

IN THE THIRTEENTH JUDICIAL CIRCUIT FOR THE STATE OF FLORIDA
CIRCUIT CIVIL DIVISION

STEPHANIE HILTON,
Petitioner,

CASE NO.: 21-CA-5226

v.

DIVISION: E

STATE DEPARTMENT OF HIGHWAY
SAFETY AND MOTOR VEHICLES,
Respondent.

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CLERK OF THE
CIRCUIT COURT

ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Petitioner Stephanie Hilton seeks issuance of a writ of certiorari following a May 25, 2021 final order upholding the suspension of her driving privilege. For the reasons stated here, the petition is denied.

I. JURISDICTION

This Court has jurisdiction. §§ 322.31; 322.2615(13), Fla. Stat.

II. STANDARD OF REVIEW

When reviewing the decision of an administrative agency, the scope of the circuit court's review is limited to whether Petitioner received due process, whether competent, substantial evidence supports the decision, and whether the decision departs from the essential requirements of law. City of Deerfield Beach v. Vaillant, 419 So. 2d 624, 626 (Fla. 1982).

III. FACTS AND PROCEDURAL HISTORY

On April 15, 2021 at 8:47 p.m., Trooper Nottingham of the Florida Highway Patrol arrived to the scene of a one-vehicle accident. He observed damage on the driver's side of a pick-up truck, as well as damage to a utility pole and fence that the vehicle had hit.

The owner of the truck was at the scene and he identified Petitioner as the driver. He advised Trooper Nottingham that Petitioner is the mother of his children, she appeared to be impaired, and that she was at her house. A witness to the accident advised Trooper Nottingham that he had seen the crash and saw Petitioner get out of the truck. The witness added that Petitioner fell to the ground. He was concerned for her safety as well as that of the two children that were also in the vehicle. The witness told law enforcement that they had offered to drive Petitioner and the children home.

Trooper Nottingham met with Petitioner at her address. She seemed unaware that there had been a crash. According to Trooper Nottingham, Petitioner was unsteady on her feet, had bloodshot eyes, pinpoint pupils, droopy eyelids, and slurred speech. She strayed off topic several times. Thereafter, Trooper Nottingham began a DUI investigation.

After receiving Miranda warning, Petitioner admitted she was driving at the time of the crash and that she did not attempt to contact law enforcement about the incident. She admitted to smoking marijuana two hours before. She consented to perform field sobriety exercises and performed them very poorly.

Petitioner was then transported to the Pasco County Jail. While en route to the jail, Petitioner consumed a pill. She dropped another pill, which a law enforcement officer retrieved. The pill was later identified as oxycodone. At the jail, Petitioner was read implied consent and, based on her evident impairment and admission to smoking marijuana, was asked to submit to a urine test. After considering the request for a few minutes, Petitioner refused, resulting in the administrative suspension of her driving privilege.

Petitioner sought formal review of the suspension in accordance with section 322.2615, Fla. Stat. The formal review hearing was held May 19, 2021. There were no witnesses; the hearing officer was presented with documentary evidence only. Petitioner's attorney moved to invalidate the suspension because Petitioner's driver license was not included in evidence, arguing that the statute mandates the inclusion its inclusion in the record. Although Petitioner's tangible driver license card was not in evidence, the license number was included in the documentary evidence, including the traffic citations, arrest report, and refusal affidavit. The hearing officer denied Petitioner's motion to invalidate the suspension on the ground that the license

itself had not been furnished, stating that Petitioner's identity was not at issue in the proceeding. This petition followed.

IV. ANALYSIS

Petitioner contends that the failure to include the license in the hearing packet provided to the hearing officer violated her due process rights, and the hearing officer's refusal to invalidate her license suspension departed from the essential requirements of law.

A. Due Process

The right to due process is secured in the Florida Constitution. Art. I, § 9, Fla. Const. Within that right are both substantive and procedural components. Procedural due process relates to the procedure employed by the government when it makes decisions that affect the rights of its citizens, whereas substantive due process protects citizens from the deprivation of fundamental rights. See, e.g., Bondar v. Town of Jupiter Inlet Colony, 321 So. 3d 774, 783 (Fla. 4th DCA 2021) (citing Hillcrest Prop., LLP v. Pasco Cnty., 915 F. 3d 1292, 1297 (11th Cir. 2019) (discussing the Due Process Clause of the United States Constitution and noting that without a compelling state interest and an infringement that is narrowly tailored to serve that interest, the government may not violate such rights "at all, no matter what process is provided.")). A citizen's right to procedural due process requires that he or she receive "fair treatment through the proper administration of justice." Dept. of Law Enforcement v. Real Prop., 588 So. 2d 957, 960 (Fla. 1991).

It is the right to procedural due process that entitles citizens to notice of a proceeding that may impact their rights, and a meaningful opportunity to be heard at that proceeding. Massey v. Charlotte County, 842 So. 2d 142, 146 (Fla. 2d DCA 2003). "The specific parameters of the notice and opportunity to be required by procedural due process are not evaluated by fixed rules of law, but rather by the requirements of the particular proceeding." Id. at 146.

Here, Petitioner contends that her procedural due process was violated when the law enforcement officer failed to forward a copy of her driver license as required by the statute. She is correct about the statute's requirement, and she is correct that the officer failed to satisfy that requirement. However, the procedural due process analysis focuses on whether she was given fair notice and the opportunity to be heard in an orderly proceeding. She was given both. The failure to comply with the statutory requirement to forward the driver license was an error, but that error did

not deprive her of a meaningful hearing and it did not deprive her of procedural due process.

B. Essential Requirements of the Law

The statute plainly requires that the law enforcement officer “shall forward to the department, within 5 days after issuing the notice of suspension, the driver license” Section 322.2615(2)(a), Fla. Stat. Use of the word “shall” means that this is mandatory. See, e.g., Izaguirre v. Beach Walk Resort/Travelers Ins., 272 So. 3d 819, 820 (Fla. 1st DCA 2019) (“Based on its plain and ordinary meaning, the word ‘shall’ in a statute usually has a mandatory connotation.”). However, the officer’s failure to comply with a mandatory statutory provision does not necessarily compel the conclusion that the hearing officer’s failure to invalidate the suspension amounted to a departure from the essential requirement of the law.

The word “essential” in the legal standard matters, too. In considering a petition for certiorari, the legal standard is not whether the hearing officer departed from any requirement in the law; it is whether the hearing officer departed from an “essential” requirement of the law. In considering what constitutes an essential requirement of the law, it is relevant that Petitioner’s identity was not an issue in dispute at the hearing. Further, the absence of the tangible driver license did not result in a lack of substantial competent evidence. The license number was included in the documentary evidence, including the traffic citations, arrest report, and refusal affidavit.

Here, it cannot reasonably be said that the tangible driver license itself was essential to this proceeding. The statute required the officer to forward the driver license, but the hearing officer did not depart from the essential requirements of the law in refusing to invalidate the suspension on that basis.

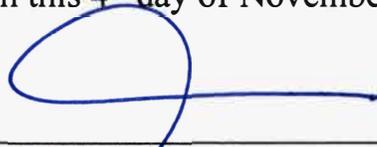
V. CONCLUSION

Certiorari is not available to review every departure from the law. Haines City Comm. Dev’t v. Heggs, 658 So. 2d 523, 528 (Fla. 1995) (citing Combs v. State, 436 So. 2d 93, 95-96 (Fla. 1983)). Only where there “has been a violation of clearly established principle of law resulting in a miscarriage of justice” should a writ of certiorari be granted. Id. at 528.

In this instance, the Petitioner was given due process, and the hearing officer did not depart from any essential requirement of the law as it related to this case.

Put differently, the trooper made an error in failing to comply with the statutory requirement, but the error was harmless and under these circumstances certiorari should not be granted. Department of Highway Safety and Motor Vehicles v. Chamizo, 753 So. 2d 749, 752 (Fla. 3d DCA 2000).

It is therefore ORDERED that the petition is DENIED in Tampa, Hillsborough County, Florida, on this 4th day of November, 2021.



Anne-Leigh Gaylord Moe, Circuit Court Judge

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