IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

THIRD DISTRICT

JANUARY TERM, A.D. 2004

ALVIN JACKSON, **

Petitioner, **

vs. ** CASE NO. 3D03-1102

THE STATE OF FLORIDA, **

LOWER

Respondent. ** TRIBUNAL NO. 99-447 98-25951

98-26838

Opinion filed April 14, 2004.

A Case of Original Jurisdiction - Habeas Corpus.

Alvin Jackson, in proper person.

Charles J. Crist, Jr., Attorney General, and Marni A. Bryson, Assistant Attorney General, for respondent.

Before COPE, GREEN and SHEVIN, JJ.

PER CURIAM.

Alvin Jackson petitions for a belated appeal pursuant to Florida Rule of Appellate Procedure 9.141(c). Petitioner Jackson entered a guilty plea to multiple criminal charges. In the plea colloquy, the petitioner waived the right to an appeal and no issue was reserved for appeal.

In the sworn petition for belated appeal, petitioner alleged that he asked his counsel to file an appeal from his guilty plea. Petitioner's trial counsel denied that any such request for an appeal was made.

Mark King Leban to serve as a Commissioner of this Court to take testimony to resolve the factual dispute. See State v. Trowell, 739 So. 2d 77, 81-82 & n. 5 (Fla. 1999); Rios v. Moore, 765 So. 2d 888 (Fla. 3d DCA 2000); Gonzalez v. Singletary, 763 So. 2d 1282, 1283 (Fla. 3d DCA 2000). The Commissioner has submitted his report and recommendation, which is accepted with the thanks of the Court. The Commissioner resolved the dispute in testimony in favor of trial counsel, and concluded that the petitioner "did not ask his attorney to file an appeal" That being so, the petition for belated appeal is denied.