

APPENDIX - A

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

October 09, 2018

CASE NO.: 2D18-1944
L.T. No.: CRC10-26597-CFANO

JAMIE GEER

v. STATE OF FLORIDA

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

Petitioner's petition for belated appeal is denied.

Petitioner's motion to correct the transcript is denied.

Petitioner's motion to supplement the record with documents considered during the evidentiary hearing on petitioner's petition for belated appeal is granted to the extent that this court has considered the documents.

LaROSE, C.J., and MORRIS and SALARIO, JJ., Concur.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

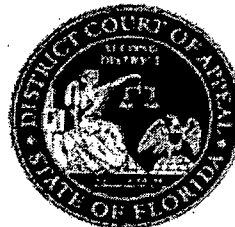
Attorney General, Tampa
Hon. Michael F. Andrews

Jamie Geer
Marcia J. Silvers, Esq.

Hon. Anthony Rondolino
Ken Burke, Clerk

lb

Mary Elizabeth Kuenzel
Mary Elizabeth Kuenzel
Clerk



APPENDIX – B

**IN THE SECOND DISTRICT COURT OF APPEAL OF FLORIDA
LAKELAND, FLORIDA**

JAMIE GEER,
Appellant/Petitioner

APP. NO.: 2D18-1944

**REF. NOS.:CRC10-26597CFANO
522010CF026597XXXXNO**

STATE OF FLORIDA,
Appellee/Respondent.

COMMISSIONER'S FINDINGS AND RECOMMENDATION

THIS CAUSE came before the Court on a recent order issued by the Second District Court of Appeal, dated June 29, 2018, and a subsequent order issued by Chief Judge Anthony Rondolino, dated July 2, 2018, the latter of which appointed the undersigned judge to act as commissioner in order to take testimony and make findings of fact concerning the instant Petition for Belated Appeal, filed in the Second District Court of Appeal.

The Court, acting as commissioner, conducted an evidentiary hearing on the Petition for Belated Appeal on August 9, 2018. At the hearing, the Petitioner appeared *pro se*, reaffirming his desire to represent himself as initially indicated at a status check held on July 26, 2018. Assistant State Attorneys Michael Marr and Kelly McKnight appeared on behalf of the State. A transcript of the evidentiary hearing is attached hereto as Exhibit A.

PROCEDURAL HISTORY

On April 27, 2012, the Petitioner was found guilty by a jury of one count each of capital sexual battery, lewd or lascivious battery, and unlawful sexual activity with a minor. That same date, he was sentenced to life imprisonment on the sexual

battery count, and to fifteen years' imprisonment on each of the remaining two counts. Petitioner filed a direct appeal of his judgment and sentence, which was *per curiam* affirmed by the Second District Court of Appeal. Geer v. State, 137 So. 3d 382 (Fla. 2d DCA 2014).

Subsequently, the Petitioner filed a motion for postconviction relief pursuant to Florida Rule of Criminal Procedure 3.850. After conducting an evidentiary hearing on the Petitioner's rule 3.850 motion, this Court entered a final order denying postconviction relief on December 1, 2017. The Petitioner was represented by privately retained counsel Marcia Silvers for purposes of his postconviction motion and evidentiary hearing; co-counsel Joseph Rosenbaum also represented the Petitioner but only at the rule 3.850 evidentiary hearing.

COMMISSIONER'S HEARING TESTIMONY

The Petitioner testified at the August 9, 2018 evidentiary hearing. The Petitioner testified that he received the denial of his postconviction motion on December 7, 2018, and wanted to file a motion for rehearing. The Petitioner testified that he had communication with Ms. Silvers via e-mail around December 11-13, 2017, regarding her withdrawing as counsel. He testified that he arranged a legal call with Ms. Silvers. He could not recall the date of the legal call, but believed it to be the date Ms. Silvers had indicated, which was December 14, 2017. The Petitioner testified that he asked Ms. Silvers to withdraw as counsel on his case, as well as have Mr. Rosenbaum withdraw, so the Petitioner could file *pro se* motions. The Petitioner indicated that he had had problems in the past with filing *pro se* motions while represented by counsel and did not want any of his *pro se* motions to be stricken on the basis that he was represented by counsel. The Petitioner testified that during the legal call, he spoke to Ms. Silvers about her fee for appealing the denial of his postconviction motion and would get back to her if he could raise the money to pay her. He testified that he did not however retain her for the appeal during that phone

call and that he never again followed up about paying her or signing a retainer contract.

He testified that on December 15, 2017, he wrote Ms. Silvers a letter informing her to monitor his docket to make sure that his motion for rehearing was filed and if there were any issues (e.g., the motion for rehearing was not filed), then to go ahead and file a notice of appeal. The Petitioner testified that he never heard back from Ms. Silvers. The Petitioner testified that on January 16, 2018, he received notice that his motion to suppress was denied and that the court never received his motion for rehearing. He testified that he never followed up with Ms. Silvers about filing an appeal but rather he filed a *pro se* notice of appeal the next day.

The Petitioner conceded that his *pro se* notice to represent himself was docketed on December 14, 2017. He conceded that his *pro se* motion to dismiss and strike State's response was docketed on January 4, 2018. He testified that his *pro se* motion to suppress was docketed on December 20, 2017, prison mail stamp dated December 13, 2017. He testified that he mailed his motion for rehearing in the same envelope as his motion to suppress and is not sure how the Court received the motion to suppress but not the motion for rehearing. The Petitioner admitted that his *pro se* motion to disqualify assistant state attorney was docketed on January 22, 2018, and his *pro se* notice of supplemental authority was docketed on January 24, 2018.

The Petitioner testified that he sent a letter to Ms. Silvers requesting documents from her and that Ms. Silvers did respond to that letter. He testified that he did not send any retainer money to Ms. Silvers for the appeal because he believed the time for filing an appeal was tolled by the filing of a motion for rehearing. He testified that he never communicated with Ms. Silvers regarding the status of his motion for rehearing.

Ms. Silvers also testified at the evidentiary hearing. (Ms. Silvers is now physically located in California. She indicated that she has a virtual office in Miami;

that a receptionist takes in all mail and puts it in the appropriate attorney's cubby; and that her secretary picks up the mail from Ms. Silvers' cubby, scans the mail and sends it to Ms. Silvers.) Ms. Silvers testified that she has been licensed to practice law in the State of Florida since 1982. She testified that she has specialized in criminal appeals and postconviction relief motions for thirty years. Ms. Silvers testified that she represented the Petitioner for purposes of his direct appeal from judgment and sentence as well as for purposes of his rule 3.850 motion. Ms. Silvers indicated that the direct appeal and the rule 3.850 motion were separate contracts/fee arrangements with the Petitioner.

Ms. Silvers testified that she received the denial of the Petitioner's motion for postconviction relief on December 7, 2017; that same date she wrote a letter to the Petitioner enclosing a copy of the court's order and informing him that she was disappointed by the order and would be calling him to discuss an appeal. Ms. Silvers testified that she received a letter from the Petitioner informing her that he was intending on filing a *pro se* motion for rehearing and asking her to withdraw as counsel. Ms. Silvers testified that she received an e-mail from the Petitioner's girlfriend on December 10, 2017, saying the same thing.¹ Ms. Silvers testified that on December 12, 2017, she filed a motion to withdraw as counsel and called Mr. Rosenbaum to file a similar motion. She testified that her motion to withdraw as counsel was granted that same date on December 12, 2017, and Mr. Rosenbaum's

¹ On August 17, 2018, the Petitioner filed a "Motion to Supplement the Record," in which he attaches the e-mail exchange between Ms. Silvers and the Petitioner's girlfriend, where Ms. Silvers is asked to temporarily withdraw as the Petitioner's attorney so that the Petitioner may file a *pro se* motion for rehearing. The Petitioner also attached a copy of the retainer agreement in which he highlights the portion indicating, "The scope of the firm's engagement for the motion for post-conviction relief is limited to representation of the client in the Sixth Judicial Circuit to the final disposition of the motion in that court." The Court finds this supplement to be of no value. Nowhere in the e-mail exchange is there a mention of an appeal. In addition, the retainer agreement specifically indicates that representation ends upon final disposition of the postconviction motion in the Sixth Judicial Circuit, which occurred upon rendition of the final order dated December 1, 2017. To the extent final disposition would not occur until the conclusion of a motion for rehearing, the Petitioner clearly expressed his desire to proceed with a motion for rehearing without representation. Thus, Ms. Silver's representation of the Petitioner had concluded upon her withdrawal as attorney of record, at the Petitioner's request.

motion to withdraw as counsel was granted on December 13, 2017. Ms. Silvers testified that there was no indication in the Petitioner's letter that his request for her to withdraw as counsel was only temporary.

Ms. Silvers testified that she arranged a legal phone call with the Petitioner, which occurred on December 14, 2017. During this legal phone call, Ms. Silvers testified, she told the Petitioner that the court had granted her and Mr. Rosenbaum's motions to withdraw as counsel; the Petitioner asked how much her fee would be to retain her for the appeal; Ms. Silvers informed him of her fee amount; the Petitioner expressed that the fee was a lot of money, and he did not retain her at that time or otherwise indicate that he was planning to retain her for an appeal. Ms. Silvers testified that her normal practice when a rule 3.850 motion is denied is to ask the defendant if the defendant wishes to retain Ms. Silvers for the appeal; if not, she withdraws and sends the defendant a form *pro se* notice of appeal for the defendant to file, and she will usually monitor the defendant's docket; if the defendant has not filed a *pro se* notice of appeal by the expiration date, she files a notice of appeal on the defendant's behalf, and indicates her representation is limited to the sole purpose of filing the notice of appeal. However, Ms. Silvers testified that this was not a normal situation because the Petitioner had specifically asked her to withdraw so that he could file *pro se* motions and inquired about her doing the appeal, but then never followed up to retain her for the appeal. Ms. Silvers testified that based on their conversation it was her understanding that she was no longer responsible for the case. She further testified that she did not send the Petitioner a *pro se* notice of appeal as she normally does because the Petitioner knows how to file a *pro se* notice of appeal; he has filed many *pro se* motions and appeals.

Ms. Silvers testified that she was not asked by the Petitioner to monitor his docket during that legal call or at any other time. Indeed, Ms. Silvers testified that after she was withdrawn as counsel, she did not have access to his docket because

she was no longer the attorney of record. She testified that even when she was the attorney of record, she occasionally had trouble accessing the Petitioner's docket due to its limited access. (The Petitioner's docket is restricted for public view due to the nature of the charges. However, the attorney of record is able to access the docket.)

Ms. Silvers testified that she did receive a letter from the Petitioner dated December 15, 2017, requesting documents from her so that he could file his motion for rehearing, or possibly to amend his motion for rehearing. Ms. Silvers testified that she sent a letter back to the Petitioner informing him that she did not have the documents he sought. She testified that she received no other letters from the Petitioner and never again heard from the Petitioner, or anyone else on his behalf, after the letter requesting documents.

FINDINGS AND RECOMMENDATION

A court must recommend that a belated appeal be granted only if it finds competent substantial evidence to support the Petitioner's claim that he timely requested his attorney file an appeal, and the attorney failed to do so. See Duggins v. State, 921 So. 2d 775 (Fla. 3d DCA 2006). However, when the court is confronted with conflicting testimony, it is within its province to weigh the credibility of the witnesses to resolve the factual dispute. See Smith v. State, 697 So. 2d 991 (Fla. 4th DCA 1997). The Court is also mindful of case law put forth by the Petitioner out of the First District Court of Appeal suggesting that a letter sent but not received constitutes an "exceptional circumstance" to the granting of a belated appeal. See Rumph v. State, 746 So. 2d 1249, 1250 (Fla. 1st DCA 1999), Brock v. State, 947 So. 2d 1190, 1191 (Fla. 1st DCA 2007), Carswell v. State, 46 So. 3d 99, 100 (Fla. 1st DCA 2010).

Having heard the testimony summarized above and reviewed the pleadings in this matter, the Court finds the testimony of Attorney Silvers to be credible and finds

the testimony of the Petitioner not to be credible. There is no competent substantial evidence before this Court reflecting that the Petitioner timely requested that Ms. Silvers file an appeal. Nor does the Court believe the Petitioner sent Ms. Silvers a letter requesting her to file an appeal that she did not receive, thereby constituting an exceptional circumstance to the granting of a belated appeal.

In determining the Petitioner's testimony was not credible and Ms. Silver's testimony was credible, the court considered the many *pro se* filings of the Petitioner. Indeed, Ms. Silvers indicated that the Petitioner was experienced in *pro se* litigation and was not in need of any handholding with respect to criminal procedure (as is also evinced by his multitude of pending appeals at the moment). (See Exhibit B: Docket printout). After asking that Ms. Silvers withdraw as counsel, the Petitioner filed a "Notice of Appearance of Counsel," dated December 11, 2017, filed December 14, 2017, indicating that he would be appearing *pro se* and further indicating that representation by Ms. Silvers and Mr. Rosenbaum "has been terminated by Defendant, who chooses to exercise his U.S. Constitutional right to represent himself and they have been ordered to withdraw as counsel." (See Exhibit C). Also dated December 11, 2017, and filed December 14, 2017, the Petitioner filed a "Waiver of Counsel," indicating that he waived his right to the appointment or assistance of counsel in this case, that he had a conflict with his previously retained counsel following the evidentiary hearing on his rule 3.850 motion, and as a result has terminated private counsel's representation. (See Exhibit D). This alleged conflict is contrary to a desire for representation on appeal. In that same waiver, he states that he is of sound mind, has some legal training, and understands the advantages and disadvantages of representing himself. (See Exhibit D).

Additional *pro se* filings by the Petitioner include a motion to suppress, dated December 13, 2017; and filed December 20, 2017 (See Exhibit E); motion to dismiss and strike state's response dated January 2, 2018, and filed January 4, 2018 (See

Exhibit F); motion to disqualify assistant state attorney dated January 17, 2018, and filed January 22, 2018 (See Exhibit G); and a notice of supplemental authority dated January 19, 2018, and filed January 24, 2018 (See Exhibit H). Notably, the Petitioner filed correspondence with the court dated January 16, 2018, filed January 22, 2018, requesting that the restricted access of his docket be removed and he be allowed access to his docket since he is *pro se*. (See Exhibit I).

The Petitioner testified that he mailed a letter to Ms. Silvers dated December 15, 2017, asking her to monitor his docket and to file a notice of appeal if his rehearing had not been docketed. However, Ms. Silvers testified that the letter she received that was dated December 15, 2017, merely requested documents. Interestingly, his allegations and testimony now mirrors what Ms. Silvers had previously advised him of what her normal practice was. Yet, as Ms. Silvers testified, this was not a normal situation and, as the Petitioner testified, he was adamant that he wished her to withdraw from her case, which would make it so that she was unable to monitor his docket due to the restricted nature of his case. Furthermore, it is curious that the petitioner did indeed file a *pro se* notice of appeal, albeit just outside of the 30-day window, but never contacted Ms. Silvers about the appeal again after he allegedly sent her a letter to monitor his docket and to file an appeal if the motion for rehearing was not docketed.

In light of the foregoing testimony and pleadings, the Court finds the Petitioner's testimony that he asked Ms. Silvers to monitor his docket and to file a notice of appeal if no rehearing was filed to not be credible. The Petitioner has filed many *pro se* filings and has several pending appeals. It is quite apparent that the Petitioner knows what he is doing with respect to the rules of criminal procedure. The Petitioner's attempt to manipulate the conversation between him and Ms. Silvers on December 14, 2017, and the contents of his letter dated December 15, 2017, will

not be given credence. Therefore, the Court recommends that the Petition for Belated Appeal be denied.

Accordingly, this Court

FINDS no competent substantial evidence in the record to support the Petitioner's claim that he timely requested his attorney to file a notice of appeal in this case, and therefore **RECOMMENDS** to the Second District Court of Appeal that the Petitioner's Petition for Belated Appeal be **DENIED**.

DONE in Chambers at Clearwater, Pinellas County, Florida, this 27th day of August, 2018. A copy of the foregoing has been furnished to the parties listed below.

Michael F. Andrews, Circuit Court Judge

ORIGINAL SIGNED

AUG 27 2018
MICHAEL F. ANDREWS
CIRCUIT JUDGE

cc: Office of the State Attorney

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Mary Elizabeth Kuenzel, Clerk
Second District Court of Appeal
P.O. Box 327
Lakeland, FL 33802-0327

Jamie Geer, Docket No. 1766719
Cell Location/Status: SD-4F-POD04-CI-006
Pinellas County Jail
14400 49th Street North
Clearwater, FL 33762

APPENDIX – C

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

February 20, 2019

AMENDED ORDER
CASE NO.: 2D18-1944
L.T. No.: CRC10-26597-CFANO

JAMIE GEER

v. STATE OF FLORIDA

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

Petitioner's "motion for rehearing with written opinion and motion for certification" is denied. Petitioner's motion for rehearing en banc is denied. Petitioner's motion for judicial notice and amended motion for judicial notice are denied. Petitioner's motion to stay is denied.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

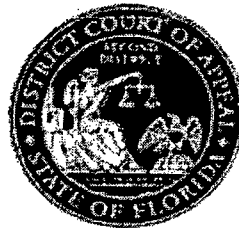
Attorney General, Tampa
Hon. Anthony Rondolino
Ken Burke, Clerk

Jason M. Miller, A.A.G.
Hon. Michael F. Andrews
Marcia J. Silvers, Esq.

Jamie Geer

ag

Mary Elizabeth Kuenzel
Mary Elizabeth Kuenzel
Clerk



Received
~~LEGAL MAIL~~
Provided to *on*
Wakulla CI

FEB 25 2019

FOR MAILING *[Signature]*

**Additional material
from this filing is
available in the
Clerk's Office.**