

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

DENNIS WAYNE ELLIOTT,

Petitioner,

v.

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

CASE NO. 1D13-4685

STATE OF FLORIDA,

Respondent.

_____ /

Opinion filed December 26, 2013.

Petition Seeking Belated Appeal -- Original Jurisdiction.

Dennis Wayne Elliott, pro se, Petitioner.

Pamela Jo Bondi, Attorney General, Tallahassee, for Respondent.

PER CURIAM.

By “petition for leave to file belated motion for discretionary review,” Dennis Wayne Elliott alleges that following the denial of his amended motion for post-

conviction relief, he timely placed into the hands of prison officials for mailing a motion for rehearing and for leave to file a second amended motion for post-conviction relief. He has provided this court with copies of the motion, which bears an institutional mailing stamp corroborating his claim concerning the date he surrendered it to prison officials.

Under Florida Rule of Appellate Procedure 9.420(a)(1) Elliott's motion is deemed to have been "filed" when it was turned over to prison officials for mailing. Accordingly, he need only resubmit the stamped copy of his motion to the circuit court with a motion requesting that it be accepted as timely filed and considered on the merits. Cf. Hair v. Crews, 116 So. 3d 616 (Fla. 1st DCA 2013) (denying petition for writ of mandamus without prejudice to petitioner's right to refile where the pleading at issue was not received by the court). We therefore DENY Elliott's petition without prejudice to him pursuing this remedy.

LEWIS, C.J., BENTON and SWANSON, JJ., CONCUR.