D04-4109

Opinion filed December 23, 2004.

Petition Seeking Belated Appeal -- Original Jurisdiction.

George M. Daniels, pro se, petitioner.

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

PER CURIAM.

George M. Daniels seeks a belated appeal from an order which denied his motion for postconviction relief. For the reasons set forth below, we grant the petition for belated appeal.

The Circuit Court for Duval County denied Daniels' postconviction motion by order of March 4, 2003, and on March 15, 2003, Daniels moved for an enlargement of time to move for rehearing. The motion for rehearing was filed on April 17, 2003.

Both the motion for enlargement of time and the motion for rehearing were denied on July 10, 2003. Daniels filed a notice of appeal on August 6, 2003, which was assigned this court's case number 1D03-3605. The appeal was dismissed. Daniels v. State, 860 So. 2d 21 (Fla. 1st DCA 2003).

Petitioner argues, and we agree, that a belated appeal should be granted in this circumstance because the time for moving for rehearing of denial of postconviction relief can be extended in accordance with Florida Rule of Criminal Procedure 3.050. See Nguyen v. State, 868 So. 2d 666 (Fla. 1st DCA 2004). In the instant case, the motion for enlargement of time to move for rehearing was filed within the time for moving for rehearing and stated good cause, Daniels' need to schedule time in the prison library and to obtain the assistance of an inmate law clerk. Thus, the motion for extension of time should have been granted and the motion for rehearing would have therefore postponed rendition of the order, resulting in the notice of appeal being timely filed. Daniels is accordingly granted a belated appeal of the order of the Circuit Court for Duval County which denied his motion for postconviction relief in case number 99-13201-CF-A. Upon issuance of mandate in this cause, a copy of this opinion will be provided to the clerk of the lower tribunal with directions that it be treated as a timely notice of appeal.

PETITION GRANTED.

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