

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

RICHARD DAVID OLMSTEAD,  
Petitioner,

vs.

UCN: 522015AP000021XXXXCV  
Ref No.: 15-000021AP-88B

STATE OF FLORIDA,  
DEPARTMENT OF HIGHWAY  
SAFETY & MOTOR VEHICLES,  
Respondent.

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**ORDER AND OPINION**

Petitioner challenges a final order by the Department of Highway Safety and Motor Vehicles (DHSMV) permanently revoking his driver's license following his fourth conviction for driving under the influence of alcohol (DUI). Petitioner asserts that competent substantial evidence of the prior DUI convictions does not exist. In the alternative, Petitioner alleges that due process requires an opportunity to contest the revocation and prior convictions. For the reasons set forth below, the Petition for Writ of Certiorari is denied.

**Facts and Procedural History**

On February 10, 2015, Petitioner pleaded no contest to a DUI charge. The trial court sentenced Petitioner as if it was his second DUI in more than five years and suspended his license for six months. Petitioner had no objections to being sentenced to a second DUI, the suspension, or the prior conviction, which was used to determine his sentence. On February 27, Petitioner received an Order of Revocation from the DHSMV. The Order indicated that Petitioner had three previous DUI convictions, and as a result, his license was permanently revoked. After receiving the Order, Petitioner requested copies of the records related to the

alleged prior convictions. Petitioner received a letter from the Clerk of Court indicating that the records for two of the three cases could not be located, and the record for the third case had been destroyed in compliance with the Florida Rules of judicial Administration.

Petitioner filed the instant Petition for Writ of Certiorari. Neither party submitted Petitioner's driving record to the Court. The Court requested that the DHSMV file the evidence it relied on in its decision to revoke Petitioner's license. The DHSMV filed difficult to read copies of two prior DUI citations. On its second attempt at supplementing the record, the DHSMV filed copies of all three prior DUI citations, which are still hard to decipher, and an affidavit from a program manager with the DHSMV's Bureau of Records describing the process involved in transmitting and recording citations and indicating what the citations said.

### **Standard of Review**

Orders from the DHSMV are examined "under a three-part standard of review: (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." *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995).

### **Discussion**

The DHSMV is required to permanently revoke the driver's license of any person convicted of four DUIs. Florida Statutes section 322.28 states:

The court shall permanently revoke the driver license or driving privilege of a person who has been convicted four times for violation of s. 316.193 or former s. 316.1931 or a combination of such sections. . . . If the court has not permanently revoked such driver license or driving privilege within 30 days after imposing sentence, the department shall permanently revoke the driver license or driving privilege pursuant to this paragraph.

Accordingly, the mandatory administrative revocation is separate and distinct from any criminal sentence imposed. *State Dep't of Highway Safety & Motor Vehicles v. Gordon*, 860 So. 2d 469, 471 (Fla. 1st DCA 2003). Furthermore, if the DHSMV's records indicate that a person has a previous DUI conviction, "that evidence is sufficient by itself to establish that prior conviction." Fla. Stat. § 316.193(12). However, the presumption that the DHSMV's records are prima facie evidence of prior convictions is rebuttable. *Ibarrondo v. State*, 1 So. 3d 226, 234 (Fla. 5th DCA 2008).

Petitioner asserts that due process requires an opportunity to present evidence to rebut the presumption. On appeal, a court can consider "only materials furnished to and reviewed by the lower tribunal in advance of the administrative action to be reviewed by the court." Fla. R. App. P. 9.190(c)(1). Because final orders revoking a driver's license are reviewable only by petition for writ of certiorari, the lower tribunal (the DHSMV) never conducted a hearing, and the record is limited to the evidence it relied on in issuing the Order of Revocation. See *Vichich v. Dep't. of Highway Safety & Motor Vehicles*, 799 So. 2d 1069, 1073 (Fla. 2d DCA 2001); Fla. Stat. § 322.31 (2014). Accordingly, this Court is unable to consider Petitioner's evidence (or the DHSMV's affidavit). At most, the Court "can determine whether the DHSMV's records qualify as sufficient evidence admissible as a matter of due process." *Vichich*, 799 So. 2d at 1074. The Court finds that, as a matter of due process, the citations were properly relied on by the DHSMV to support its order.

Finally, in reviewing a petition for writ of certiorari, "[a]s long as the record contains competent substantial evidence to support the agency's decision, the decision is presumed lawful and the court's job is ended." *Dusseau v. Metro. Dade Cnty. Bd. of Cnty.*

*Comm'rs*, 794 So. 2d 1270, 1276 (Fla. 2001). In addition, this Court must “defer to the agency's superior technical expertise and special vantage point in such matters.” *Id.* Although the submitted citations are difficult to read, it is clear that all three are issued in Petitioner’s name, with the same birthdate and driver’s license number. The first two citations have the guilty box checked under verdict. The third citation has the box checked for estreated or forfeited bond. Under the driver's license laws, a bond forfeiture “shall be equivalent to a conviction.” Fla. Stat. § 322.25. Accordingly, competent substantial evidence supports the DHSMV’s determination that Petitioner had three previous DUI convictions. It is, therefore,

**ORDERD AND ADJUDGED** that the Petition for Writ of Certiorari is DENIED.

**DONE AND ORDERED** in Chambers, in St. Petersburg, Pinellas County, Florida, on this 16 day of October 2015.

Original Order entered on October 16, 2015, by Circuit Judges Jack Day, Amy M. Williams, and Thomas M. Ramsberger.

Copies furnished to:

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