

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

ERIC J. ALPERT,
Petitioner,

CASE NO.: 2018-CA-11334-O

v.

DEPARTMENT OF HIGHWAY
SAFETY AND MOTOR VEHICLES,
Respondent.

**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 (Petition), the Court's Order to Show Cause (Show Cause Order), Respondent's Motion to Dismiss for Lack of Jurisdiction (Motion to Dismiss), Respondent's Notice of Filing, and Petitioner's Response to Order to Show Cause and Respondent's Motion to Dismiss for Lack of Jurisdiction (Response). The Court finds:

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 imposed by Rule 9.100(c)(1) is jurisdictional. *See Penate v. State*, 967 So. 2d 364 (Fla. 5th DCA 2007) (court lacked jurisdiction over petition for writ of certiorari filed more than 30 days from the date of rendition of order).

In the instant case, Petitioner is seeking certiorari review of the Hearing Officer's Findings of Fact, Conclusions of Law and Decision (Decision). Because the Hearing Officer's Decision was rendered on September 14, 2018, under Rule 9.100(c)(1) the

deadline for seeking certiorari review was October 15, 2018, a Monday. However, the instant Petition was not filed until October 17, 2018, two days past the 30-day deadline.

In the Response, Petitioner argues that his Petition should not be dismissed as untimely because although the hearing officer's Decision "was ordered on September 14, 2018," he did not "receive" it "until September 18, 2018." Petitioner also argues that the Decision was not rendered on September 14, 2018 for purposes of Florida Rule of Appellate Procedure 9.020(i) because there is no indication that it was filed on that date.

For support, Petitioner points out that under Florida Administrative Code Rule 15A-6.013(12), the date of rendition "shall be the date of mailing entered on the driver license record" and that his driver's license record, which he attaches as an exhibit, "provides no date whatsoever as to the date of mailing of the Final Order sought for review." According to Petitioner, his Petition was timely under *Wibbens v. Department of Highway Safety and Motor Vehicles*, 956 So. 2d 503 (Fla. 1st DCA 2007), which determined that an order of license suspension had not yet been rendered since the department's records failed to reflect when the order had been mailed for purposes of Rule 15A-6.013(12).

In the Notice of Filing, Respondent has also provided the Court with Petitioner's driver's license record, which includes a table of correspondences with entries. One of the entries states "final order of suspension mailed" and gives "09-14-2018," or September 14, 2018, as the date of mailing. Petitioner has not sought to challenge or otherwise take issue with Respondent's Notice of Filing.

Under the circumstances, the Court finds that Petitioner's case *Wibbens* is distinguishable. In *Wibbens*, a mandamus proceeding, neither version of the driver's license record provided to the appellate court failed to reflect the date on which the order of suspension had been mailed for purposes of Rule 15A-6.013(12):

Neither party provided the circuit court with any evidence of when such mailing was entered on [petitioner's] driver license record, although two different versions of petitioner's record are now before this court as inclusions in the parties' appendices. One makes no mention of the order in question. The other, a more complete record, contains an entry of October 3, 2006, which simply states "final order of suspension rendered" on that date. The department relies on this version of [petitioner's] driver record to argue that the certiorari petition was untimely and correctly dismissed.

956 So. 2d at 504. *Wibbens* found that the department's reliance on the October 3, 2006 entry was "not conclusive of the matter," explaining that to

comply with the department's rule, the driver license record must reflect a date when the order is mailed to the licensee. A docket entry which states that an order was rendered on a particular date is insufficient. Instead, the entry must describe a particular action, such as filing of the order with the clerk or, as in this case, order to the parties. The appellate tribunal, as arbiter of its own jurisdiction, must determine when the lower tribunal's order was rendered. (Footnote omitted.)

Id. *Wibbens* concluded that the order had "not yet been rendered as that term is defined by the department's rule," so that the time for review of that order ha[d] not yet begun and there [was] no rendered order for the circuit court to review." *Id.* at 504-05.


Wibbens denied mandamus, but "without prejudice to petitioner's right to seek review in the circuit court once the order has been properly rendered by the making of an entry in his driver[']s license record that the order was mailed to him." *Id.* at 505.

In contrast to *Wibbens*, in the instant case Petitioner's driver's license record in the Notice of Filing does reflect when the hearing officer's Decision was mailed to him. As indicated, his driver's license record includes a table of correspondences with an entry stating that the hearing officer's Decision was mailed to him on September 14, 2018. As a result, unlike the deficient entry in *Wibbens*, the entry in the instant case satisfies 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," and the requirement in *Wibbens* that the entry "describe a particular action, such as filing of the order with the clerk or, as in this case, order to the parties." 956 So. 2d at 504.

Accordingly, the hearing officer's Decision was rendered for purposes of Rule 15A-6.013(12) and *Wibbens* on September 14, 2018, when it was mailed to Petitioner. As the instant Petition was not filed until October 17, 2018, 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, the Petition must be dismissed.

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 17th day of Sept, 2019.

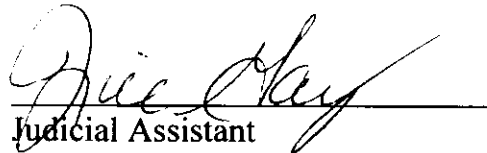


KEVIN B. WEISS
Presiding Circuit Judge

BEAMER and TENNIS, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order was furnished on this 17th day of Sept, 2019 to the following: **Rose M. Feller, Esquire**, Feller Law, P.A., 745 Primera Blvd., Suite 1021, Lake Mary, Florida 32746 at rose@feller-law.com and eservice@feller-law.com; **Mark L. Mason, Assistant General Counsel, Office of General Counsel**, Department of Highway Safety and Motor Vehicles, 2900 Apalachee Parkway, A-432, Tallahassee, Florida 32399-0504 at MarkMason@flhsmv.gov and RodBruce@flhsmv.gov.


Judicial Assistant