

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

PAUL A. HAMMONS,)
)
 Petitioner,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Respondent.)
 _____)

Case No. 2D14-2729

Opinion filed February 27, 2015.

Petition for Writ of Certiorari to the Circuit
Court for the Twentieth Judicial Circuit for
Lee County; sitting in its appellate capacity.

Christopher E. Cosden of The Wilbur Smith
Law Firm, Fort Myers, for Petitioner.

Pamela Jo Bondi, Attorney General,
Tallahassee, and Wendy Buffington,
Assistant Attorney General, Tampa, for
Respondent.

MORRIS, Judge.

Paul Hammons seeks second-tier certiorari review of a circuit court order reversing a county court order granting him a new trial for the charge of driving under the influence (third offense). The petition for writ of certiorari is untimely, and we do not

have the authority to grant belated review of the circuit court order. See Russell v. State, 114 So. 3d 483, 484-85 (Fla. 2d DCA 2013).

We note that even if the petition had been timely filed, it is without merit. After a jury found Hammons guilty, the county court granted Hammons' motion for new trial based on the prosecutor's comment that Hammons "voluntarily gave up his driver's license for either one year or 18 months" by refusing to submit to a breath test. The circuit court did not apply the incorrect law in reversing the county court's order because the challenged statement did not prejudice Hammons. The statement did not suggest that Hammons had a prior breath test refusal; rather, the statement was a proper reference to the arresting officer's testimony regarding the standard warning he gave to Hammons on the implied consent for a breath test. See § 316.1932(1)(a)(1)(a), Fla. Stat. (2011).

Dismissed as untimely.

CASANUEVA and BLACK, JJ., Concur.