

SUPREME COURT OF FLORIDA

In re Amendments to Florida Rule of Appellate Procedure 9.141

1 So. 3d 168 (Fla. 2009) · Decided January 29, 2009

SUMMARY

The Florida Supreme Court amended Florida Rule of Appellate Procedure 9.141 to clarify procedures for seeking belated discretionary review or belated appeal of a district court decision. The opinion addresses filing forums, petition contents, time limits, and procedures for such petitions, and makes the amendment effective immediately.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Per Curiam; Quince, C.J.; Wells, J.; Pariente, J.; Lewis, J.; Canady, J.; Polston, J.; Anstead, Senior Justice
JURISDICTION	Florida
DECIDED	January 29, 2009
DISPOSITION	other
PROCEDURAL POSTURE	Rulemaking proceeding by the Supreme Court of Florida concerning amendments to Florida Rule of Appellate Procedure 9.141 after comments were solicited regarding an earlier sua sponte amendment.
PRECEDENTIAL VALUE	Published and precedential rulemaking opinion

TOPICS

appellate procedure post-conviction relief state post-conviction relief criminal procedure
successive petitions

PRACTICE AREAS

Florida appellate procedure criminal post-conviction procedure appellate rulemaking

QUESTIONS PRESENTED

1. Whether Florida Rule of Appellate Procedure 9.141(c) should be amended to clarify the procedures and forum for seeking belated discretionary review or belated appeal of a district court decision.
2. What filing contents, time limits, service requirements, and treatment of successive petitions should govern proceedings under amended rule 9.141(c).

HOLDINGS

1. Florida Rule of Appellate Procedure 9.141(c) is amended to expressly govern petitions seeking belated discretionary review or belated appeal of a decision of a district court of appeal.
2. Petitions seeking belated discretionary review or belated appeal of a district court of appeal decision must be filed in the Supreme Court of Florida.
3. The amended rule establishes specified two-year filing limitations, subject to defined sworn factual exceptions, and prescribes petition contents, service, amendment, successive-petition, and disposition procedures.

KEY QUOTATIONS

“we amend Florida Rule of Appellate Procedure 9.141(c) to clarify the procedure for seeking belated discretionary review or belated appeal of a district court decision.” (1 So. 3d at 169)

“The amendment shall become effective immediately upon release of this opinion.” (1 So. 3d at 169)

“Petitions seeking belated discretionary review or belated appeal of a decision of a district court of appeal shall be filed in the supreme court.” (1 So. 3d at 169)

FACTUAL BACKGROUND

The court had previously amended rule 9.141(c) to address belated discretionary review and belated appeals in the Supreme Court. Following that decision, the Florida Bar Appellate Court Rules Committee submitted comments recommending clarification of the rule and indicating that a comprehensive revision might later be proposed.

PROCEDURAL HISTORY

The Supreme Court previously amended rule 9.141(c) to include petitions seeking belated discretionary review or belated appeal in the Supreme Court. After allowing sixty days for comments, the Florida Bar Appellate Court Rules Committee submitted recommendations concerning the scope and clarity of the rule. The court adopted further amendments and made them effective immediately upon release of the opinion.

DISPOSITION

other

CASES CITED

- In re Amendments to Florida Rule of Appellate Procedure 9.14.1, 992 So. 2d 233 (Fla. 2008)
- Sims v. State, 998 So. 2d 494 (Fla. 2008)

OPINION

PER CURIAM.

PER CURIAM. Pursuant to comments filed following issuance of our opinion in *In re Amendments to Florida Rule of Appellate Procedure 9.14.1*, 992 So.2d 233 (Fla.2008) (“Amendments ”), we amend Florida Rule of Appellate Procedure 9.141(c) to clarify the procedure for seeking belated discretionary review or belated appeal of a district court decision.

We have jurisdiction. See art. V, § 2(a), Fla. Const. The Court in *Amendments* adopted sua sponte an amendment to rule 9.141(c), *Petitions Seeking Belated Appeal or Alleging Ineffective Assistance of Appellate Counsel*, which extended the existing rule to include petitioners seeking belated discretionary review or belated appeal in this Court: (6) Supreme Court.

Petitioners seeking belated discretionary review or belated appeal in the supreme court shall follow procedures prescribed in this rule. 992 So.2d at 236. Interested persons were given sixty days to file comments, and the Appellate Court Rules Committee (Rules Committee) of The Florida Bar has filed a comment.

The Rules Committee recommends that rule 9.141 be revised to clarify whether certain provisions contained therein are or are not applicable to petitions for discretionary review. Second, the Rules Committee suggests that the Court consider adopting a court commentary specifically referring to *Sims v. State*, 998 So.2d 494 (Fla.2008).

Third, the Rules Committee notes that with these changes, the Criminal Practice Subcommittee of the Rules Committee has determined that subdivision (c) may benefit from a more comprehensive revision. Unless directed otherwise by the Court, the Rules Committee states that it will review rule 9.141(c) in its entirety to explore potential revisions.

The Rules Committee’s Criminal Practice Subcommittee anticipates having a specific proposal ready for consideration and approval by the full Committee no later than the June 2009 Annual Meeting of The Florida Bar. Any proposals passed by the Committee will be proposed in an out-of-cycle report. Based on the above comment, we amend Florida Rule of Appellate Procedure 9.141 as set forth in the appendix below.

New language is underscored; deleted language is struck-through. The amendment shall become effective immediately upon release of this opinion. The Appellate Court Rules Committee may pursue its planned comprehensive review of rule 9.141 and file its out-of-cycle report and proposals with the Court no later than October 1, 2009. It is so ordered. QUINCE, C.J., WELLS, PARIENTE, LEWIS, CANADY, and POLSTON, JJ., and ANSTEAD, Senior Justice, concur.

APPENDIX Rule 9.141. Review Proceedings in Collateral or Post-Conviction Criminal Cases; Belated Appeals; or Belated Discretionary Review; Ineffective Assistance of Appellate Counsel (a)-(b) [No change] (c) Petitions Seeking Belated Appeal or Belated Discretionary Review or Alleging Ineffective Assistance of Appellate Counsel.

(1) Treatment as Original Proceedings. Review proceedings under this subdivision shall be treated as original proceedings under rule 9.100, except as modified by this rule. (2) Forum. Petitions seeking belated appeal or alleging ineffective assistance of appellate counsel shall be filed in the appellate court to which the appeal was or should have been taken.

Petitions seeking belated discretionary review or belated appeal of a decision of a district court of appeal shall be filed in the supreme court. (3) Contents. The petition shall be in the form prescribed by rule 9.100, may include supporting documents, and shall recite in the statement of facts (A) the date and nature of the lower tribunal's order sought to be reviewed; (B) the name of the lower tribunal rendering the order; *170(C) the nature, disposition, and dates of all previous court proceedings in the lower tribunal and, if-any, in appellate courts; (D) if a previous petition was filed, the reason the claim in the present petition was not raised previously; (E) the nature of the relief sought; and (F) the specific acts sworn to by the petitioner or petitioner's counsel that constitute the alleged ineffective assistance of counsel or basis for entitlement to belated appeal or belated discretionary review, including in the case of a petition for belated appeal whether the petitioner requested counsel to proceed with the appeal.

(4)Time Limits. (A) A petition for belated appeal or belated discretionary review shall not be filed more than 2 years after the expiration of time for filing the notice of appeal or notice to invoke discretionary jurisdiction from a final order, unless it alleges under oath with a specific factual basis that the petitioner (i) was unaware an-a notice of appeal or a notice to invoke discretionary jurisdiction had not been timely filed or was not advised of the right to an appeal or to seek discretionary review pro se; and (ii) should not have ascertained such facts by the exercise of reasonable diligence.

(B) A petition alleging ineffective assistance of appellate counsel on direct review shall not be filed more than 2 years after the judgment and sentence become final on direct review unless it alleges under oath with a specific factual basis that the petitioner was affirmatively misled about the results of the appeal by counsel. (C)Time periods under this subdivision shall not begin to run prior to January 1,1997.

(5) Procedure. (A) The petitioner shall serve copies of the petition on the attorney general and state attorney. (B) The court may by order identify any provision of this rule that the petition fails to satisfy and, pursuant to rule 9.040(d), allow the petitioner a specified time to serve an amended petition. (C) The court may dismiss a second or successive petition if it does not allege new grounds and the prior determination was on the merits, or if a failure to assert the grounds was an abuse of procedure.

(D) An order granting a petition for belated appeal shall be filed with the lower tribunal and treated as the notice of appeal, if no previous notice has been filed. An order granting a petition for belated discretionary review or belated appeal of a decision of a district court of appeal shall be

filed with the district court and treated as a notice to invoke discretionary jurisdiction or notice of appeal, if no previous notice has been filed.

(6) Supreme Court, — Petitioners seeking belated discretionary review or belated appeal in the supreme court shall ■ follow procedures prescribed in this rule. Committee Notes 2000 Amendment. [No change]