

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

| | | |
|-------------------|---|-------------------|
| WILLIAM BAILEY, |) | |
| |) | |
| Appellant, |) | |
| |) | |
| v. |) | Case No. 2D04-875 |
| |) | |
| STATE OF FLORIDA, |) | |
| |) | |
| Appellee. |) | |
| _____ |) | |

Opinion filed December 1, 2004.

Appeal from the Circuit Court for
Sarasota County;
Harry M. Rapkin, Judge.

James Marion Moorman, Public
Defender, and Pamela H. Izakowitz,
Assistant Public Defender, Bartow,
for Appellant.

Charles J. Crist, Jr., Attorney General,
Tallahassee, and Timothy A. Freeland,
Assistant Attorney General, Tampa,
for Appellee.

CANADY, Judge.

William Bailey appeals the nonsummary denial of his motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850. In his motion, Bailey sought relief on several grounds as well as a belated appeal. The trial

court denied all of Bailey's claims. We affirm the denial of the postconviction claims without discussion but write to address his request for belated appeal.

On appeal, Bailey argues that the trial court erred in denying his request for belated appeal. A petition for belated appeal must be filed in the appellate court to which the appeal should have been taken. See Fla. R. App. P. 9.141(c)(2). Therefore, the trial court was without jurisdiction to either grant or deny Bailey's request for belated appeal. The trial court's denial is harmless, however, because while his postconviction motion and request for belated appeal were pending in the trial court, Bailey filed a petition for belated appeal in this court, which was properly considered and denied.

Bailey v. State, 2D03-3007 (Fla. 2d DCA April 22, 2004).

Affirmed.

ALTENBERND, C.J., and SALCINES, J., Concur.