

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

DONALD L. KELLY,
Petitioner,

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

v.

CASE NO. 1D07-1593

STATE OF FLORIDA,
Respondent.

Opinion filed July 12, 2007.

Petition Seeking Belated Appeal -- Original Jurisdiction.

Donald L. Kelly, pro se, Petitioner.

Bill McCollum, Attorney General, and Daniel A. David, Assistant Attorney General,
Tallahassee, for Respondent.

PER CURIAM.

Donald L. Kelly seeks a belated appeal of a judgment and sentence imposed upon his entry of a no contest plea. The basis for Kelly's claim is his allegation that

he was ignorant concerning his appellate rights. Although Kelly faults his trial counsel for failing to inform him of his appellate rights, the transcript of the plea and sentencing proceedings reflects that the trial court itself failed to discharge its duty under Florida Rule of Criminal Procedure 3.670 to advise Kelly concerning those rights. The trial court's failure to do so entitles Kelly to a belated appeal. See Robinson v. Wainwright, 245 So. 2d 867 (Fla. 1971); Fleming v. State, 895 So. 2d 538 (Fla. 1st DCA 2005).

Accordingly, the petition seeking a belated appeal of the judgment and sentence rendered on or about June 2, 2005, in Alachua County Circuit Court case number 01-2004-CF-5032-A, 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). We note that the trial court has already determined that Kelly is indigent for purposes of appeal. Accordingly, the trial court is directed to appoint counsel to represent Kelly in the belated appeal authorized by this opinion.

ALLEN, WOLF, and POLSTON, JJ., CONCUR.