

Petition for Writ of Certiorari to Review Quasi-Judicial Action, Department of Highway Safety and Motor Vehicles: DRIVER’S LICENSE— Petitioner failed to demonstrate a denial of due process or departure from essential requirements of law occurred in this matter. Petition denied. *Megan Seeley-Potter v. State of Florida, Dep’t of Highway Safety and Motor Vehicles*, No. 15-CA-2470-WS (Fla. 6th Cir. App. Ct. April 1, 2016).

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

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR PASCO COUNTY
APPELLATE DIVISION**

MEGAN SEELEY-POTTER,
Petitioner,

UCN: 512015CA002470CAAXWS

v.

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

_____ /
Petition for Writ of Certiorari

Charles D. Radeline, Esq.,
for Petitioner,

Nicholas A. Merlin, Esq.,
for Respondent.

ORDER AND OPINION

Petitioner was afforded adequate due process and no departure from essential requirements of law occurred in this matter. The order revoking Petitioner’s driver’s license is supported by competent, substantial evidence. The Petition is denied.

STATEMENT OF THE CASE AND FACTS

Petitioner seeks review of a July 7, 2015, order revoking Petitioner’s license for a period of five years, based on Petitioner’s status as a habitual traffic offender pursuant to § 322.27(5), Fla. Stat. Petitioner was previously convicted of three separate counts of driving while license canceled, revoked, suspended, or disqualified, on July 8, 2010, July 14, 2011, and September 1, 2011. Petitioner alleges she was not informed that entering a plea to the charges would subject her to habitual traffic offender status

pursuant to statute, and that she would have sought relief from judgment pursuant to Fla. R. Crim. P. 3.850, had she been aware of the full consequences of entering the pleas.¹ Petitioner alleges that by waiting until July 7, 2015, to revoke Petitioner's license, Respondent deprived Petitioner of the opportunity to seek relief by filing a motion pursuant to Rule 3.850, and that the suspension order amounts to a departure from essential requirements of law. Petitioner contends the equitable doctrine of laches applies because Respondent waited an unreasonably long period of time prior to issuing the order, which resulted in prejudice to Petitioner, and Respondent should therefore be prevented from revoking Petitioner's license. Petitioner contends the revocation amounted to a violation of due process because Petitioner was not afforded the opportunity to be heard prior to entry of the order.

STANDARD OF REVIEW

This Court may review the order revoking Petitioner's license to determine 1) whether procedural due process was afforded; 2) whether the essential requirements of law have been observed; and 3) whether the order is supported by competent, substantial evidence. See *Vichich v. Dep't of Highway Safety and Motor Vehicles*, 799 So. 2d 1069, 1073 (Fla. 2d DCA 2011).

LAW AND ANALYSIS

Petitioner contends the order amounts to a departure from essential requirements of law. This "means failure to accord due process of law within the contemplation of the Constitution, or the commission of an error so fundamental in character as to fatally infect the judgment and render it void." *Haines City Comm. Dev. v. Heggs*, 658 So. 2d 523, 527 (Fla. 1995). Petitioner contends that by waiting over three years after the conviction date for Petitioner's most recent qualifying offense on which the order is based, Respondent departed from essential requirements of law by effectively denying Petitioner's rights afforded by Rule 3.850. Petitioner alleges she was

¹ This Court's record on certiorari review does not appropriately include the court proceedings which resulted in Petitioner's convictions.

not informed that entering a plea to the underlying charges could result in revocation of her driver's license, and therefore any pleas were not voluntarily entered.²

Petitioner claims she is now barred from seeking relief pursuant to Fla. R. Crim. P. 3.850 because more than two years have passed since entry of the judgment and sentence. Petitioner therefore claims the equitable doctrine of laches applies and Respondent is prevented from entering the revocation order. The elements of common law laches include (1) conduct by the defendant "giving rise to the situation of which complaint is made;" (2) the plaintiff had knowledge of or was on notice of the defendant's conduct, was "afforded the opportunity to institute suit," and "is guilty of not asserting his rights by suit; (3) lack of knowledge on the part of the defendant that plaintiff will assert the right on which he bases his suit; and (4) injury or prejudice to the defendant in event relief is accorded to the plaintiff, or in event the suit is held not to be barred." *Trevett v. Walker*, 89 So. 3d 998, 1000 (Fla. 3d DCA 2012). See *Van Meter v. Kelsey*, 91 So. 2d 327, 330-31 (Fla. 1956). Petitioner alleges all elements are present, because Petitioner's conduct gave rise to the situation on which the revocation is based; Respondent had knowledge of Petitioner's offenses and waited over three years to enter the order; Petitioner lacked knowledge that Respondent would enter the order; and Petitioner was prejudiced by the loss of the opportunity to file a motion to vacate the underlying judgments.

Petitioner further alleges that application of the statute in this case denied Petitioner due process of law and that the statute is unconstitutional. The statute provides that "[t]he department shall revoke the license of any person designated a habitual offender, as set forth in s. 322.264, and such person is not eligible to be relicensed for a minimum of 5 years from the date of revocation, except as provided for in s. 322.271." Fla. Stat. § 322.27(5)(a). The statute further provides that "[a]ny person whose license is revoked may, by petition to the department, show cause why his or her license should not be revoked." *Id.* Petitioner alleges the statute as applied to Petitioner is unconstitutional because Petitioner was not afforded an opportunity to be heard prior to the revocation.

² The facts on which these allegations are based do not appear from the record in this matter and would not be properly included in the record on certiorari review.

Courts have previously found the challenged statute to be constitutional. See *Jones v. Kirkman*, 138 So. 2d 513 (Fla. 1962). The argument that notice and an opportunity to be heard are required prior to the revocation has been previously rejected. See *Dep't of Highway Safety and Motor Vehicles v. Argeros*, 313 So. 2d 55 (Fla. 4th DCA 1975); *Cappadona v. Keith*, 290 So. 2d 545, 546 (Fla. 4th DCA 1974). Due process protections vary depending on the character of the interests involved and the nature of the process afforded. See *Hadley v. Dep't of Admin.*, 411 So. 2d 184, 187 (Fla. 1982); *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976). Due process may be satisfied by a post-deprivation hearing. See *Mackey v. Montrym*, 443 U.S. 1, 13 (1979); *Souter v. Dep't of Highway Safety and Motor Vehicles*, 310 So. 2d 314 (Fla. 1st DCA 1975). The revocation order provided that Petitioner was entitled to apply for administrative review of the order, but it appears Petitioner did not do so in this case. A party who does not avail himself of the right to petition the Department for review may not later allege a due process violation based on the lack of such review. See *Cappadona*, 290 So. 2d at 546.

Respondent was not a party to the criminal proceedings in which Petitioner was convicted of the underlying offenses on which the revocation is based. Respondent alleges it was unable to revoke Petitioner's license until it received notice of Petitioner's convictions from the Clerk of Court, which gave rise to the revocation pursuant to statute. See *Dep't of Highway Safety and Motor Vehicles v. Tarman*, 917 So. 2d 899, 901 (Fla. 3d DCA 2005). A "habitual traffic offender" is defined as a person whose record reflects "three or more convictions" within a five-year period for "[d]riving a motor vehicle while his or her license is suspended or revoked." § 322.264, Fla. Stat. Petitioner meets this definition and is subject to the mandatory five-year revocation pursuant to statute. The statute does not prescribe a limitation period in which the Department must take action to suspend or revoke an individual's license. See *Dep't of Highway Safety and Motor Vehicles v. Hagar*, 581 So. 2d 214, 217 (Fla. 5th DCA 1991).

Petitioner failed to demonstrate Respondent had knowledge of or was on notice of the prior proceedings before the county court, and the defense of laches cannot be applied to prevent Respondent from entering the revocation order in this case. See

Dep't of Highway Safety and Motor Vehicles v. Gordon, 860 So. 2d 469, 471 (Fla. 1st DCA 2003); *Stuart v. State*, 579 So. 2d 864 (Fla. 2d DCA 1991). Petitioner has failed to demonstrate a denial of due process or departure from essential requirements of law occurred in this matter. The Petition is therefore denied.

CONCLUSION

Petitioner failed to demonstrate a denial of due process or departure from essential requirements of law occurred in this matter. The challenged order is supported by substantial, competent evidence. The Petition is denied.

It is hereby ORDERED that the Petition is DENIED.

DONE AND ORDERED in Chambers at New Port Richey, Pasco County, Florida this 1st day of April, 2016.

Original order entered on April 1, 2016, by Circuit Judges Susan Barthle, Shawn Crane and Daniel D. Diskey.