**Petition for Writ of Certiorari to Review Quasi-Judicial Action, Department of Highway Safety and Motor Vehicles:** DRIVER'S LICENSE— Petitioner was afforded adequate due process and there is sufficient evidence to support the revocation of Petitioner's restricted license. Petition denied. *Dennis Bellnier v. State of Florida, Dep't of Highway Safety and Motor Vehicles*, No. 15-CA-3292-ES (Fla. 6th Cir. App. Ct. May 9, 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**

**DENNIS BELLNIER,**
**Petitioner,** **UCN: 512015CA3292CAAXES**

**v.**

**STATE OF FLORIDA, DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES, DUI COUNTERATTACK HILLSBOROUGH, INC., and PRIDE INTEGRATED SERVICES, INC., d/b/a DUI PROGRAMS OF PASCO COUNTY,**
**Respondents.**
_____/

Petition for Writ of Certiorari,

A.R. Mander, III, Esq.,
for Petitioner,

Jason Helfant, Esq.
for Respondent.

## ORDER AND OPINION

Petitioner was afforded procedural due process and the challenged order is supported by substantial, competent evidence. No departure from essential requirements of law occurred in this matter. The Petition is denied.

## STATEMENT OF THE CASE AND FACTS

Petitioner seeks review of an order revoking Petitioner's restricted license as a result of cancellation of Petitioner's participation in the Special Supervision Services Program. Petitioner's license was suspended for life after Petitioner was convicted of DUI four times. Petitioner was granted reinstatement of driving privileges on a restricted basis pursuant to § 322.271, Fla. Stat. As a condition of the restricted license Petitioner

was required to enroll in and comply with terms of a DUI Special Supervision Services Program. *See* § 322.271(2)(c), Fla. Stat. Petitioner enrolled in a DUI Special Services Program, and agreed to the terms and conditions of the Program, which included review of medical records and complete abstinence from alcohol consumption. Petitioner's medical records from other care providers were reviewed by the Program. During a dentist visit on May 26, 2015, Petitioner completed a medical history form and reported alcohol use of four to ten drinks per week. Petitioner alleges this referred to prior, and not current, alcohol use, and that he has been sober since October 29, 2000.

DUI Programs reported Petitioner's noncompliance and recommended cancellation of Petitioner's participation in the Program. Once the Program reported Petitioner's noncompliance, Respondent was statutorily mandated to cancel the restricted driving privilege pursuant to § 322.271(2)(c), Fla. Stat:

> [T]he department shall require such persons upon reinstatement . . . to be supervised by a DUI program licensed by the department, and to report to the program at least three times a year as required by the program for the duration of the revocation period for supervision. . . . If the person fails to comply with the required supervision, the program shall report the failure to the department, and the department shall cancel the person's driving privilege.

Petitioner's driving privilege was cancelled August 21, 2015. Petitioner appealed the cancellation to DUI Counterattack, as authorized by Rule 15A-10.031(2), Fla. Admin. Code, which concurred with the Program's decision to cancel Petitioner's participation, finding the medical history form clearly referred to current, rather than past, alcohol use.

## STANDARD OF REVIEW

Review in this Court of an order from the DHSMV by Petition for Writ of Certiorari is limited to a determination of: "(1) whether procedural due process had been accorded, (2) whether the essential requirements of the law had been observed, and (3) whether the administrative findings and judgment were supported by competent, substantial evidence." *Vichich v. Dep't of Highway Safety and Motor Vehicles*, 799 So. 2d 1069, 1073 (Fla. 2d DCA 2001).

## LAW AND ANALYSIS

Petitioner alleges the revocation of his restricted license based on cancellation of participation in the Program was not based on substantial, competent evidence, and that Petitioner was not afforded due process. Petitioner challenges the constitutionality of the procedures employed, and alleges the procedures do not provide adequate due process.

Petitioner alleges *Truxton v. Dep't of Highway Safety and Motor Vehicles*, 2010-CA-5908-WS (Fla. Sixth Cir. App. Ct. Jan. 28, 2011), is controlling in this case, and stands for the proposition that a self-report on a medical history form is insufficient to support the cancellation. In *Truxton*, the Court found that medical records reporting alcohol use were vague as to whether petitioner was reporting past or current alcohol use, and that the records were legally insufficient to support the order. Petitioner alleges it was a departure from essential requirements of law not to follow *Truxton* as controlling precedent. Petitioner maintains the report of four to ten drinks per week was in reference to past alcohol use. The medical history form is the only evidence that Petitioner consumed alcohol. Petitioner alleges the form in this case was computerized and provided no room for additional responses to questions. The form states:

**Medical History**

Please tell us a little about your medical history now.

. . .

Do you consume alcohol?

The form then contains four boxes which may be marked, indicating consumption of alcohol: 1) never; 2) less than 4 drinks per week; 3) between 4 and 10 drinks per week; or, 4) more than 10 drinks per week. Petitioner selected the box for consuming between 4 and 10 drinks per week. Petitioner alleges that use of the term "medical history" renders the question ambiguous because it does not define a time frame, and history commonly refers to the past, which would explain why Petitioner's answer referred to past alcohol consumption. This form is the only evidence to support Petitioner's cancellation from the Program.

The Summary of Review from DUI Counterattack Supervisor Liz Armstrong states that the questions on the medical history form "refer to both current and past behaviors and the question asking about consumption of alcohol is very clearly stated in the present tense." The record also contains a summary of responses from the other staff members reviewing Petitioner's appeal, and each member agreed with the decision to cancel Petitioner from the Program based on the finding that the medical history form referred to current, and not past, alcohol use. The medical history form in this case indicating Petitioner's consumption of alcohol is sufficient to support Petitioner's cancellation from the Program. The Department was required to revoke Petitioner's license after receiving notification of Petitioner's noncompliance. The finding that the medical history form references current alcohol consumption is supported by the record. *Truxton*, 2010-CA-5908-WS (Fla. Sixth Cir. App. Ct. Jan. 28, 2011), is distinguishable because the medical history form in this case did define a time frame by asking, "Do you consume alcohol?" This Court's review is limited to a determination of whether the record contains evidence sufficient to support the challenged order. *See Dep't of Highway Safety and Motor Vehicles v. Wiggins*, 151 So. 3d 457, 465 (Fla. 1st DCA 2014); *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982). The decision to cancel Petitioner from the program is supported by the evidence.

Petitioner alleges the procedures employed in this case did not provide adequate due process.[1] Once Petitioner's license was reinstated on a restricted basis, Petitioner alleges it could not be revoked without adequate due process. Petitioner alleges due process requires the right to confront and cross-examine witnesses, representation by counsel, findings by a preponderance of the evidence, and a record sufficient to permit meaningful appellate review. Petitioner alleges a due process violation because the statute does not provide for a hearing prior to cancellation of the restricted license.

Petitioner alleges the provision of an opportunity for a face-to-face meeting with the appellant does not provide Petitioner with an adequate hearing, which should include the right to present evidence and confront witnesses. Petitioner does not allege

[1] Although Petitioner challenges the constitutionality of the statutory scheme and procedures employed by Respondent, this Court's review is limited to the question of whether Petitioner was afforded procedural due process in this case. *See Miami-Dade County v. Omnipoint Holdings, Inc.*, 863 So. 2d 195 (Fla. 2003).

that DUI Counterattack denied any request by Petitioner to be represented by counsel, or to present witnesses or evidence. Petitioner alleges further error with the lack of a transcript from the face-to-face meeting. The record includes an account of the meeting provided by DUI Counterattack, but there was no recording or transcript of the meeting.

Respondent contends Petitioner was afforded procedural due process. Petitioner was not entitled to a formal review of the suspension of driving privileges pursuant to § 322.2615, Fla. Stat., because this case involved restricted license privileges which are controlled by §§ 322.271, 322.291 and 322.292, Fla. Stat., and Rule 15A-10.031, and a formal hearing was not required. The Rule requires that the DUI program reviewing the appeal provide the opportunity for a face to face meeting with the appellant, and that the program shall review all written documentation related to the issues resulting in termination. In this case all requirements were met and Petitioner was afforded adequate due process.

Respondent contends the delegation of the review process challenged by Petitioner is authorized by §§ 322.291 and 322.292, Fla. Stat., and Fla. Admin. Code r. 15A-10.031. Respondent contends DUI Programs, as the program with personal knowledge and a history of interaction with Petitioner, is in a better position to render the appropriate decision. Nothing in the record demonstrates Petitioner was denied an opportunity to be represented by counsel, or to present evidence or witnesses during the review by DUI Counterattack. *See Keeling v. Suncoast Safety Counsel*, 17 Fla. L. Weekly Supp. 952a (Fla. Sixth Cir. App. Ct., Apr. 16, 2010). A driver's license is a privilege, and "the reasonable regulation of an individual's privilege to drive is in the interest of the public good." *See Conahan v. Dep't of Highway Safety and Motor Vehicles*, 619 So. 2d 988, 990 (Fla. 5th DCA 1993). Petitioner is not entitled to a restricted license as of right, but was granted the privilege on certain conditions. The lack of pre-deprivation procedures does not amount to a due process violation in this case. *See Mackey v. Montrym*, 443 U.S. 1, 2 (1979). The absence of a transcript in this case does not demonstrate a denial of due process. *See Moore v. Dep't of Highway Safety and Motor Vehicles*, 169 So. 3d 216, 219 (Fla. 2d DCA 2015). Petitioner has failed to demonstrate that adequate due process was not afforded in this case. The Petition is denied.

## CONCLUSION

Petitioner was afforded adequate due process and no departure from essential requirements of law occurred in this matter. The 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 9th day of May, 2016.

Original order entered on May 9, 2016, by Circuit Judges Linda Babb, Susan Barthle and Daniel D. Diskey.