

**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, FLORID  
APPELLATE DIVISION**

**SCOTT. D. RODRIQUEZ,**  
Petitioner

**REF: 18-000055AP-88A  
UCN: 522018AP000055XXXXCI**

**-vs-**

**STATE OF 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

Scott Rodriguez  
Petitioner

Christine Utt, Gen. Counsel  
Mark L. Mason, Asst. Gen. Counsel  
Attorneys for Respondent

**PER CURIAM**

Scott Rodriguez seeks certiorari review of the “Final Order Sustaining Permanent Revocation for DUI” of the Hearing Officer of the Bureau of Administrative Reviews, Department of Highway Safety and Motor Vehicles (“DHSMV”) entered August 20, 2018. The Petition is granted only for the limited purpose to correct the scrivener’s error in the Final Order. The matter is remanded to the Department of Highway Safety and Motor Vehicles to issue a Final Order Sustaining Permanent Revocation citing the correct statute.

“(U)pon the 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.” *Moore v. Department of Highway Safety and Motor Vehicles*, 169 So. 3d 216, 219 (Fla. 2<sup>nd</sup> DCA 2015).

Petitioner’s driving privileges were suspended pursuant to a negotiated plea of no contest February 21, 1995 to the charge of DUI Manslaughter, a violation of §316.193 (3), Fla. Stat. (1994). The court pronounced a lifetime revocation of Defendant’s driver license. On June 6, 2018, Petitioner filed a Motion for Relief of Vacated Final Judgment/Permanent License Revocation Sanction which was denied. The Order stated “A sentence is separate from the administrative revocation and the Court could not vacate administrative action, and further, the 1995 conviction remained unchanged as a result of the 2004 resentencing.” (*Respondent’s Exhibit B*)

Petitioner requested a show cause hearing before the Department to show cause why Petitioner’s license should not be reinstated. Petitioner’s hearing was held August 20, 2018 to afford Petitioner the opportunity to submit evidence that the Petitioner’s driving privilege should not have been permanently revoked. The hearing officer found the Petitioner did not provide any evidence to show that his driving privilege should not have been permanently revoked. The Final Order states Petitioner’s driving privilege was revoked for four or more convictions of DUI pursuant to section §322.28(2)(e) Fla. Stat. rather than a permanent revocation for the DUI Manslaughter conviction.

There is not transcript of the administrative hearing contained in the record. However, Petitioner states that the hearing officer had in his possession Petitioner’s driving record “which he read aloud twice during the hearing.” *Petitioner’s Initial Brief page 4*. Petitioner’s driving record has a description and length of the revocation. The

description is "Sanction Code: 9; DUI Manslaughter/DUI/DUBAL/VEH HOM; Revocation is a Result of Violation; Number 16; Citation Number 70880DS; Circuit Court Action; Rev Period Recommended by Court. The length of the revocation is listed as Permanent.

Petitioner's arguments that the essential requirements of law were not observed and the findings of the DHSMV hearing officer were not based upon competent substantial evidence because the Final Order Sustaining Permanent Revocation for DUI cited the incorrect statute are without merit. The hearing officer performed the administrative function of abiding the lawful court order recommending permanent revocation of Petitioner's driving privilege. Petitioner's driving record, which was read aloud twice in the hearing, reflects that his driving privilege was permanently revoked by court action. A scrivener's error does not and cannot modify the prior court order of a lifetime revocation of Petitioner's driving privilege.

Accordingly, it is

**ORDERED AND ADJUDGED** that this matter is remanded to the Department of Highway Safety and Motor Vehicles for the limited purpose of issue a new order citing the correct statute sustaining Petitioner's permanent revocation for DUI manslaughter.

**DONE AND ORDERED** in Chambers at Clearwater, Pinellas County, Florida this 27th day of April, 2020.

**TRUE COPY**

Original Order entered on April 27, 2020, by Circuit Judges Jack R. St. Arnold, Patricia Muscarella, and Keith Meyer.

*Copies furnished to:*

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