

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

JULY TERM 2011

JON A. REGISTER,

Petitioner,

v.

Case No. 5D11-3185

STATE OF FLORIDA,

Respondent.

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Opinion filed December 30, 2011

Petition for Belated Appeal,
A Case of Original Jurisdiction.

Jon A. Register, Milton, pro se.

Pamela Jo Bondi, Attorney General,
Tallahassee, and Wesley Heidt, Assistant
Attorney General, Daytona Beach, for
Respondent.

PER CURIAM.

Jon A. Register, Petitioner, seeks a belated appeal of his judgment and sentence in Osceola County case number 2004-CF-000152, asserting that immediately following sentencing, he requested his attorney, Jose Baez, to file an appeal, but counsel failed to do so. On October 27, 2011, this Court ordered the appointment of a commissioner to conduct an evidentiary hearing and make a finding of fact as to whether Petitioner timely communicated to the trial attorney his desire to appeal the judgment and sentence. The commissioner conducted a hearing; however, he made no findings as to

whether Petitioner made a timely request to his counsel to file an appeal. Because the sworn testimony of Petitioner was not refuted, we grant Petitioner's request for a belated appeal. A copy of this opinion shall be filed with the trial court and be treated as the notice of appeal from the judgment and sentence in case number 2004-CF-000152, in the Circuit Court in and for Osceola County, Florida. See Fla. R. App. P. 9.141(c)(6)(D).

PETITION GRANTED.

SAWAYA, COHEN and JACOBUS, JJ., concur.