IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

THIRD DISTRICT

JULY TERM, A.D. 2001

KEITHAN DARNELL BATTIE, **

Petitioner, **

vs. ** CASE NO. 3D98-1243

* *

HARRY SINGLETARY, Secretary of the Florida Dept. of Corrections,

LOWER

** TRIBUNAL NO. 94-7634 J97-7527

Respondent. **

Opinion filed November 21, 2001.

A Case of Original Jurisdiction - Habeas Corpus.

Keithan Darnell Battie, in proper person.

Robert A. Butterworth, Attorney General, and Doquyen T. Nguyen, Assistant Attorney General, for respondent.

Before COPE, FLETCHER and SHEVIN, JJ.

On Rehearing Denied

PER CURIAM.

By motion for rehearing en banc, which we treat as including a motion for rehearing, defendant-petitioner Battie contends that our denial of relief in his case is inconsistent with the

granting of relief in the case of <u>Walker v. State</u>, 742 So. 2d 342 (Fla. 3d DCA 1999). We disagree and deny rehearing.

In <u>Walker</u>, this court denied a belated appeal. Eight days later, which was before the expiration of the rehearing time in <u>Walker</u>, the Florida Supreme Court announced <u>State v, Trowell</u>, 739 So. 2d 77 (Fla. 1999). Because the rehearing time had not yet expired and the <u>Walker</u> decision had not yet become final, this court ordered rehearing and granted relief in accordance with <u>Trowell</u>.

In the present case, by contrast, the opinion denying relief became final in 1998. The <u>Trowell</u> decision was not announced until 1999. As we have previously explained, if petitioner was aggrieved by our decision in his case in 1998, it was necessary for petitioner to seek review in the Florida Supreme Court.

Rehearing denied.