

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2007

GERALD KLEPAREK,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

No. 4D07-1432

[August 29, 2007]

ON MOTION FOR REHEARING

PER CURIAM.

We grant, in part, petitioner's motion for rehearing and issue the following opinion.

On January 12, 2007, pursuant to the Jimmy Ryce Act, the trial court found petitioner Gerald Kleperek to be a sexually violent predator and committed Kleperek to the Department of Children and Families. Kleperek notified trial counsel that he wished to appeal, and counsel attempted to effectuate a timely appeal. However, the notice of appeal was untimely stamped by the clerk's office and was thus five days late. Kleperek filed a petition for belated appeal pursuant to Florida Rule of Appellate Procedure 9.141(c). This court denied the petition on June 4, 2007 by order and Kleperek filed a timely motion for rehearing.

While Kleperek is not entitled to relief under rule 9.141(c) as the underlying Ryce proceedings are civil in nature and not criminal, *Cartwright v. State*, 859 So. 2d 526 (Fla. 1st DCA 2003), we find that the proper vehicle is instead a petition for writ of habeas corpus seeking belated review of the lower tribunal's order. *See In Interest of E.H.*, 609 So. 2d 1289 (Fla. 1992) (finding petitioner's remedy to seek belated appeal of an order terminating parental rights was through a petition for writ of habeas corpus). We therefore treat the instant petition for belated appeal as a petition for writ of habeas corpus and grant belated review of the lower court's January 12, 2007 order designating Kleperek a sexually

violent predator and committing him to the Department of Children and Families.

WARNER, KLEIN and HAZOURI, JJ., concur.

* * *

Petition seeking belated appeal to the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Robert O. Collins, Judge; L.T. Case No. 06-14053 13.

Howard Finkelstein, Public Defender, and Sarah W. Sandler, Assistant Public Defender, Fort Lauderdale, for petitioner.

Bill McCollum, Attorney General, Tallahassee, and Sue-Ellen Kenny, Assistant Attorney General, West Palm Beach, for respondent.