

IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT, STATE OF FLORIDA

DAVID L. BROWN,

Appellant,

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

v.

CASE NO. 1D02-4940

WARDEN JOHN DOE PERRINE,

Appellee.

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Opinion filed August 21, 2003.

An appeal from the Circuit Court for Leon County.

L. Ralph Smith, Judge.

Appellant, pro se.

Donna La Plante, Assistant Attorney General, Tallahassee; Louis A. Vargas,  
Tallahassee, for Appellee.

PER CURIAM.

Having considered the appellant's responses to this Court's orders of May 23, 2003, and June 16, 2003, as well as the appellee's reply filed on June 6, 2003, the appeal is hereby dismissed as untimely. See Florida Rule of Civil Procedure 1.530(b). The appellant brought an original petition for writ of mandamus seeking to compel the appellee, in his official capacity, to perform a legal duty. Because the petition did not

seek review of agency action, the civil rules of procedure, rather than the appellate rules of procedure were controlling. Cf. Newell v. Moore, 826 So. 2d 1033 (Fla. 1st DCA 2002). Under these rules, the appellant's motion for rehearing was not timely, therefore, it did not delay rendition of the order on appeal. See Fla. R. App. P. 9.020(h). All pending motions are denied as moot.

AFFIRMED.

BENTON, PADOVANO and BROWNING, JJ., CONCUR.