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

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IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

JOSEPH HENRY ROTH,
Appellant,
V.
JAMES CROSBY, SECRETARY, DEPARTMENT OF CORRECTIONS,
Appellee.

Case No. 2D03-1453

Opinion filed July 16, 2004.

Appeal from the Circuit Court for Polk County; Charles B. Curry, Judge.

Joseph Henry Roth, pro se.

No appearance for Appellee.

WALLACE, Judge.

In February 2000, the Florida Parole and Probation Commission (the Commission)

established his presumptive parole release date as June 2, 2011, a date significantly

later than the date recommended by the hearing examiner.

Roth sought review of the Commission's order by filing a petition for a writ of habeas corpus in the Circuit Court for Polk County. However, the appropriate vehicle for challenging a presumptive parole release date is a petition for a writ of mandamus directed against the Commission. <u>Griffith v. Fla. Parole & Prob. Comm'n</u>, 485 So. 2d 818, 820 (Fla. 1986) (contrasting mandamus with habeas corpus, which is the appropriate vehicle for challenging an effective parole release date). The mandamus petition must be filed in the Circuit Court for Leon County, where the Commission is headquartered. <u>Lewis v. Fla. Parole Comm'n</u>, 697 So. 2d 965, 966 (Fla. 1st DCA 1997). Applying the correct law, the circuit court denied Roth's petition without prejudice for Roth to file a petition for a writ of mandamus directed against the Commission.

We treat Roth's timely filed notice of appeal as a petition for a writ of certiorari. <u>See</u> Fla. R. App. P. 9.040(c); <u>Sheley v. Fla. Parole Comm'n</u>, 703 So. 2d 1202, 1206 (Fla. 1st DCA 1997) (criminal division en banc), <u>approved</u>, 720 So. 2d 216 (Fla. 1998). We deny the petition.

Petition denied.

NORTHCUTT and VILLANTI, JJ., Concur.