

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

JANUARY TERM 2012

WILLIAM A. EVANS,

Petitioner,

v.

Case No. 5D12-75

STATE OF FLORIDA,

Respondent.

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Opinion filed March 2, 2012

Petition Alleging Ineffectiveness  
of Appellate Counsel,  
A Case of Original Jurisdiction.

William A. Evans, Arcadia, pro se.

Pamela Jo Bondi, Attorney General,  
Tallahassee, and Douglas T. Squire,  
Assistant Attorney General, Daytona  
Beach for Respondent.

MONACO, J.

The petitioner, William Evans, seeks a belated appeal based on his assertion that his appellate counsel was ineffective. We grant the petition.

The petitioner contends that his sentence was technically terminated when the Department of Corrections failed to award him proper jail credit. The trial court agreed and ordered the Department to apply the appropriate credit being sought. Prior to his release from prison, however, the State filed a petition seeking his civil commitment pursuant to the *Ryce Act*, sections 394.910 - .931, Florida Statutes (2010). Mr. Evans

then asserted that in accordance with *Larimore v. State*, 2 So. 3d 101 (Fla. 2008), the trial court did not have jurisdiction over him for the purposes of the *Ryce Act*. Thereafter, Mr. Evans agreed to voluntary commitment, but reserved the *Larimore* issue for appeal.

Mr. Evans then retained private appellate counsel, and indeed an appeal was filed on his behalf. This court, however, dismissed the appeal for failure to prosecute. Mr. Evans now seeks a new appeal based on the ineffective assistance of his appellate counsel. The State admirably agrees that the petitioner was constructively denied any assistance of counsel on appeal, and suggests that the petition should be granted. See *Harris v. Day*, 226 F.3d 361, 364 (5th Cir. 2000).

Accordingly, we grant the petition for 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 No. 2006-MH-000949, in the Circuit Court in and for Citrus County, Florida. See Fla. R. App. P. 9.141(c)(6)(D).

PETITION FOR BELATED APPEAL GRANTED.

TORPY and JACOBUS, JJ., concur.