

NOT FINAL UNTIL TIME EXPIRES  
TO FILE REHEARING MOTION  
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
THIRD DISTRICT  
JANUARY TERM A.D., 2004

ANTHONY ANTRONE LEWIS,  
  
Petitioner,  
  
vs.

THE STATE OF FLORIDA,  
  
Respondent.

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\*\*  
\*\* CASE NO. 3D03-3094  
\*\*  
\*\* LOWER  
\*\* TRIBUNAL NO. 01-30544  
\*\* 02-25881

Opinion filed June 9, 2004.

A petition from the Circuit Court for Miami-Dade County,  
Kevin M. Emas, Judge.

Anthony A. Lewis, in proper person.

Charles J. Crist, Jr., Attorney General, and John D.  
Barker, Assistant Attorney General, for respondent.

Before COPE, GERSTEN and RAMIREZ, JJ.

PER CURIAM.

Anthony Antrone Lewis filed an emergency petition for writ  
of habeas corpus which is in substance a petition for belated  
appeal. See Fla. R. App. P. 9.141(c).

Defendant-petitioner entered a guilty plea to the charge of attempted second degree murder, as well as a plea of admission to a violation of probation, and was sentenced as a youthful offender to a term of incarceration followed by two years of probation.

In the defendant's petition, he alleges that after he entered his guilty plea, he requested that his appointed counsel file an appeal but counsel did not do so. Counsel denied that any such request was ever made of him.

This court appointed Honorable Mark King Leban to act as a Commissioner of this Court to conduct an evidentiary hearing and resolve the factual dispute. See State v. Trowell, 739 So. 2d 77, 81 (Fla. 1999); Walker v. State, 742 So. 2d 342 (Fla. 3d DCA 1999). The Court accepts the report of the Commissioner, with the thanks of the Court.

After hearing the testimony of the defendant and his trial counsel, as well as considering the other evidence in the case, the Commissioner stated, "The undersigned Commissioner resolves the credibility dispute against the defendant and finds that he did not at any time ask his attorney to file an appeal, but instead, knowingly waived his right to any appeal." Commissioner's Report and Recommendation at 4.

In accordance with the Commissioner's Report, the emergency petition for writ of habeas corpus is denied. See Gonzalez v. Singletary, 263 So. 2d 1282, 1283 (Fla. 3d DCA 2000).

Petition denied.