

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

STEVEN BRIAN ARMENDINGER,
Petitioner,

v.

STATE OF FLORIDA, DEPARTMENT
OF HIGHWAY SAFETY AND MOTOR
VEHICLES, et al.,
Respondents.

Ref. No. 20-000024AP-88B

UCN: 522020AP000024XXXXCI

KEN BURKE
CLERK OF CIRCUIT COURT
AND COMPTROLLER

2020 DEC 23 AM 10:21

FILED
CRIMINAL COURT RECORDS

ORDER AND OPINION

PER CURIAM.

Denied. Petitioner admitted to eating two-thirds of a piece of cake with rum frosting. Assuming arguendo that it was the cause of the interlock ignition device's breath-alcohol reading of 0.083, the applicable statute requires Petitioner to have "been drug-free for at least 5 years prior to the hearing" and makes no exception for accidental consumption. *See* § 322.271(5)(a)3, Fla. Stat. Accordingly, Respondents' decision is supported by competent, substantial evidence. In addition, Petitioner has not demonstrated a violation of his due process rights that would allow this Court to grant the Petition. *See Keeling v. Dep't of Highway Safety & Motor Vehicles*, 17 Fla. L. Weekly Supp. 952a (Fla. 6th Cir. Ct. App., Apr. 16, 2010) (holding that "the lack of an attorney does not deprive Petitioner of a meaningful review or due process"); *Paul v. Dep't of Highway Safety & Motor Vehicles*, 15 Fla. L. Weekly Supp. 1043a (Fla. 6th Cir. Ct. App., Sept. 15, 2008) (holding that where a petitioner was not advised of the ability to get a urine sample retested, "if [it] was error, it was harmless, because the petitioner's defense was not that he had not consumed a prohibited substance, but that he had done so unknowingly and by mistake").

DONE AND ORDERED in Chambers at St. Petersburg, in Pinellas County, Florida, on this day of , 2020.

Original Order entered on December 22, 2020, by Circuit Judges Linda R. Allan, Pamela A.M. Campbell, and Thomas M. Ramsberger.

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