

DISTRICT COURT OF APPEAL OF FLORIDA, FIRST DISTRICT

Somchai Miller v. State of Florida

183 So. 3d 474 (Fla. Dist. Ct. App. 2016) · No. 1D15-4374 · Decided January 24, 2016

SUMMARY

The Florida First District Court of Appeal dismissed Somchai Miller’s petition for a belated appeal as legally insufficient. The court held that Miller failed to allege that counsel misadvised him about the availability of appellate review and failed to specify when the relevant advice was given, but dismissed without prejudice to filing a new, legally sufficient petition.

CASE DETAILS

COURT	District Court of Appeal of Florida, First District
WRITING FOR THE COURT	Per Curiam; Wetherell; Makar; Winokur
JURISDICTION	Florida
DECIDED	January 24, 2016
DOCKET	1D15-4374
DISPOSITION	dismissed
PROCEDURAL POSTURE	Original-jurisdiction petition seeking a belated appeal from an order denying Miller's second amended motion for postconviction relief.
STANDARD OF REVIEW	The court reviewed the petition for a prima facie basis for granting belated appellate relief and legal sufficiency under Florida Rule of Appellate Procedure 9.141(c).
PRECEDENTIAL VALUE	Published Florida First District Court of Appeal opinion
PARTIES	Somchai Miller v. State of Florida

TOPICS

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QUESTIONS PRESENTED

1. Whether Miller's petition established a prima facie basis for a belated appeal when he alleged advice concerning the advisability of pursuing another postconviction remedy but did not allege misadvice concerning the availability of appellate review.
2. Whether the petition was legally sufficient when it failed to identify when counsel provided the allegedly erroneous advice, preventing a showing that the advice prejudiced Miller's appellate rights.

HOLDINGS

1. A petition seeking a belated appeal is legally insufficient unless it affirmatively alleges that the petitioner was misadvised as to the availability of appellate review, rather than merely alleging that counsel gave unreasonable advice about whether pursuing an appeal was advisable.
2. A petition for belated appeal must identify when the alleged misadvice occurred because advice to pursue another remedy would not establish prejudice to appellate rights if it was given after the time for appeal had already expired.

KEY QUOTATIONS

“Absent an affirmative allegation of misadvice as to the availability of an appeal as opposed to the advisability of pursuing an appeal, his present claim is legally insufficient to establish a basis for granting relief.” (at 2)

“Moreover, by failing to specifically allege when the interaction with counsel occurred, petitioner has failed to set forth a prima facie basis for relief since even if erroneous, the advice to pursue another potential remedy would not have prejudiced him with respect to his appeal rights if that advice was solicited and given after the time for appealing had already expired.” (at 2)

FACTUAL BACKGROUND

Miller retained counsel to pursue postconviction remedies after the denial of his second amended motion and a timely motion for rehearing. He alleged that counsel advised him to file a second or successive motion in the trial court instead of pursuing an appeal. Miller did not allege that counsel misadvised him about the availability of appellate review, and he did not specify when the relevant interaction with counsel occurred.

PROCEDURAL HISTORY

Miller sought a belated appeal after counsel allegedly advised him to pursue a second or successive postconviction motion rather than an appeal. A special master recommended dismissal for failure to establish a prima facie basis for relief. The First District adopted that recommendation and dismissed the petition without prejudice.

DISPOSITION

dismissed

REMAND INSTRUCTIONS

None. The dismissal was without prejudice to Miller filing a new petition curing the identified deficiencies and otherwise complying with Florida Rule of Appellate Procedure 9.141(c).

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