

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

MICHAEL VELASCO,

Petitioner,

v.

STATE OF FLORIDA, DEPARTMENT
OF HIGHWAY SAFETY AND
MOTOR VEHICLES,

Respondent.

CASE NO. 2019-CA-2953-O

FINAL ORDER DISMISSING PETITION FOR WRIT OF CERTIORARI
AND DIRECTING CLERK TO CLOSE CASE

THIS MATTER came before the Court for consideration of the Petition for Writ of Certiorari, filed on March 7, 2019 (Petition);¹ the Court's Order to Show Cause, filed on September 18, 2019 (Show Cause Order); Petitioner's Response, filed on October 9, 2019; and Respondent's Reply, filed on October 21, 2019. Petitioner is seeking review of a final administrative order of driver's license suspension that was rendered on February 1, 2019. The Court finds as follows:

Pursuant to Florida Rule of Appellate Procedure 9.100(c)(1), a petition for writ of certiorari must be filed within 30 days of the date of rendition of the order to be reviewed. The 30 day time limit set forth in Rule 9.100(c)(1) is jurisdictional. *See Penate v. State*, 967 So. 2d 364 (Fla. 5th DCA 2007) (appellate court lacked jurisdiction over petition for writ of certiorari that was filed more than 30 days from the date of rendition of the

¹ Petitioner filed an Amended Petition on March 8, 2019. The Petition and Amended Petition were not brought to the Court's attention until September 12, 2019 because they had been inadvertently misfiled by the Clerk of the Court.

opinion). Under Florida Administrative Code Rule 15A-6.013(12), the rule governing formal review proceedings, the date of rendition “shall be the date of mailing entered on the driver license record.” In the instant case, Petitioner’s driver license record, which is attached as an exhibit to Respondent’s Reply, reflects that the final administrative order of driver’s license suspension was mailed on Friday February 1, 2019.² Accordingly, for purposes of Rule 15A-6.013(12), the final administrative order was rendered on February 1, 2019. As a result, the deadline to file the instant Petition was Tuesday March 5, 2019. *See Fla. R. Jud. Admin. 2.514(a)(1)*. Therefore, the instant Petition was filed beyond the 30 day deadline as it was filed on March 7, 2019.

To be sure, Petitioner filed a motion for rehearing. However, under Florida law, only an authorized motion for rehearing suspends rendition. *See City of Palm Bay v. Palm Bay Greens, LLC*, 969 So. 2d 1187, 1190 (Fla. 5th DCA 2007),

A motion can suspend rendition of an order only if the motion is authorized under the rules governing the proceeding in which the order was entered. A motion for rehearing does not suspend rendition of an administrative order because rehearing is not authorized in administrative proceedings. (Citations omitted.)

Florida Administrative Code Rule 15A-6.013 authorizes the entry of a final order by the hearing officer but does not additionally authorize a motion for rehearing with respect to a final order. Thus, Petitioner’s motion for rehearing was unauthorized.

Because the instant Petition appeared to be untimely filed, the Court in its Order to Show Cause directed Petitioner to show cause why the Petition should not be dismissed

² Petitioner has not sought to challenge or otherwise take issue with Respondent’s inclusion of his driving record as an exhibit to the Reply.

for lack of jurisdiction as untimely. In the Response, Petitioner argues that his Petition should not be dismissed as untimely for six main reasons. Each is addressed in turn.

First, Petitioner argues that the time to file the Petition was extended by Florida Rule of Judicial Administration 2.514(b),³ which allows an additional five days when a party “may or must act within a specified time after service and service is made by mail.” Petitioner points out that although the final administrative order of driver’s license suspension was issued on February 1, 2019, it “was not mailed until February 4, 2019, therefore cutting into the 30 day time period,” as reflected by the postmarked envelope attached to his Response. Petitioner also points out that in *Mick v. Florida State Board of Dentistry*, 338 So. 2d 1297 (Fla. 1st DCA 1976), the court denied a motion to dismiss because the final order had been mailed, which added three days to the 30 day time limit pursuant to former Florida Rule of Appellate Procedure 3.18.

The Court rejects Petitioner’s contentions. Under Florida law, Florida Rule of Judicial Administration 2.514(b), as incorporated by Florida Rule of Appellate Procedure 9.420(e), did not operate to extend the time for seeking appellate review by five days even though the final administrative order of driver’s license suspension had been mailed to Petitioner. As *Donaldson v. State*, 136 So. 3d 1281, 1282 (Fla. 2d DCA), *mandamus denied*, 151 So. 3d 1224 (Fla. 2014) explained,

Since 2012, Florida Rule of Appellate Procedure 9.420(e) has explained that the computation of time in appeals is governed by Florida Rule of Judicial Administration 2.514(b). That rule provides that the automatic five-day extension applies

³ Florida Rule of Appellate Procedure 9.420(e) provides that that the computation of time in appeals is governed by Florida Rule of Judicial Administration 2.514(b).

only when some act is required to be done after service of a document by mail, not when the act is required to be done after rendition or filing of an order, even if the rendered order is mailed to the parties.

Thus, in *Matheny v. Indian River Fire Rescue*, 174 So. 3d 1129, 1130 (Fla. 1st DCA 2015), the court dismissed a petition for certiorari as untimely when it had been filed more than 30 days after rendition. In so doing, *Matheny* specifically rejected petitioner's argument that he was entitled to an additional five days pursuant to Rule 2.514(b), because this rule "applies only when another rule, a court order, or a statute requires a party to act within a specified time after service," whereas Rule 9.100(c) "requires a petition for writ of certiorari to be filed within thirty days after 'rendition of the order to be reviewed.'" *Id.* *Matheny* explained, "Rendition is not the same thing as service." *Id.* See also *Miccosukee Tribe of Indians of Fla. v. Lewis*, 122 So. 3d 504, 506 (Fla. 3d DCA 2013) (dismissing petition for certiorari as untimely when filed more than 30 days after rendition; mailing of order did not entitle petitioner to five additional days to file petition pursuant to Rule 2.514(b)).

The Court also finds that Petitioner's reliance on *Mick v. Florida State Board of Dentistry*, 338 So. 2d 1297 (Fla. 1st DCA 1976) is misplaced. As indicated, *Mick* relied on a former Florida Rule of Appellate Procedure. However, as explained, under present Florida law and rules of procedure, a petitioner is not entitled to an additional five days for filing a petition for writ of certiorari pursuant to Florida Rule of Appellate Procedure 9.420(e) and Florida Rule of Judicial Administration 2.514(b), since the five days is available "only when some act is required to be done after service of a document by mail,

not when the act is required to be done after rendition or filing of an order, even if the rendered order is mailed to the parties.” *Donaldson*, 136 So. 3d at 1282. *See also Matheny*, 174 So. 3d at 1130; *Miccosukee Tribe of Indians of Fla.*, 122 So. 3d at 506.

Further, it is of no moment that the final administrative order of driver’s license suspension “was not mailed until February 4, 2019, therefore cutting into the 30 day time period,” as Petitioner argues. The Fifth District rejected this very argument in *Penate v. State*, 967 So. 2d 364 (Fla. 5th DCA 2007), in which the petitioner did not receive a copy of the circuit court’s appellate opinion until 24 days after rendition, and complained that he did not have sufficient time to prepare a petition. *Penate* explained that the petitioner still had time to file a “bare bones” petition, while “requesting an immediate extension of time from this Court within which to amend his petition based on the circumstances surrounding his receipt of the opinion.” *Id.*

Second, Petitioner, while conceding that the five day extension of time in Florida Rule of Judicial Administration 2.514(b) does not apply with respect to a notice of appeal, argues that unlike a notice of appeal, a petition for writ of certiorari “takes a considerable amount of time to prepare,” and “is in sum a legal brief, which requires research of the issues, drafting, and citing.” Thus, Petitioner “submits” that Florida Rule of Appellate Procedure 9.100(c)(1) contemplates the extension of time or additional days added in Florida Rule of Judicial Administration 2.514(b), so that the instant Petition was timely filed on March 7, 2019.

However, Petitioner’s point that a petition for writ of certiorari takes a considerable amount of time to prepare was addressed in *Penate*, which, as indicated,

explained that a petitioner could file a “bare bones” petition, while “requesting an immediate extension of time” from the appellate court to file an amended petition. 967 So. 2d at 364. In any event, *Penate* squarely held that under Rule 9.100(c)(1) a petition for writ of certiorari must be “filed within 30 days of the date of rendition.” *Id.*

Third, Petitioner argues that even if the five day extension provision in Florida Rule of Judicial Administration 2.514(b) does not apply, there is “nothing” on the final administrative order of driver’s license suspension or “in the record at this time” to demonstrate when it was filed with the clerk to begin running of the 30 day period. Petitioner points out that according to Rule 9.020(h), rendition takes place when a “signed, written order is filed with the clerk of the lower tribunal.”

Petitioner’s third argument overlooks Florida Administrative Code Rule 15A-6.013(12), which provides that the date of rendition “shall be the date of mailing entered on the driver license record.” As indicated, Petitioner’s driver license record reflects that the final administrative order of driver’s license suspension was mailed on February 1, 2019. As a result, the final administrative order of driver’s license suspension was rendered on February 1, 2019 pursuant to Rule 15A-6.013(12).

Fourth, Petitioner argues that even if the five day extension provision in Florida Rule of Judicial Administration 2.514(b) does not apply, the time to file his Petition “was tolled” by Rule 9.020(h)(1)(B), which tolls rendition for an “authorized” motion for rehearing. Petitioner points out that he filed a motion for rehearing on February 13, 2019, and that the hearing officer sent him a letter on February 15, 2019 stating that his request

for rehearing was denied. According to Petitioner, the 30 days for filing his Petition did not commence until the letter “was filed with the clerk of the lower tribunal.”

The Court rejects Petitioner’s argument. Florida Rule of Appellate Procedure Rule 9.020(h)(1)(B) by its own terms only allows for a motion for rehearing that is “authorized.” Contrary to his position, his motion for rehearing was not authorized. As explained, Florida Administrative Code Rule 15A-6.013 authorizes the entry of a final order by the hearing officer but does not additionally authorize a motion for rehearing with respect to a final order. Under Florida law, a motion for rehearing that is not authorized does not suspend rendition. *City of Palm Bay v. Palm Bay Greens, LLC*, 969 So. 2d 1187, 1190 (Fla. 5th DCA 2007).

Five, Petitioner argues that Respondent “has unclean hands” because the “method and manner of providing notice” of the final administrative order of driver’s license suspension “divested” him of seven days in which to file his Petition. Petitioner urges that if his “Petition was not timely filed, it was due to a three day delay in mailing the order and a seven day delay in counsel receiving the order” and Respondent not participating in the e-service requirements set forth in Florida Rule of Judicial Administration 2.516.

Petitioner’s fifth argument lacks merit. As explained, under *Penate*, Petitioner could have filed a “bare bones” petition, while “requesting an immediate extension of time” from the appellate court to file an amended petition. 967 So. 2d at 364. And whereas the complained-of delay in receiving the order in the instant case was seven days, in *Penate* the delay was 24 days. Further, the e-service requirements set forth in

Florida Rule of Judicial Administration 2.516 pertain only to documents in a “court proceeding” according to Rule 2.516(a), and simply do not apply to an administrative proceeding such as the instant administrative driver’s license suspension proceeding.

Sixth, and finally, Petitioner argues that as a matter of due process or “fundamental fairness,” this Court should relinquish jurisdiction and remand to Respondent to vacate the February 1, 2019 final administrative order of driver’s license suspension and enter a new order so that his Petition may be decided on the merits. Petitioner cites to Florida case law setting forth Florida public policy in favor of deciding cases on the merits, while conceding that the cited cases “address the filing of briefs, which is non-jurisdictional.”

Petitioner’s sixth argument also lacks merit. Petitioner concedes that the cases he cites for support merely “address the filing of briefs, which is non-jurisdictional.” Again, under *Penate*, Petitioner could have filed a “bare bones” petition, while “requesting an immediate extension of time” from the appellate court to file an amended petition. 967 So. 2d at 364. There is simply no valid basis for relinquishing jurisdiction for entry of a new order when Petitioner had time to file a timely Petition.

In short, Petitioner has failed to show good cause why his Petition should not be dismissed for lack of jurisdiction as untimely. The final administrative order of driver’s license suspension was rendered on February 1, 2019, and his motion for rehearing did not suspend rendition as it was unauthorized. *See* Fla. Admin. Code R. 15A-6.013. Since the instant Petition was not filed until March 7, 2019, it is untimely and this Court lacks jurisdiction to consider it on the merits. *See* Fla. R. App. P. 9.100(c)(1); *Penate*,

967 So. 2d at 364-65 (court lacked jurisdiction over petition for writ of certiorari filed more than 30 days from the date of rendition of order). Therefore, Court determines that the Petition must be dismissed.

Based on the foregoing, it is ORDERED AND ADJUDGED that the Petition for Writ of Certiorari is DISMISSED. The Clerk of the Court is directed to CLOSE this case forthwith.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this _____ day of _____, 20____.

ROBERT J. EGAN
Presiding Circuit Judge

HARRIS and WHITEHEAD, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing order was furnished on this _____ day of _____, 20____ to the following: Carlus L. Haynes, Esquire, Law Office of Haynes & Laurent, P. A., 8615 Commodity Circle, Unit 6, Orlando, FL 32819 at champ@fighting4ulaw.com; Mark Mason, Esquire, Assistant General Counsel, Department of Highway Safety and Motor Vehicles, 2900 Apalachee Parkway, A-432, Tallahassee, FL 32399-0504 at markmason@flhsmv.gov.

Judicial Assistant