

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

BENJAMIN SLABY,
Petitioner,

CASE NO. 2019-CA-15471-O

v.

STATE OF FLORIDA, 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, filed on December 19, 2019; Petitioner’s Motion for Attorney’s Fees and Costs, filed on December 19, 2019; Respondent’s Motion to Dismiss for Lack of Jurisdiction, filed on December 23, 2019; the Court’s Order to Show Cause Why Petition for Writ of Certiorari Should Not Be Dismissed, filed on January 30, 2020 (Show Cause Order); Petitioner’s Response, filed on February 18, 2020; and Respondent’s Reply, filed on February 28, 2020. Petitioner is seeking review of a final administrative order of driver’s license suspension rendered on November 18, 2019.¹ The Court finds as follows:

Under Florida Rule of Appellate Procedure 9.100(c)(1), a petition for writ of certiorari must be filed “within 30 days of rendition of the order to be reviewed.” The

¹ We deny Petitioner’s request for oral argument.

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) (appellate court lacked jurisdiction over petition for writ of certiorari that was filed more than 30 days from the date of rendition of the opinion). In the instant case, it is undisputed that the final administrative order of driver's license suspension was rendered on November 18, 2019. As the Motion to Dismiss for Lack of Jurisdiction points out, the deadline to file the Petition was December 18, 2019, so the Petition, filed on December 19, 2019, was filed one day past the 30 day deadline set forth in Florida Rule of Appellate Procedure 9.100(c)(1). Thus, this Court's January 30, 2020 Show Cause Order directed Petitioner to show cause why the Petition should not be dismissed for lack of jurisdiction as untimely.

As Petitioner correctly acknowledges, Florida Rule of Judicial Administration 2.514(a)(1)(A), (B) & (C) is the applicable rule for the computation of time in appeals. *See Fla. R. App. P. 9.420(e)*. In pertinent part, Rule 2.514(a)(1)(A) & (B) provides that in computing a time period, the counting starts "from the next day that is not a Saturday, Sunday, or legal holiday" and includes "every day, including intermediate Saturdays, Sundays, and legal holidays." Under Rule 2.514(a)(1)(C), the "last day of the period" is counted, but "if the last day is a Saturday, Sunday, or legal holiday, or falls within any period of time extended through an order of the chief justice . . . the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday and does not fall within any period of time extended through an order of the chief justice."

The Court determines that the Petition for Writ of Certiorari was untimely filed. As indicated, the final administrative order was rendered on November 18, 2019, which was a Monday. Therefore, the first day to be counted was Tuesday, November 19, 2019, since the counting starts “from the next day that is not a Saturday, Sunday, or legal holiday” under Florida Rule of Judicial Administration 2.514(a)(1)(A). The 30th day for timely filing the Petition, December 18, 2019, a Wednesday, was “last day of the period” for purposes of Rule 2.514(a)(1)(C) as it was not “a Saturday, Sunday, or legal holiday,” and did not fall “within any period of time extended through an order of the chief justice.” As a result, the Petition was untimely by one day as it was not filed until Thursday, December 19, 2019, which was 31 days after rendition of the final administrative order. *See Fla. R. App. P. 9.100(c)(1)* (petition for writ of certiorari must be filed “within 30 days of rendition of the order to be reviewed”).

To be sure, Petitioner, reasoning that “the day being counted from is counted as zero,” argues that the “starting date” for computing the 30 days is November 19, 2019, with the result that the Petition was timely filed on December 19, 2019. The Court rejects this argument. Since the final administrative order was rendered on November 18, 2019, it is November 18, 2019 that is the actual “starting date,” so that the “the next day that is not a Saturday, Sunday, or legal holiday” to “begin counting” for purposes of Florida Rule of Judicial Administration 2.514(a)(1)(A) was November 19, 2019. Under Petitioner’s own reasoning, with “the day being counted from is

counted as zero,” it is November 18, 2019 that would be the day “counted as zero,” with the result that the 30th day, the “last day of the period,” would be December 18, 2019.

Petitioner makes the additional argument that *Penate v. State*, 967 So. 2d 364 (Fla. 5th DCA 2007) and related “older” cases do not specifically address “whether the day of the order or the next day is counted as zero when calculating a deadline” under the current version of Florida Rule of Judicial Administration 2.514(a)(1)(A), (B) & (C). Thus, in Petitioner’s view, since the “plain text” of the current rule now says to begin counting “from the next day,” this Court “must follow the common and ordinary meaning of that language.” However, contrary to Petitioner’s position, in construing the “plain text” of the current version of Rule 2.514(a)(1)(A), (B) & (C), the Court determines that it is the “day of the order” that is “counted as zero,” since counting begins “from the next day.” Additionally, as indicated, Florida Rule of Appellate Procedure 9.100(c)(1) requires that a petition for writ of certiorari be filed “within 30 days of rendition of the order to be reviewed.” Petitioner’s interpretation of Rule 2.514(a)(1)(A), (B) & (C) would effectively ignore the date of rendition specified in Rule 9.100(c)(1) in determining whether its Petition was timely filed. *See CPI Mfg. Co. v. Industrias St. Jack's, S.A.*, 870 So.2d 89, 92-93 (Fla. 3d DCA 2003) (“As in statutory construction, the rules must be read as a cohesive whole, and a rule should not be construed in such a way as to render another rule meaningless.”).

Based on the foregoing, it is ORDERED AND ADJUDGED that the Petition for Writ of Certiorari is DISMISSED. Petitioner's Motion for Attorney's Fees and Costs is DENIED. 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 _____, 2020.

ELAINE A. BARBOUR
Presiding Circuit Judge

WHITE and LEBLANC, J.J., concur.

CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the foregoing order was furnished on this _____ day of _____, 2020 to the following: Joel N. Leppard, Esquire, Joseph G. Easton, Esquire, Stephanie M. McEnery, Esquire, Leppard Law PLLC, 638 Broadway Ave., Orlando, FL 32803 at Joel@LeppardLaw.com, JEaston@LeppardLaw.com, and Stephanie@LeppardLaw.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