

Petition for Writ of Certiorari to Review Quasi-Judicial Action, Department of Highway Safety and Motor Vehicles: DRIVER'S LICENSES – Early Reinstatement— Department observed the essential requirements of law when it denied Petitioner's request for restricted reinstatement of revoked driving privileges pursuant to Section 322.271(2)(c), Fla. Stat. (2013); Fla. Admin. Code Rule 15A-1.019. During twelve-month period prior to reinstatement, applicant must not consume drugs or alcohol. Petitioner admitted consuming alcohol prior to hearing on application. Petition denied. Zareas v. Fla. Dept. of Highway Safety and Motor Vehicles, No. 12-000006AP-88A (Fla. 6th Cir. App. Ct. May 9, 2014).

NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND, IF FILED, DETERMINED

**IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
APPELLATE DIVISION**

**PETER ZAREAS,
Petitioner,**

**Case No.: 14-000028AP-88A
UCN: 522014AP000028XXXXCV**

v.

**STATE OF FLORIDA, DEPARTMENT
OF HIGHWAY SAFETY AND MOTOR
VEHICLES
Respondent.**

Opinion Filed _____/

Petition for Writ of Certiorari from
Decision of Hearing Officer
Bureau of Administrative Reviews
Department of Highway Safety
and Motor Vehicles

Peter Zareas, pro se

Stephen D. Hurm, Gen. Counsel
Karen E. Lloyd, Asst. Gen. Counsel
Attorneys for Respondent

PER CURIAM.

Peter Zareas seeks certiorari review of the "Final Order Denying Early Reinstatement" entered on January 15, 2014, by the Hearing Officer of the Bureau of

Administrative Reviews, Department of Highway Safety and Motor Vehicles. The petition for writ of certiorari is denied.

Statement of Case

In the petition, Mr. Zareas states that he pleaded guilty to Driving Under the Influence ("DUI") on January 15, 2013. Mr. Zareas has attached the "Referral and Information" form dated January 16, 2013, relating to his DUI probation. ("DUI form") Mr. Zareas was placed on DUI probation and his driver's license was revoked for five years. The DUI form states in part, "OTHER CONDITIONS" "No Alcohol, No Bars; ET [early termination] after 6 months." See also "Judgment of Guilt and Placing Defendant on Probation" in State v. Zareas, Case No. CTC12-5837XELASP (Fla. 6th Cir. Ct. 2013) (Exhibit A).

Mr. Zareas represents that he was granted early termination of his probation after six months. He directs the Court to the DUI form and states, "Please note the enclosed probation form under other conditions, no alcohol, no bars, for 6 months. I was of the understanding that in the early termination I was in compliance of the court order and alcohol was permitted after 6 months." Mr. Zareas concedes that prior to the meeting with the Hearing Officer he consumed "a beer or glass of wine." He requests that this Court reconsider his application for early reinstatement for a hardship license.

The "Final Order Denying Early Reinstatement" states: "During the hearing your Florida driving record was reviewed and discussed. Your sworn testimony indicated that you had consumed alcohol on 1/11/14. An applicant for early reinstatement must not have consumed any alcohol or drugs or driven for one year prior to the hearing. Your reconsideration date is 1/15/2015."

Analysis

Section 322.271, Florida Statutes (2013), "Authority to modify revocation, cancellation, or suspension order," states in part:

(1)(a) Upon the suspension, cancellation, or revocation of the driver license of any person as authorized or required in this chapter, except . . . a person who is ineligible to be granted the privilege of driving on a limited or restricted basis under subsection (2), the department shall immediately notify the licensee and, upon his or her request, shall afford him or her an opportunity for a hearing. . . .

. . . .

(2) At such hearing, the person whose license has been suspended, canceled, or revoked may show that such suspension, cancellation, or revocation causes a serious hardship and precludes the person from carrying out his or her normal business occupation, trade, or employment and that the use of the person's license in the normal course of his or her business is necessary to the proper support of the person or his or her family.

....

(c) A person whose license has been revoked for a period of 5 years or less pursuant to s. 322.28(2)(a) may, 12 months after the date the revocation was imposed, petition the department for reinstatement of his or her driving privilege on a restricted basis. . . . In addition, the department shall require such persons upon reinstatement to have not driven and to have been drug free for at least 12 months immediately before the reinstatement

(Emphasis added). Further, Florida Administrative Code Rule 15A-1.019, "Reinstatement; Hardship," states in part:

Any driver whose driver's license has been suspended, revoked, or cancelled for any reason, other than those exceptions listed in paragraph (5) below, . . . may apply immediately to the Department for the modification of the order or the reinstatement of a license pursuant to Section 322.271, F.S., as follows:

(5) Exceptions to reinstatement on a limited restricted basis:

....

(c) Persons revoked for five years for two convictions of driving under the influence or driving with an unlawful blood alcohol level within five years, must serve twelve months of the revocation period, complete a Department approved substance abuse course, be under the supervision of a DUI school, abstain from drinking, and abstain from driving for a 1 year period prior to applying for reinstatement on a restricted basis.

(Emphasis added).

Standard of Review

Circuit court certiorari review of an administrative agency decision is governed by a three-part standard: (1) whether procedural due process is accorded; (2) whether the essential requirements of law have been observed; and (3) whether the administrative findings and judgment are supported by competent substantial evidence. State, Dep't of Highway Safety and Motor Vehicles v. Sarmiento, 989 So. 2d 692, 693 (Fla. 4th DCA 2008).

Conclusion

This Court has taken judicial notice of the criminal traffic case file in State v. Zareas, CTC12-5837XELASP (Fla. 6th Cir. Ct. 2013).

Due Process:

Mr. Zareas does not claim he was denied due process of law. Basic due process requirements are met if the parties are provided notice of the hearing and an opportunity to be heard. Jennings v. Dade County, 589 So. 2d 1337, 1340 (Fla. 3d DCA 1991).

There was no due process violation in this case.

Essential Requirements of Law:

As noted above, section 322.271(2)(c) governs when an individual, whose driver's license has been revoked for a period of five years or less, seeks early reinstatement. The statute requires that the applicant must have been "drug free for at least 12 months immediately before the reinstatement." In State, Department of Highway Safety and Motor Vehicles v. Abbey, 745 So. 2d 1024, (Fla. 2d DCA 1999), the Second District Court of Appeal upheld the Department's interpretation of section 322.271 that found alcohol to be included within those substances defined as a drug under section 322.271. The appellate court stated:

When the legislature announced that an applicant must be "drug-free," it did not intend the applicant to refrain from the use of aspirin. Section 316.193, Florida Statutes (1997), establishes penalties for driving under the influence of certain mind-altering substances that impair a driver's judgment and performance. That statute discusses alcohol and certain regulated drugs. The Department is interpreting section 322.271(4) to require abstinence from the same mind-altering substances, i.e. drugs, that can result in an arrest for DUI. In the context of these statutes, any other interpretation would be unreasonable.

....

This statute was created to protect the public's safety. A person whose license has been permanently revoked for several DUI convictions should expect "drug-free" in this context to include alcohol.

Id. at 1025-26. Further, Florida Administrative Code Rule 15A-1.019 supports the ruling of the appellate court, and the Hearing Officer's conclusion in the present case, as the administrative rule specifically requires one year of abstinence from drinking as a prerequisite to reinstatement of driving privileges.

The DUI form given to Mr. Zareas states as a condition of probation "No Alcohol, No Bars." The reference to early termination after six months relates to Mr. Zareas' probation. The early termination of probation does not affect the requirements that must be met by an individual seeking early reinstatement of his driver's license under section 322.271. The Hearing Officer applied the correct law and observed the essential requirements of law when he concluded that Mr. Zareas was required to be drug and alcohol free for one year prior to the application for early reinstatement of his driver's license.

Competent Substantial Evidence:

Mr. Zareas made an admission in his petition that he consumed "a beer or glass of wine" before the hearing with the Hearing Officer. This statement supports the finding in the January 15, 2014, Final Order that Mr. Zareas consumed alcohol during the twelve-month period prior to the hearing. Thus, the competent, substantial evidence supports the conclusion that Mr. Zareas was ineligible for early reinstatement of his driver's license under section 322.271(2)(c) and administrative rule 15A-1.019. The Hearing Officer properly denied Mr. Zareas' application.

The petition is denied.

DONE AND ORDERED in Chambers in Clearwater, Pinellas County, Florida, this ____ day of _____, 2014.

Original order entered on May 9, 2014, by Circuit Judges Linda R. Allan, John A. Schaefer, and Jack R. St. Arnold.

Copies furnished to:

Peter Zareas
1065 Eden Isle Blvd., Apt. 1
St. Petersburg, FL 33704

Stephen D. Hurm, Gen. Counsel
Judson M. Chapman, Sr. Asst. Gen. Cons.
6855 62nd Ave. North
Pinellas Park, FL 33781

Stephen D. Hurm, Gen. Counsel
Karen E. Lloyd, Asst. Gen Counsel
5023 53rd Avenue East
Bradenton, FL 34203