

EMPIRE TILE
CERAMIC TILE CONTRACTOR

LETTER OF TRANSMITTAL

(813) 722-0550

7050 Moran Road
Palmetto, FL 34221

FAX No. 813/722-8869

March 19, 1991

Mr. Ed Leinster
Orlando, Fl.

Re: Kevin Herrick

Dear Ed,

We spoke to the Public Defender's Office this morning. There is no record of you requesting a new trial or a Public Defender to represent Kevin. You had assured me that this had been done on January 25, 1991. Gina had promised to send me copies of these requests, which I have not received.

We are extremely upset about this as the 30 days has now passed. I have called the office, but no one can help me so I am faxing you this notice. Please look into this immediately, as it is your responsibility as Kevin's attorney to file for these things.

Thank you,

Gina Herrick
813-722-6555

IN THE CIRCUIT COURT OF THE
SIXTH JUDICIAL CIRCUIT, IN AND
FOR PINELLAS COUNTY, FLORIDA

CASE NO: CRC89-11425CFANO

STATE OF FLORIDA,

Plaintiff

vs

KEVIN HERRICK,

Defendant.

MOTION FOR BELATED APPEAL

COMES NOW the Defendant by and through below signed counsel and moves this Court for an Order allowing a belated appeal in this matter and as grounds therefore would show:

1. That on January 24, 1991 below signed counsel's secretary mailed a package to the Clerk of Court containing a Notice of Appeal, Motion for Indigency for Purposes of Appeal, Statement of Judicial Acts to be Reviewed, Directions to the Clerk, Designation to the Court Reporter on State vs Kevin Herrick.

2. Also contained in said package was a letter to the Pinellas County Clerk together with two (2) checks, one made payable to the Clerk of Court for \$55.00, check number 3794 and one to the District Court of Appeals for \$250.00, check number 3795 in State vs Ed Leinster/Sherman Lahar.

3. Having not seen an Order of Indigency counsel inquired to his secretary as to the status of the Herrick matter. Counsel's secretary called the Clerk of Court on

February 27, 1991 and inquired into this matter only finding that again that the Clerks are denying having received the above stated pleadings. Counsel's secretary then asked the Clerk if they had received the checks and letter stated in paragraph 2 hereof and was told that they had been received. When questioned as to how they can receive a letter and two checks and not receive the other five (5) pleadings which were in the same envelope, the Clerk, Mary's, response was that they did not open the mail directly, that they had a mailroom which opened the mail and dispersed same to each department. Counsel's secretary then called the Office of the State Attorney and spoke to the Assistant State Attorney, Joe Bulone's secretary, Judy, and asked if they had received the pleadings in question and was told that Joe had ordered the file because they thought they may have some original pleadings and that as soon as she got the file and checked she would call counsel and inform him if they had them. Counsel's secretary then left a message for Mr. Bologna to call counsel to discuss this matter.

4. On the morning of February 28, 1991 having not received a return call from either the Assistant State Attorney nor his secretary counsel's secretary called her to find out what they found and was told that they had found them and had sent them to the Clerk's office. Counsel's secretary again left a message for Mr. Bulone to call counsel on this matter. To date a return call has not been made.

5. Counsel's secretary then called the Clerk's office

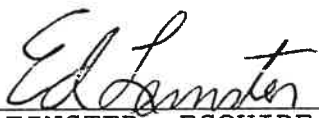
and it was confirmed that the pleadings were there and that the file and Motion for Indigency would be sent up to the Judge to either appoint the Public Defender or set a hearing and counsel would be notified.

6. It was not until recently that the family of the Defendant called the Clerk and was told on one occasion that counsel had never filed the appropriate pleadings requesting an appeal and on another occasion was told that they were waiting on the filing fee checks from counsel in order to file the appeal.

7. The family contacted counsel as to why the checks had not been filed and a Public Defender appointed. Counsel's secretary called the Clerk's office and was told that the pleadings were not there.

6. That attached hereto is an Affidavit of counsel's secretary, Gina Binkley as to the events in this matter.

WHEREFORE counsel moves this Court for an Order allowing the filing of a belated appeal pursuant to 3.850 Florida Rules of Criminal Procedure.



ED LEINSTER, ESQUIRE
1302 E. Robinson Street
Orlando, Florida 32801
(407) 422-3937
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail delivery to the Office of the State Attorney, Joe Bulone, Esquire, 5100 144th Avenue North, Clearwater, Florida 34620 this the 28th day of May, 1991.



ED LEINSTER, Esquire
1302 E. Robinson Street
Orlando, Florida 32801
(407) 422-3937

AFFIDAVIT

I, GINA L. BINKLEY, hereby swear and affirm, under oath, that the following is true and correct:

1. That on January 25, 1991 I typed, copied and mailed a Notice of Appeal, Directions to the Clerk, Designation to the Court Reporter, Motion for Indigency for Purposes of Appeal, Statement of Judicial Acts to be Reviewed, letter addressed to Pinellas County Clerk's Office and two checks, check number 3794 for \$55.00 made payable to Pinellas County Clerk and 3795 for \$250.00 payable to District Court of Appeals.

2. Mr. Leinster asked to what was the status of the Motion for Indigency so I called the Clerk and spoke to Mary, on February 27, 1991 and she told me that they had never received the motion I was asking about. So then I had her check for each pleading we had filed on January 25, 1991 in the Herrick package. She stated that had not received any of them. I then asked her if they had received the checks and letter on State vs Leinster. She asked another Clerk, Yolanda, if they had been received and she stated, "Yes". I then asked her how they could have received the letter and checks and not receive the other five (5) pleadings which were in the same envelope? She stated that they did not open the mail directly, that they had a mailroom which opened the mail and dispersed same to each department.

3. I then called the Office of the State Attorney and ask to speak to the Assistant State Attorney, Joe Bulone

and was told he was in trial so I spoke to his secretary, Judy, and asked if they had received the Appeal pleadings and she told me that Joe had ordered the file because they thought they may have the originals and that as soon as she got the file and checked she would call me and let me know. I told her this had happened in the Pettit matter also and that it seemed awful strange that to date they had only received the pleadings and checks for Mr. Leinster's appeal on Judge Carrerra's Order, even though I had mailed them in the same package. She stated he did not really know what was going on except that Mr. Bulone had requested that she order the file up to see if they had the original pleadings. I then left a message for Mr. Bulone to call Mr. Leinster when he got back from Court to discuss this matter.

4. On the morning of February 28, 1991 having not received a return call from either the Assistant State Attorney nor his secretary I called Judy at the State Attorney's office back to find out what they found and she said that they had sent them to the Clerk's office. I asked her to double check for me and she said they had already sent the file back and to call the Clerk's office.

5. I again left a message for Mr. Bulone to call Mr. Leinster.

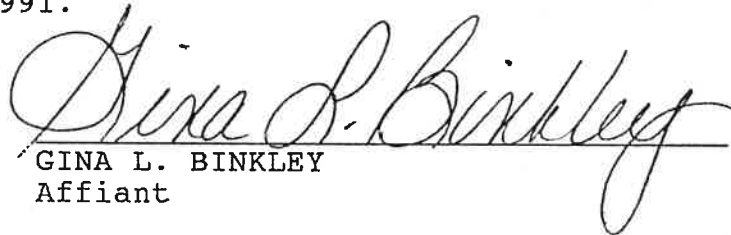
6. I then called the Clerk's office and spoke to Carol and she confirmed that the pleadings were there and that the file and Motion for Indigency would be sent up to the Judge to either appoint the Public Defender or set a hearing and

counsel would be notified.

7. According to a recent conversation with Mrs. Herrick, the Defendant's mother, she had called the Clerk and was told on one occasion that counsel had never filed for the Appeal and on another occasion was told that they were waiting on the filing fee checks from counsel in order to accept the appeal. She wanted to know the checks had not been filed and a Public Defender appointed?

8. On May 28, 1991 I called the Clerk's office and was told that

DATED at Orlando, Orange County, Florida this the 28th day of May, 1991.


GINA L. BINKLEY
Affiant

STATE OF FLORIDA
COUNTY OF ORANGE

BEFORE ME personally appeared GINA L. BINKLEY to me well known to be the person who executed the foregoing Affidavit and who after being duly sworn, deposes and says that the facts contained in the Affidavit are true and correct.

WITNESS my hand and official seal this 28th day of May, 1991.


NOTARY PUBLIC

Notary Public
State of Florida at Large
My Commission Expires:
January 17, 1993