

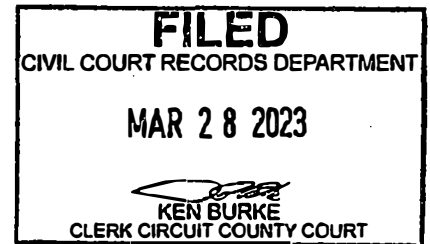
IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, STATE OF FLORIDA
APPELLATE DIVISION

ZACHARY PULITZER,
Petitioner,

REF: 21-000027-AP
UCN: 522021AP000027XXXXCI

v.

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



Opinion filed 03/28/2023

Petition for Writ of Certiorari for relief
from a final administrative order of the
Department of Highway Safety and
Motor Vehicles

Keeley R. Karatinos, Esq.
Counsel for Petitioner

Kathy A. Jimenez-Morales, Esq.
Counsel for Respondent

PER CURIAM

Petitioner, Zachary Pulitzer, seeks certiorari review of a final
administrative order, Findings of Fact, Conclusions of Law and Decision,
entered on August 27, 2021 by the hearing officer for the State of Florida
Department of Highway Safety and Motor Vehicles (hereafter, "DHSMV").

This Court has appellate jurisdiction pursuant to Art V § 5(b), Fla. Const.,

Fla. Stat. 322.31, Fla. Admin. Code R. 15A-6.019, and Fla. R. App. P. 9.030(c). Following review, we affirm the decision of the lower tribunal.

STATEMENT OF FACTS

On July 26, 2021, Petitioner, Zachary Pulitzer, was the subject of a traffic stop on suspicion of driving under the influence. Petitioner was placed under arrest for driving under the influence and subsequently transported to the DeSoto County Jail. At the facility, Petitioner refused to submit to a breath analysis test. Petitioner signed an implied consent warning apprising him of the consequences for refusing to provide a breath sample. Much of Petitioner's concern involves the alleged "conflict" between the time entries in the documentary evidence and the narrative sequence of events in the same.

Pursuant to Fla. Stat. § 322.2615(a), the Department of Highway Safety and Motor Vehicles suspended Petitioner's driving privileges. Petitioner requested a formal review, and a hearing was held on August 23, 2021. The hearing officer affirmed the suspension of the Petitioner's driving privileges by final administrative order dated August 27, 2021.

STANDARD OF REVIEW

Fla. Stat. § 322.31 provides a right of review for the final orders and rulings of the DHSMV when the department denies, cancels, suspends, or

revokes such license. The appellate court shall review the decision “in the manner and within the time provided by the Florida Rules of Appellate Procedure only by a writ of certiorari issued by the circuit court in the county wherein such person shall reside, in the manner prescribed by the Florida Rules of Appellate Procedure.” Id.

The Supreme Court of Florida, in City of Deerfield Beach v. Vaillant, 419 So.2d 624 (Fla. 1982), held that where full review of administrative action is given in the circuit court as a matter of right, the circuit court must determine: (1) whether procedural due process is accorded, (2) whether the essential requirements of law have been observed, and (3) whether the administrative findings and judgment are supported by competent substantial evidence.

ANALYSIS

Petitioner’s sole argument for review is whether competent, substantial evidence supports a finding that Petitioner’s implied consent warning and subsequent refusal to submit to a breath analysis test was sufficiently incidental to his arrest, as required by Fla. Stat. §§ 316.1932, 322.2615. See Pet. Writ of Cert. at 1, 5, 6.

First, the requirements of procedural due process pursuant to the United States Constitution, as well as the Florida Constitution, are fair

notice and a reasonable opportunity to be heard. Housing Authority of City of Tampa v. Robinson, 464 So.2d 158, 164 (Fla. 2d DCA 1985). “[T]here is ... no single, unchanging test which may be applied to determine whether the requirements of procedural due process have been met.” Hadley v. Department of Administration, 411 So.2d 184, 187 (Fla.1982). These are flexible concepts to be discerned from the facts of each case. Mathews v. Eldridge, 424 U.S. 319 (1976).

While Petitioner does not dispute whether due process was accorded to him, this Court notes that a notice of hearing does not appear on the appellate record. However, Petitioner admits that “Petitioner requested a formal review, which was timely held on August 23, 2021.” Pet. Writ of Cert. at 6. The hearing officer’s Findings of Fact, Conclusions of Law and Decision, signed on August 27, 2021 also states that “[t]he hearing was held as noticed on August 23, 2021 at 9:00 am” with counsel for Petitioner present. Thus, the Court must conclude that due process was accorded to Petitioner.

Second, whether the essential requirements of law have been observed hinges upon the lower tribunal’s application of the correct law. Haines City Community Development v. Heggs, 658 So.2d 523, 531 (Fla. 1995). A deviation from the essential requirements of law entails a violation

of a clearly established principle of law resulting in a miscarriage of justice.

Id.

Pursuant to Fla. Stat. § 316.1932(1)(a) (emphasis added):

“[t]he chemical or physical *breath test must be incidental to a lawful arrest*...[t]he person shall be told that his or her failure to submit to any lawful test of his or her breath will result in the suspension of the person’s privilege to operate a motor vehicle...”

The hearing officer applied the correct law when the issue on appeal was addressed at the hearing on August 23, 2021:

Motion #1: To invalidate the suspension of the driver license of Petitioner based on an improper implied consent warning. Specifically, the Petitioner was read the Implied Consent prior to arrest. (See DDL #6 & DDL #8).

Ruling: Denied. The officer’s Arrest Report (DDL #5) was entered into evidence without objection. The arrest report contains details of the timing of the arrest and the actions taken afterwards to include transportation to the jail, prior to the reading Implied Consent warning (DDL #8).

In making this ruling, the hearing officer concluded that the law enforcement officer’s narrative sequence of events: (a) the Petitioner’s arrest on SW Highway 17, (b) the transportation to the DeSoto County Jail, (c) the reading of the Implied Consent Warning, and (d) the Petitioner’s subsequent refusal; was sufficient to overcome any conflict with the time entries on the documents submitted by law enforcement. Other jurisdictions have arrived at the same conclusion using a narrative sequence of events.

See Labuda v. Dep't of Highway Safety & Motor Vehicles, 20 Fla. L. Weekly Supp. 208a (Fla. 7th Jud. Cir. Ct. 2012); see Soles v. Dep't of Highway Safety & Motor Vehicles, 15 Fla. L. Weekly Supp. 1144a (Fla. 7th Jud. Cir. Ct. 2008); see Jones v. Dep't of Highway Safety & Motor Vehicles, 3 Fla. L. Weekly Supp. 534c (Fla. 7th Jud. Cir. Ct. 1995). Thus, the hearing officer concluded that the implied consent warning and subsequent refusal was incidental to a lawful arrest. We conclude that the lower tribunal applied the correct law.

Third, whether the administrative findings and judgment are supported by competent substantial evidence demands an honest look at the evidence. Wiggins v. Florida Dep't of Highway Safety & Motor Vehicles, 209 So. 3d 1165 (Fla. 2017). The evidence cannot be untruthful or nonexistent. Id. Competent, substantial evidence is "such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred." De Groot v. Sheffield, 95 So.2d 912, 916 (Fla. 1957).

In making a ruling on "Motion #1," the hearing officer referred to DDL #5 (DeSoto County, Florida Officer's Arrest Report (Probable Cause Affidavit)), DDL #6 (DeSoto County Sherriff's Office Influence Report), and DDL #8 (Implied Consent Warning: State of Florida). Pursuant to Florida law, such documentary evidence as submitted by law enforcement is

broadly considered “self-authenticating” and shall be in the record for consideration by the hearing officer. Fla. Stat. § 322.2615(2)(b); see also Fla. Admin. Code R. 15A-6.013(2). Notwithstanding the lack of testimony to corroborate the narrative sequence of events, the evidence is admissible on its own and forms a sufficient basis of fact upon which the hearing officer based its ruling in the Findings of Fact, Conclusions of Law and Decision, as entered on August 27, 2021.

DISPOSITION

Affirmed.

ORDERED in Chambers at Clearwater, Pinellas County, Florida, this
, 2023.

28 day of March

Original Order entered on March 28, 2023, by Circuit Judges Sherwood Coleman, George Jirotko, and Patricia A. Muscarella.

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