

Third District Court of Appeal

State of Florida

Opinion filed January 24, 2018.
Not final until disposition of timely filed motion for rehearing.

No. 3D17-2249
Lower Tribunal No. 00-14941A

Ryan C. McKenzie,
Petitioner,

vs.

The State of Florida,
Respondent.

A Case of Original Jurisdiction – Habeas Corpus

Ryan C. McKenzie, in proper person.

Pamela Jo Bondi, Attorney General, and Gabrielle Raemy Charest-Turken,
Assistant Attorney General, for respondent.

Before LAGOA, EMAS, and SCALES, JJ.

LAGOA, J.

Petitioner, Ryan C. McKenzie (“McKenzie”), seeks a belated appeal of an order denying his second motion for post-conviction relief filed pursuant to Florida Rule of Civil Procedure 3.850. We grant the petition for a belated appeal.

On August 16, 2017, the trial court rendered its order denying McKenzie’s motion for post-conviction relief, and the Miami-Dade Clerk of Court certified that a copy of the order was furnished by mail to McKenzie on August 18, 2017. In his sworn petition, McKenzie asserts that he is entitled to a belated appeal because he did not receive a copy of the order denying his motion until after the time for taking an appeal had expired. In addition to his sworn statement, McKenzie filed his prison mailroom log request regarding legal mail received during the relevant time period. McKenzie further filed a copy of the prison’s mail log record received from a prison official where he is serving his sentence.

We directed the State to show cause why McKenzie should not be granted a belated appeal. In its response, the State contends that because the mail log provided by McKenzie is incomplete, it is possible that McKenzie received other legal mail, including the copy of the order, on other days between August 18, 2017, and September 25, 2017. However, a review of the prison mail log indicates that on September 25, 2017, McKenzie received legal mail from the Miami-Dade Clerk of Court, supporting McKenzie’s allegation.

Accordingly, we find that McKenzie has established the right to obtain a belated appeal from the August 16, 2017, order denying his motion for post-conviction relief. See Brigham v. State, 769 So. 2d 1100, 1101 (Fla. 1st DCA 2000); Funchess v. Moore, 766 So. 2d 348, 348-49 (Fla. 1st DCA 2000).

Petition granted.