

Third District Court of Appeal

State of Florida

Opinion filed March 28, 2018.
Not final until disposition of timely filed motion for rehearing.

No. 3D17-1963
Lower Tribunal No. 14-21972A

Juan Alvarez,
Petitioner,

vs.

The State of Florida,
Respondent.

A Case of Original Jurisdiction—Petition for Belated Appeal.

Juan Alvarez, in proper person.

Pamela Jo Bondi, Attorney General, and Nikole Hiciano, Assistant Attorney General, for respondent.

Before LAGOA, SCALES, and LUCK, JJ.

LAGOA, J.

The Petitioner, Juan Alvarez (“Alvarez”), filed a petition seeking a belated appeal pursuant to Florida Rule of Appellate Procedure 9.141(c). For the following reasons, we deny the petition.

On November 22, 2017, this Court appointed a commissioner to hold a limited evidentiary hearing in order to determine whether Alvarez requested that his counsel file an appeal from his plea and sentence. See Alvarez v. State, 230 So. 3d 625, 626 (Fla. 3d DCA 2017). On December 21, 2017, the commissioner held an evidentiary hearing where both Alvarez and his former counsel, Alejandro Zamora (“Zamora”), testified. The State proceeded to file the Commissioner’s Report from that hearing with this Court.

The commissioner made several factual findings. Specifically, the commissioner found that “Defendant’s attorney, Mr. Zamora, took detailed notes at the time of the plea” and that “Zamora credibly testified the Defendant did not ask him to file an appeal nor was it referenced in his detailed notes.” The commissioner further found that Alvarez was “not credible” and that various statements he made during the evidentiary hearing were “in fact refuted by the prior record,” including the Order of Probation as well as the February 10, 2017, plea and sentencing hearing transcript. Based on these findings, the commissioner found that Alvarez did not request for his attorney to file a direct appeal. We accept the commissioner’s recommendation and deny Alvarez’s petition for belated appeal. See Svoboda v. State, 932 So. 2d 545, 547 (Fla. 5th DCA 2006).

Petition denied.