

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-1274

PAUL WAYNE MERRITT,

Petitioner,

v.

WARDEN ROBERT BRYNER,

Respondent.

Petition for Writ of Certiorari—Original Jurisdiction.

December 14, 2022

PER CURIAM.

Petitioner seeks review of an order dismissing a petition for writ of mandamus. The petition challenged a disciplinary report that Petitioner received after the Fourth District Court of Appeal issued a *Spencer* order that sanctioned him for filing repetitious and frivolous pro se pleadings. *See State v. Spencer*, 751 So. 2d 47, 48 (Fla. 1999) (“[A]ny citizen, including a citizen attacking his or her conviction, abuses the right to pro se access by filing repetitious and frivolous pleadings, thereby diminishing the ability of the courts to devote their finite resources to the consideration of legitimate claims.”).

Because it appears that the lower court denied Petitioner’s claim on the merits, this Court converted the proceeding from an appeal to certiorari. *See generally Sheley v. Fla. Parole Comm’n*, 720 So. 2d 216, 218 (Fla. 1998) (“*Sheley II*”) (“[O]nce an inmate has had a full review on the merits of a Parole Commission order in the circuit court, he or she is not entitled to a second plenary appeal of the order in the district court.”); *see also* Fla. R. App. P. 9.040(c) (“If a party seeks an improper remedy, the cause shall be treated as if the proper remedy had been sought . . .”).

Even so, we lack jurisdiction to proceed. Although Petitioner filed a notice of appeal within thirty days of rendition of the order denying his motion for rehearing, that motion was untimely. As untimely, the motion for rehearing did not toll rendition of the order under review. *See* Fla. R. App. P. 9.020(h). Therefore, the notice of appeal, which was filed more than thirty days after rendition of the order under review, was untimely. *See* Fla. R. App. P. 9.110(b). So, too, the notice of appeal as a redesignated petition for writ of certiorari was untimely. *See* Fla. R. App. P. 9.100(c)(1) (“The following shall be filed within 30 days of rendition of the order to be reviewed . . . a petition for writ of certiorari.”).

DISMISSED.

B.L. THOMAS, RAY, and LONG, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Paul Wayne Merritt, pro se, Petitioner.

Ashley Moody, Attorney General, Kelly R. Forren and Gecelyne S. Dixon, Assistant Attorneys General, Tallahassee, for Respondent.