

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

MICHAEL SANDS
Appellant,

vs.

Appeal No. 08-0000-46AP88B

STATE OF FLORIDA, DEPARTMENT
OF HIGHWAY SAFETY AND MOTOR
VEHICLES, DIVISION OF DRIVER
LICENSES,
Appellee.

UCN: 52200

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Appeal from Final Judgment
State of Florida Department
of Highway Safety And
Motor Vehicles
Hearing Officer Sondra C. Boresow

Ricardo Rivera,
Attorney for Appellant

Heather Rose Cramer
Attorney for Appellee

ORDER AND OPINION

THIS CAUSE came before the Court on appeal, filed by Michael Sands from the Final Judgment, entered on November 18th, 2008 in favor of the State of Florida. The Court has considered Petitioner's Initial Brief, Respondent's Response Brief, and Petitioner's Reply. Upon review, the Court affirms the Final Judgment.

Facts

Petitioner, Michael Sands requested a formal administrative review of his license suspension pursuant §322.2615, Florida Statutes. Petitioner was arrested for a DUI and his license was suspended for a year due to Petitioner's failure to submit three valid

breath samples, as requested by police officers pursuant to Florida Statute §322.2615 (7)

(b). In submitting the supporting documents, the arresting police officer failed to sign the “Refusal to Submit to a Breath, Blood or Urine.” An evidentiary hearing regarding the suspension of Mr. Sands’ license was held on November 18, 2008. The hearing officer for the Department of Motor Vehicles found by a preponderance of the evidence the suspension of the Petitioner’s license should be sustained. Petitioner seeks review from this Court.

Issues/ Legal Standard of Review

The substantial issue brought by Petitioner was whether the Failure to Submit a Breath, Blood, or Urine Sample Affidavit was properly submitted into evidence due to the lack of a signature by the arresting officer. The standard of review applicable in reviewing administrative action taken by a department is (1) whether the Department’s actions accorded the defendant procedural due process (2) whether the essential requirements of law have been observed and (3) Whether the administrative findings and judgment were supported by substantial competent evidence. See Vichich v. Department of Highway Safety and Motor Vehicles, 799 So.2d 1069, 1073 (Fla.2d DCA 2001) (setting forth the standard of review for administrative action taken by the department). The only issue this court seems necessary to address brought by Petitioner is whether there was competent substantial evidence to support the hearing officer’s findings. The other two factors this Court has reviewed and finds no merit in Petitioner’s argument.

Notwithstanding Humes v. Department of Highway Safety and Motor Vehicles, Case No.: 512007CA856WS/P (Fla. 6th Cir. Ct. Sept. 18, 2007), the binding precedent of the 5th DCA in State of Florida, Department of Highway Safety and Motor Vehicles v. Perry, 751 So. 2d 1277 (Fla. 5th DCA 2000) “requires only that an affidavit stating the breath,

blood, or urine test was requested by a law enforcement officer, implied consent warnings were given, and that the person refused to submit. Perry, at 1278. In this circumstance all three of these criteria were met. There is also competent substantial evidence to support hearing officer Boresow's finding Petitioner was read "implied consent" and was properly informed of the penalty for refusing to submit to a breath test. Therefore, it is **ORDERED AND ADJUDGED** Petitioner's motion for Writ of Certiorari is DENIED.

DONE AND ORDERED in Chambers, at St. Petersburg, Pinellas County,
Florida this 16 day of July, 2009.

Original order entered on July 16, 2009 by Circuit Judges Amy M. Williams, Peter Ramsberger, and Mark I. Shames.

Copies furnished to:

Ricardo Rivera
250 North Belchar Road, Suite 102a
Clearwater, Florida 33765

Heather Rose Cramer
Assitant General Counsel
Department of Highways Safety
And Motor Vehcles
Post Office Box 540609
Lake Worth, Florida, 33454