

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JANUARY TERM 2010

FRANK J. MILLER, JR.,

Petitioner,

v.

Case No. 5D10-1166

STATE OF FLORIDA,

Respondent.

_____ /

Opinion filed May 28, 2010

Petition for Belated Appeal,
A Case of Original Jurisdiction.

Frank J. Miller, Jr., Milton, pro se.

Bill McCollum, Attorney General,
Tallahassee and Wesley Heidt, Assistant
Attorney General, Daytona Beach, for
Respondent.

PER CURIAM.

Frank J. Miller, Jr. seeks a belated appeal of both his judgment and sentence and the denial of a rule 3.850 motion for postconviction relief. Miller is not entitled to an appeal of his judgment and sentence because the petition was filed more than two years after his judgment and sentence became final. He is, however, entitled to an appeal from the order denying his motion for postconviction relief because the order did not inform him of his right to appeal. See Arizmendi v. State, 894 So. 2d 309 (Fla. 5th DCA 2005) (citing Pippin v. State, 616 So. 2d 1182 (Fla. 1st DCA 1993)).

The petition for belated appeal is granted. A copy of this opinion will be filed with the lower court and treated as the notice of appeal from the order denying the motion for postconviction relief in Case No. 06-32592-CFAES in the Circuit Court in and for Volusia County. See Fla. R. App. P. 9.141(c)(5)(D).

PETITION DENIED IN PART/GRANTED IN PART.

MONACO, C.J., ORFINGER and COHEN, JJ., concur.