

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2008

RODNEY THOMAS,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

No. 4D08-1575

[November 5, 2008]

PER CURIAM.

Rodney Thomas seeks review of a sanction imposed for filing a notice of appeal from an order prohibiting him from filing further pro se challenges to his conviction and sentence in lower court case number 94CF012542AXX. *See State v. Spencer*, 751 So. 2d 47 (Fla. 1999). The *Spencer* order was upheld by this court in case number 4D07-5054. But, while review was still pending in this court, on April 7, 2008, the trial court sanctioned Thomas for filing the pro se notice of appeal that sought review of the *Spencer* order. The April 7, 2008 order recommended that the Department of Corrections forfeit his gain time. *See* § 944.279(1), Fla. Stat. (2007).

Because a *Spencer* order affects a pro se litigant's access to the court, the litigant has the right to challenge whether the order was warranted and whether the proper procedure was followed. *See, e.g., Rogers v. State*, 916 So. 2d 899 (Fla. 4th DCA 2005). Moreover, as this court has recognized, an order restricting further pro se filings "cannot restrict or frustrate in any way an appeal taken from that order." *Martin v. Circuit Court, Seventeenth Judicial Circuit*, 627 So. 2d 1298, 1300 (Fla. 4th DCA 1993). Accordingly, the April 7, 2008 sanction order is quashed.

FARMER, STEVENSON, and GROSS, JJ., concur.

* * *

Petition for writ of certiorari to the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Krista Marx, Judge; L.T. Case No. 94CF012542AXX.

Rodney Thomas, Miami, pro se.

Bill McCollum, Attorney General, Tallahassee, and Daniel P. Hyndman, Assistant Attorney General, West Palm Beach, for respondent.

Not final until disposition of timely filed motion for rehearing.