

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

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

STEVEN WAYNE STICKLER,
Petitioner,

v.

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

Ref. No. 19-000050AP-88B

UCN: 522019AP000050XXXX01

FILED
CRIMINAL COURT RECORDS
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KEN BURKE
CLERK OF CIRCUIT COURT
AND COMPTROLLER

ORDER AND OPINION

Petitioner challenges a final order from the Department of Highway Safety and Motor Vehicles ("DHSMV") sustaining the suspension of his driving privilege pursuant to § 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 May 28, 2019, Lieutenant Euler observed the Petitioner's vehicle fail to stop at a stop sign at 54th Avenue North and 67th Street North. Lieutenant Euler conducted a traffic stop, made contact with the Petitioner, observed signs of impairment and requested further investigation.

Deputy Wede arrived at the stop, made contact with the Petitioner and observed signs of impairment. The Petitioner had bloodshot glassy eyes and had the distinct odor of an alcoholic beverage coming from his breath. The Petitioner was unsteady after exiting his vehicle.

Deputy Wede requested the Petitioner perform Field Sobriety Tests. The Petitioner performed poorly and was placed under arrest for DUI. Deputy Wede asked the Petitioner to submit to a breath test which the Petitioner refused after being read Implied Consent.

Deputy Wede's Complaint/Arrest Affidavit states the Petitioner had a prior refusal to submit on July 3, 2001.

After the Hearing Officer upheld the license suspension, Petitioner 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 order is not supported by competent, substantial evidence because Respondent failed to enter into evidence Petitioner's driving record “or any documentation” to establish Petitioner had previously refused to submit to a breath or urine test. Petitioner contends “[t]he only evidence on the record that indicates that Petitioner's current refusal to submit to a breath test is his second or subsequent refusal is Deputy Wede's Citation and his statement in his Arrest Affidavit.” Here, Petitioner was charged with a Driving Under the Influence and Refusal to Submit to Testing under Florida Statutes § 316.1939, which makes a second refusal a misdemeanor. The arrest affidavit for Refusal to Submit to Testing states that “Defendant had a prior refusal to submit on 07/03/2001 (402009X).” The applicable statute and regulations governing these administrative hearings do “not prohibit the admission or consideration of hearsay evidence [or] require that hearsay evidence be corroborated by non-hearsay evidence.” *State Dep't of Highway Safety & Motor Vehicles v. Saxlehner*, 96 So. 3d 1002, 1008 (Fla. 3d DCA 2012). Moreover, Florida Statutes § 322.2615(2)(b) states “[m]aterials submitted to the department by a law enforcement agency . . . shall be considered self-

authenticating and shall be in the record for consideration by the hearing officer.” Accordingly, the citation and arrest affidavit are competent, substantial evidence.

Conclusion

Because the Hearing Officer’s order is supported by competent, substantial evidence, it is

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

DONE AND ORDERED in Chambers at St. Petersburg, Pinellas County, Florida, this

_____ day of _____, 2020.

Original Order entered on May 11, 2020, by Circuit Judges Pamela A.M. Campbell, Linda R. Allan, and Thomas M. Ramsberger.

Copies furnished to:

PAUL HORNING, ESQ.
PLOTNICK LAW, PA
1515 FOURTH STREET NORTH
ST. PETERSBURG, FL 33704

MARK L. MASON, ESQ.
DEPARTMENT OF HIGHWAY SAFETY & MOTOR VEHICLES
2900 APALACHEE PARKWAY, A-432
TALLAHASSEE FL 32399-0504