

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

SCOTT D. RODRIGUEZ,
Petitioner,

Case No.: 19-000005AP-88A
UCN: 522019AP000005XXXXCI

v.

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.

Petitioner challenges a final order from the Department of Highway Safety and Motor Vehicles ("DHSMV") denying reinstatement of his hardship license. Petitioner asserts that the DHSMV's final order was not supported by competent, substantial evidence and his due process rights were violated. Because Respondent concedes that Petitioner's due process rights were violated when the DUI program refused to hear his internal appeal, the Petition for Writ of Certiorari is granted.

STANDARD OF REVIEW

“(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. Dep’t of Highway Safety & Motor Vehicles*, 169 So. 3d 216, 219 (Fla. 2nd DCA 2015).

DISCUSSION

In 1995, Petitioner was convicted of DUI manslaughter and his driver’s license was permanently revoked. However, Petitioner was eligible for a hardship license providing a restricted driving privilege after five years. Eligibility for a hardship license following a permanent revocation requires permanent enrollment in a DUI program, which involves attendance at scheduled meetings and abstaining from the use of all drugs, including alcohol. Fla. Admin. Code Rs. 15A-10.030, 15A-10.034. Petitioner was previously disqualified from a DUI program due to a failure to attend meetings. He was allowed to reapply and he did, but the program determined he was not eligible due to medical records indicating that he was still drinking in 2016, which made him “statutorily ineligible for the SSS program by not having 5 years of abstinence.”

Under Florida Administrative Code rule 15A-10.031(1), Petitioner could appeal that decision to a second DUI program, which he did. According to Respondent, the DHSMV was never advised of the appeal, “but instead was only notified by DUI Counterattack that the Petitioner had been denied reenrollment.” Based on the apparent failure to appeal, the DHSMV entered the December 18, 2018 order denying reinstatement that is subject to review in this proceeding. Respondent acknowledges that the second DUI program’s

refusal to hear Petitioner's internal appeal constituted a due process violation warranting remand.

Accordingly, it is

ORDERED AND ADJUDGED that the Petition for Writ of Certiorari is granted. The matter is remanded to allow for Petitioner's internal appeal.

DONE AND ORDERED in Chambers in Clearwater, Pinellas County, Florida, this 19th day of May, 2020.

TRUE COPY

Original Order entered on May 19, 2020, by Circuit Judges Jack R. St. Arnold, Patricia A. Muscarella, and Keith Meyer.

Copies furnished to:

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