

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-2787

KRISTIN GLOVER,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Petition for Belated Appeal—Original Jurisdiction.

November 15, 2019

PER CURIAM.

ORDER ON PETITION SEEKING BELATED APPEAL

Kristin Glover seeks a belated appeal of a judgment and sentence rendered on January 23, 2018. In her *pro se* petition, Glover alleges that she told her trial counsel after the sentencing hearing that she wished to appeal, but counsel responded, “I’m not filing an appeal without merit,” causing her to miss the deadline for filing a timely appeal because she was unaware of her right to appeal.

Upon considering the petition, we relinquished jurisdiction to the trial court pursuant to *Staley v. State*, 12 So. 3d 778 (Fla. 1st DCA 2009), for appointment of a special master for the purpose of issuing an order to show cause directed to the State Attorney, conducting an evidentiary hearing if warranted by the State’s

response, and issuing a written report and recommendation concerning Glover's entitlement to a belated appeal.

A special master was appointed and directed the State to show cause why Glover should not receive a belated appeal. The special master then issued a report noting that "[i]n its Response, the State had no objection to the Defendant being afforded a belated appeal," finding that a hearing was not needed "given the Defendant's claim, which appears to have merit, and the State's Response," and recommending that Glover's petition be granted.

In order to invoke this Court's appellate jurisdiction, a notice of appeal must be filed within thirty days of rendition of the order to be reviewed. Fla. R. App. P. 9.110(b). The failure to file a timely appeal deprives us of jurisdiction. *Joseph v. State*, 157 So. 3d 546, 548 (Fla. 1st DCA 2015). We can permit an untimely appeal in a criminal case only by granting a petition for belated appeal pursuant to Florida Rule of Appellate Procedure 9.141(c). The parties cannot confer jurisdiction on the Court by agreement or acquiescence. *Shannon v. Cheney Bros. Inc.*, 157 So. 3d 397, 399 (Fla. 1st DCA 2015). We recently explained:

For this reason, it is generally insufficient for a special master to recommend a belated appeal based simply on its finding the State does not object to the petition.

Certainly, a special master can look at the pertinent facts and conclude that the lack of State's objection is an admission to the facts as alleged in a defendant's petition. A special master, however, should make this determination evident in its report and recommendation.

Pelham v. State, 44 Fla. L. Weekly D2410 (Fla. 1st DCA Sept. 25, 2019).

In *Pelham*, the special master issued a show cause order and the State responded that "based upon the sworn representations of opposing counsel in the Amended Petition for Belated Appeal, the State does not object to the Court granting [Pelham] a belated appeal." *Id.* Based on the State's lack of objection, the special master declined to hold a hearing and issued a report

recommending the petition be granted. *Id.* We granted Pelham’s petition upon construing the State’s lack of objection “based upon the sworn representations of opposing counsel in the [petition]” as an admission of the allegations in the petition. *Id.* We cannot do the same here.

We do not have the benefit of the State’s response and nothing in the special master’s report indicates that the lack of the State’s objection is an admission to the facts as alleged in Glover’s petition. Therefore, we again relinquish jurisdiction for the special master to make the necessary findings.

RELINQUISHED JURISDICTION.

LEWIS, WINOKUR, and JAY, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Kristin Glover, pro se, Petitioner.

No appearance for Respondent.