

**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**

TODD MICHAEL ROEGNER,  
Petitioner,

v.

Ref. No. 19-000006-AP-88B  
UCN: 522019AP000006XXXXCI

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

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**ORDER AND OPINION**

Petitioner challenges a final order from the Department of Highway Safety and Motor Vehicles (“DHSMV”) upholding the suspension of his driver’s license for driving under the influence (“DUI”) under section 322.2615, Florida Statutes. For the reasons set forth below, the Petition for Writ of Certiorari is denied.

**Facts and Procedural History**

In the DHSMV’s final order, the Hearing Officer found the following facts to be supported by a preponderance of the evidence:

On October 12, 2018, at approximately 1:14 a.m., Officer Flowers observed the Petitioner operating a scooter (year 2015; make, Yama/Zuma; color, green; serial number RKRSA43AOFA120152; license plate #3667NT) without wearing eye protection. Officer Flowers conducted a traffic stop and upon contact with the Petitioner, observed numerous signs of impairment.

Officer Hastings arrived on scene and upon contact with the Petitioner: detected an odor of an alcoholic beverage; his eyes were bloodshot and watery; his speech was slurred; and he would sway while standing.

The Petitioner performed Field Sobriety Exercises poorly and was arrested for DUI.

The Petitioner was transported to the Clearwater Police Department to administer a breath test, he refused to take a breath test, he was read Implied Consent and he still refused.

The Petitioner was issued a citation (citing statute 316.211(2)), for not wearing eye protection. On November 21, 2018, counsel provided a copy of the Petitioner’s vehicle title indicating the vehicle was 49cc. The title reflects the same VIN number that is listed on the arrest report and DE2.

After review, the Hearing Officer upheld the license suspension. Petitioner then filed the instant Petition for Writ of Certiorari.

### **Standard of Review**

“[U]pon first-tier certiorari review of an administrative decision, the circuit court is limited to determining (1) whether due process was accorded, (2) whether the essential requirements of the law were observed, and (3) whether the administrative findings and judgment were supported by competent, substantial evidence.” *Wiggins v. Dep’t of Highway Safety & Motor Vehicles*, 209 So. 3d 1165, 1174 (Fla. 2017).

### **Discussion**

Petitioner asserts that the Hearing Officer’s decision departs from the essential requirements of the law and is not supported by competent, substantial evidence. Both arguments rely solely on an alleged ambiguity in section 316.211(3)(a), Florida Statutes. Section 316.211, Florida Statutes, delineates “[e]quipment for motorcycle and moped riders,” which includes “protective headgear” and “an eye-protective device.” The subsection at issue reads as follows:

This section does not apply to persons riding within an enclosed cab or to any person 16 years of age or older who is operating or riding upon a motorcycle powered by a motor with a displacement of 50 cubic centimeters or less or is rated not in excess of 2 brake horsepower and which is not capable of propelling such motorcycle at a speed greater than 30 miles per hour on level ground.

§ 316.211(3)(a), Fla. Stat. Petitioner posits two different interpretations of the statute: the first interpretation applies the final phrase, “and which is not capable of propelling such motorcycle at a speed greater than 30 miles per hour on level ground[,]” only to the immediately preceding phrase, “not in excess of 2 brake horsepower.” The second interpretation applies the final phrase individually to both preceding phrases (regarding motor displacement and brake horsepower).

The Hearing Officer applied the second interpretation and determined that “[t]he vehicle was identified to be less than 50cc[;] however[,] it was not established that the vehicle was not capable of obtaining a speed of greater than 30 miles per hour on level ground.” Petitioner maintains that the Hearing Officer incorrectly interpreted the controlling statute. He asserts that the statute should be read according to the first interpretation, which would allow him to fall within the exemption because he proved at the hearing that his scooter’s motor is rated at 49 cubic centimeters. However, an analysis of the canons of statutory interpretation, along with the statute’s

legislative history and intent, supports the Hearing Officer's interpretation. Accordingly, the Hearing Officer's decision did not depart from the essential requirements of the law.

Petitioner further contends that even under the Hearing Officer's interpretation of the statute the Petition should be granted because there is no evidence in the record to show that his scooter is capable of speeds greater than 30 miles per hour. However, at no time during the evidentiary hearing did Petitioner preserve the issue of his scooter's speed capability for review by raising the issue before the Hearing Officer. *See Tillman v. State*, 471 So. 2d 32, 35 (Fla. 1985) (opining that "[i]n order to be preserved for further review by a higher court, an issue must be presented to the lower court and the specific legal argument or ground to be argued on appeal or review must be part of that presentation"). As such, Petitioner is now precluded from raising the issue of the scooter's speed capability.

### **Conclusion**

Based on the facts and analysis set forth above, it is

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

**DONE AND ORDERED** in Chambers at St. Petersburg, Pinellas County, Florida, this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

Original Order entered on November 4, 2019, by Circuit Judges Pamela A.M. Campbell, Amy M. Williams, and Thomas M. Ramsberger.

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