

**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**

**ROBERT DEWITT,**  
**Petitioner,**

**Case No.: 14-000076AP-88A**  
**UCN: 522014AP000076XXXXCI**

**v.**

**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

Thomas W. Cauffman, Esq.  
Peter J. Molinelli, Esq.  
Attorneys for Petitioner

Stephen D. Hurm, Gen. Counsel  
Nicholas A. Merlin, Asst. Gen. Counsel  
Attorneys for Respondent

**PER CURIAM.**

Robert Dewitt seeks certiorari review of the "Final Order" of the Hearing Officer of the Bureau of Administrative Reviews, Department of Highway Safety and Motor Vehicles entered on October 16, 2014. The petition is denied.

### **Statement of Case**

Mr. Dewitt's Florida driving privileges were revoked effective May 20, 1999, pursuant to section 322.27, Florida Statutes (1999). In 2014, pursuant to section 322.44, Article V(2), Florida Statutes (2014), Mr. Dewitt requested that the Department determine if a new Florida license should be issued.

The Hearing Officer conducted an administrative hearing to determine if it would be safe to issue a Florida driver's license to Mr. Dewitt. The Final Order denied Mr. Dewitt's request for reinstatement of his driving privileges under Chapter 322.

#### **Timeline:**

12/06/1992	First Driving Under the Influence ("DUI") offense in New York.
05/30/1994	Second DUI offense in New York.
12/29/1994	In New York Mr. Dewitt convicted of the two DUIs.
11/26/1998	Third DUI offense in New York.
03/02/1999	Florida driver's license issued to Mr. Dewitt.
05/20/1999	In New York Mr. Dewitt convicted of third DUI.  Florida revokes Mr. Dewitt's license for five years based on the New York DUI convictions.
05/19/2004	Florida revocation of driver's license expired.
07/30/2008	Florida renewed Mr. Dewitt's driver's license.
09/25/2012	New York law became effective permanently revoking driver's licenses of drivers with three or more New York DUIs in the previous twenty-five years.
06/09/2013	Florida driver's license scheduled to expire.
02/06/2014	Application for renewal of Florida driver's license denied by Pinellas County Tax Collector with statement: "WE ARE UNABLE FO ISSUE A DRIVERS LICENSE TO YOU UNTIL YOUR RECORD IS CLEARED UP ON THE NATIONAL DRIVER'S REGISTRY." (Resp. App. p. 7)
09/04/2014	Settlement Agreement with Department to conduct investigation into whether it would be safe to grant driver's license to Mr. Dewitt. (App. p. 5-6).
10/14/2014	Hearing conducted by Bureau of Administrative Reviews. (App. 10-25).
10/16/2014	Final Order finding it unsafe to issue driver's license to Mr. Dewitt. (App. 1-2).

### **Standard of Review**

Circuit court certiorari review of an administrative agency decision is governed by a three-part standard: (1) whether procedural due process has been 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 & Motor Vehicles v. Sarmiento, 989 So. 2d 692, 693 (Fla. 4th DCA 2008). This Court is not entitled to reweigh the evidence; it may only review the evidence to determine whether it supports the hearing officer's findings and Decision. Dep't of Highway Safety & Motor Vehicles v. Stenmark, 941 So. 2d 1247, 1249 (Fla. 2d DCA 2006).

### **Analysis**

Mr. Dewitt does not complain that he was not afforded procedural due process. Three arguments are presented in the petition:

**(1) "The hearing officer's findings and judgment are not supported by competent substantial evidence."**

On page one of the Final Order, the Hearing Officer found "Mr. Dewitt's privilege to drive is currently under a permanent revocation in the State of New York for three convictions of driving under the influence." (App. 1). On page two of the Final Order, the Hearing Officer made the following finding:

Upon review of the Department's records and information received at the review, this hearing officer finds, that due to his three previous convictions of driving under the influence in the State of New York that are currently unresolved, this hearing officer believes it would be unsafe to issue Mr. Dewitt a Florida driver license. Based on these facts, there is competent substantial evidence to deny the Petitioner the opportunity to be issued a driver's license.

(App. 2)(emphasis added).

Mr. Dewitt argues that the Hearing Officer's finding that the three New York DUI convictions are "unresolved" is not supported by the evidence. The evidence presented clearly demonstrated that the New York DUI convictions are resolved. Based on this erroneous description of the status of Mr. Dewitt's New York DUI convictions by the Hearing Officer, Mr. Dewitt asserts the Final Order must be reversed under section 120.68(10), Florida Statutes (2014), governing final orders of an agency.

Section 322.31, Florida Statutes (2014), governs the right to review final orders of the Department of Highway Safety and Motor Vehicles. It provides that the denial of a license, or when a license has been canceled, suspended or revoked is only reviewable by a petition for writ of certiorari, not by the dictates of section 120.68(10).

In reviewing the sufficiency of the evidence, this Court is to determine if administrative findings and judgment are supported by competent, substantial evidence. "The preponderance of the evidence standard [is] evidence which as a whole shows that the fact sought to be proved is more probable than not . . . . Substantial evidence has been defined as evidence 'which a reasoning mind would accept as sufficient to support a particular conclusion and consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance.' " State v. Edwards, 536 So. 2d 288, 292 (Fla. 1st DCA 1988).

In the present case the Hearing Officer specifically noted in the Final Order and was aware of the fact that Mr. Dewitt's driving privilege in New York had been permanently revoked. The Hearing Officer's task at the October 14, 2014, hearing was to determine if the evidence presented demonstrated that it was safe to issue a Florida driver's license to Mr. Dewitt.

This Court in its appellate capacity is not to reweigh the evidence. Stenmark, 941 So. 2d at 1249. We conclude that competent, substantial evidence presented to the Hearing Officer supports her findings and decision on the issue of whether it was safe to issue a Florida driver's license to Mr. Dewitt. The fact that the Hearing Officer incorrectly referenced the New York convictions as "unresolved" did not negate the remaining evidence. The petition is denied on this basis.

**(2) The hearing officer failed to observe the essential requirements of law in failing to follow the Driver Compact in Section 322.44, Article V, Florida Statutes" (2014).**

Section 322.44 states in part:

Driver License Compact.—The Driver License Compact is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

....

ARTICLE IV

EFFECT OF CONVICTION.—

(1) The licensing authority in the home state, for the purposes of suspension, revocation, or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported, pursuant to article III, as it would if such conduct had occurred in the home state, in the case of convictions for:

....

(b) Driving a motor vehicle while under the influence of alcoholic beverages or a narcotic drug, or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle, as provided by s. 316.193;

....

#### ARTICLE V

APPLICATIONS FOR NEW LICENSES.—Upon application for a license to drive, the licensing authority in a party state shall ascertain whether the applicant has ever held, or is the holder of, a license to drive issued by any other party state. The licensing authority in the state where application is made shall not issue a license to drive to the applicant if:

....

(2) The applicant has held such a license, but the same has been revoked by reason, in whole or in part, of a violation and if such revocation has not terminated, except that after the expiration of 1 year from the date the license was revoked, such person may make application for a new license if permitted by law. The licensing authority may refuse to issue a license to any such applicant if, after investigation, the licensing authority determines that it will not be safe to grant to such person the privilege of driving a motor vehicle on the public highways.

(Emphasis added).

Mr. Dewitt asserts that under section 322.44, Article V(2), following the mandatory one year time period after the driver's license from another state has been revoked, the Department must (1) grant the application for a driver's license or (2) initiate an investigation of the applicant to determine whether it would be safe to issue a license to the applicant. Requiring a Florida resident to get his out-of-state license "cleared up" before issuance of a Florida driver's license allegedly would render section 322.44, Article (V)(2) meaningless.

It is asserted that the Hearing Officer did not comply with section 322.44 because she improperly concluded that because Mr. Dewitt's three New York DUIs were "unresolved" it would be unsafe to issue a Florida license to him. Mr. Dewitt claims he was subjected to unjust discrimination and his equal protection rights were violated because he is treated differently than his Florida neighbors with the same or worse driving records.

A review of the transcript of the October 14, 2014, hearing reveals that when the hearing commenced it appears the Hearing Officer was unsure of the scope of the hearing. The Hearing Officer incorrectly stated, "This hearing allows you the opportunity

to submit evidence to the Department as to why your privileges to drive should not have been suspended, revoked, canceled, or disqualified." (Resp. App. 83). However, counsel for Mr. Dewitt explained to the Hearing Officer the purpose of the hearing pursuant to the terms of the Settlement Agreement:

[O]ur purpose here today is that the Department was going to conduct a hearing to determine whether it would be safe to grant Mr. Dewitt a driver's license and that this was not – the purpose of this hearing was not to rehash his old driving record.

We've been through the court system on that, and the outcome is that if it is today safe to give Mr. Dewitt a license – in other words, he's qualified to, like any other citizen, go down and apply for a license, take a road test, a vision test, that he's entitled to do that.

(App. 14-15). The Hearing Officer stated that it was her understanding that the hearing "is to show why he should not – no longer be suspended, or why he should be issued the license." (App. 15). Thereafter, the Hearing Officer did express some confusion about whether Mr. Dewitt would be required to show that his New York driving privileges had been reinstated. However, after further explanation by counsel for Mr. Dewitt, the Hearing Officer understood the scope of the hearing and testimony was taken from Mr. Dewitt about his ability to drive safely. The Hearing Officer also questioned Mr. Dewitt about his current drinking habits to obtain further information in the investigation to determine if it was safe to issue a driver's license to Mr. Dewitt. (App. 23).

The Final Order demonstrates that the scope of the hearing under section 322.44 ultimately was understood and followed by the Hearing Officer as she specifically concluded that it was not safe to issue a Florida driver's license to Mr. Dewitt. (App. 2).

This Court concludes that the Hearing Officer did not depart from the essential requirements of law because in compliance with section 322.44 she conducted a hearing to investigate whether it would be safe to issue a driver's license to Mr. Dewitt. The statute specifically provides that the licensing authority may refuse to issue a license to the applicant if it "determines that it will not be safe to grant to such person the privilege of driving a motor vehicle on the public highways." This is exactly what the Hearing Officer did at the October 16, 2014, hearing. The petition is denied on this basis.



For the first time in the petition, counsel for Mr. Dewitt raises an argument about equal protection and claims discrimination. No such argument was presented at the October 16, 2014, hearing. Counsel only made one statement concerning Mr. Dewitt's status:

And so that puts someone who now lives in Florida – like Mr. Dewitt's lived here for years and years – in a different position, having previously resided in New York, as a Florida citizen that's lived in Florida all the time.

As you know, there certainly are folks in Florida that have had three or more alcohol- or drug-related driving offenses that, with the passage [of] time and whatnot, do have valid Florida driver's licenses, just because Florida law is different than New York law.

(App. 17). "[A] petition seeking certiorari review is not the proper procedural vehicle to challenge the constitutionality of a statute or ordinance." Miami-Dade County v. Omnipoint Holdings, Inc., 863 So. 2d 195, 199 (Fla. 2003). A challenge to the constitutionality of a statute "must be determined in original proceedings before the circuit court, not by way of a petition for writ of certiorari." Id. (internal quotation marks and citations omitted). Mr. Dewitt did not argue to the Hearing Officer that there was an equal protection violation or discrimination and did not obtain a ruling on the constitutionality of the statute as applied to Mr. Dewitt. The petition is denied on this basis.

**(3) The hearing officer failed to observe the essential requirements of law in not following Section 322.05, Florida Statutes" (2014).**

Mr. Dewitt argues that the Hearing Officer departed from the essential requirements of law because she did not follow the requirements of section 322.05<sup>1</sup> in

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<sup>1</sup> **322.05. Persons not to be licensed**

The department may not issue a license:

(1) To a person who is under the age of 16 years, except that the department may issue a learner's driver license to a person who is at least 15 years of age and who meets the requirements of ss. 322.091 and 322.1615 and of any other applicable law or rule.

(2) To a person who is at least 16 years of age but is under 18 years of age unless the person meets the requirements of s. 322.091 and holds a valid:

- (a) Learner's driver license for at least 12 months, with no moving traffic convictions, before applying for a license;
- (b) Learner's driver license for at least 12 months and who has a moving traffic conviction but elects to attend a traffic driving school for which adjudication must be withheld pursuant to s. 318.14; or
- (c) License that was issued in another state or in a foreign jurisdiction and that would not be subject to suspension or revocation under the laws of this state.

(3) To a person who is at least 16 years of age but who is under 18 years of age, unless the parent, guardian, or other responsible adult meeting the requirements of s. 322.09 certifies that he or she, or another licensed driver 21 years of age or older, has accompanied the applicant for a total of not less than 50 hours' behind-the-wheel experience, of which not less than 10 hours

that "a person with unresolved DUIs in another state" is not included in the statutory list of persons not to be issued a driver's license. Further, Mr. Dewitt asserts that the Hearing Officer failed to follow the essential requirements of law "in not defining the parameters for the hearing."

Petitioner's argument is without merit. The Final Order does not state that Mr. Dewitt would not be issued a driver's license due to the requirements of section 322.05. The Hearing Officer conducted a hearing in accordance with section 322.44, Article V(2), to determine if it was safe to issue a driver's license to Mr. Dewitt.

The transcript of the hearing reveals that the scope of the hearing was thoroughly discussed by counsel for Mr. Dewitt and the Hearing Officer. Further, the Hearing Officer permitted counsel for Mr. Dewitt to question his client without restriction and testimony was freely presented. The Hearing Officer also made inquiry of Mr. Dewitt.

No restrictions were placed upon the hearing in order for all evidence to be presented to determine if it was safe to issue a Florida driver's license to Mr. Dewitt. The Hearing Officer followed the requirements of section 322.44, Article V(2), in conducting an investigation to make this determination. The Hearing Officer did not depart from the essential requirements of law. The petition is denied on this basis.

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must be at night. This subsection is not intended to create a private cause of action as a result of the certification. The certification is inadmissible for any purpose in any civil proceeding.

(4) Except as provided by this subsection, to any person, as a Class A licensee, Class B licensee, or Class C licensee, who is under the age of 18 years.

(5) To any person whose license has been suspended, during such suspension, nor to any person whose license has been revoked, until the expiration of the period of revocation imposed under the provisions of this chapter.

(6) To any person, as a commercial motor vehicle operator, whose privilege to operate a commercial motor vehicle has been disqualified, until the expiration of the period of disqualification.

(7) To any person who is an habitual drunkard, or is an habitual user of narcotic drugs, or is an habitual user of any other drug to a degree which renders him or her incapable of safely driving a motor vehicle.

(8) To any person who has been adjudged to be afflicted with or suffering from any mental disability or disease and who has not at the time of application been restored to competency by the methods provided by law.

(9) To any person who is required by this chapter to take an examination, unless such person shall have successfully passed such examination.

(10) To any person, when the department has good cause to believe that the operation of a motor vehicle on the highways by such person would be detrimental to public safety or welfare. Deafness alone shall not prevent the person afflicted from being issued a Class E driver license.

(11) To any person who is ineligible under s. 322.056.



**Conclusion**

Procedural due process has been accorded, the essential requirements of law have been observed, and the Hearing Officer's findings and Final Order are supported by competent, substantial evidence.

The Petition for Writ of Certiorari is denied.

**DONE AND ORDERED** in Chambers in Clearwater, Pinellas County, Florida, this  
30 day of April, 2015.

Original Order entered on April 30, 2015, by Circuit Judges Linda R. Allan, Keith Meyer, and Patricia Muscarella.

Copies furnished to:

Thomas W. Cauffman, Esq.  
Peter J. Molinelli, Esq.  
4905 W. Laurel St., Ste. 200  
Tampa, FL 33607

Stephen D. Hurm, Gen. Counsel  
Nicholas A. Merlin, Asst. Gen. Counsel  
2900 Apalachee Parkway, Rm. A-432  
Tallahassee, FL 32399