

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
IN AND FOR THE STATE OF FLORIDA  
GENERAL CIVIL DIVISION

THOMAS BENNETT,  
Petitioner,

CASE NO.: 24-CA-001724

v.

DIVISION: C

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

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ORDER DENYING PETITION FOR WRIT OF CERTIORARI

THIS MATTER is before the Court on Petition for Writ of Certiorari filed October 30, 2023, and transferred to the 13th Judicial Circuit on February 28, 2024. The petition is timely. Rule 9.100(c)(2), Fla. R. App. P.; Rule 9.030(c)(3), Fla. R. App. P.; §322.31, Fla. Stat. Petitioner argues that the Department departed from the essential requirements of the law and violated his right to due process by upholding the revocation of his driving privileges because he was confused about the consequences of refusing to submit to a breath alcohol test subsequent to a lawful arrest and, as a result, his refusal should have been suppressed. Having reviewed the petition, response, reply, appendix, and being otherwise fully informed, the Court finds that the hearing officer applied the correct law in making his determination, Petitioner was provided adequate notice and an opportunity to be heard at the formal hearing where he was represented by counsel and presented evidence, and the Petition must therefore be denied.

On March 29, 2023, Petitioner was arrested for DUI. Petitioner initially agreed to submit to breath testing, but at the jail, Petitioner stated he would not provide a sample. After being read the Implied Consent warning, Petitioner again refused, stating that he wanted an attorney. On September 21, 2023 a hearing officer conducted an administrative formal review of Petitioner's license suspension. Petitioner was represented by counsel and had two witnesses testify as part of his defense. Counsel for Petitioner moved to invalidate the suspension on several grounds, including that Petitioner's refusal to provide a breath sample should be suppressed because Petitioner was confused about the requirements created by Florida's Implied Consent Law. In his written order, the hearing officer addressed Petitioner's motion to invalidate, and found there was insufficient evidence to establish that Petitioner was confused about the requirements.

Petitioner argues the hearing officer departed from the essential requirements of the law and denied Petitioner a fair and meaningful hearing because he denied Petitioner's motion to suppress Petitioner's refusal to provide a breath sample and "merely rubber stamped the suspension." In a DUI license suspension case, the hearing officer is limited to reviewing whether there was probable cause for the DUI arrest, whether the driver refused to submit to an alcohol or controlled substance test, and whether the driver was told that refusal to submit to the test would result in a mandatory suspension of their driver license. § 322.2615(7)(b), Fla. Stat. In reviewing this Petition, the Court is limited to considering "whether procedural due process is accorded, whether the essential requirements of the law have been observed, and whether the administrative findings and judgment are supported by competent substantial evidence." *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982). In doing so, the Court is not permitted to reweigh evidence; "[c]ontrolling case law is clear that the circuit court [is] not permitted to scour the record for evidence which contradict[s] the hearing officer's conclusion." *DHSMV v. Baird*, 175 So. 3d 363, 365 (Fla. 3d DCA 2015) (citing *DHSMV v. Porter*, 791 So. 2d 32, 35 (Fla. 2d DCA 2001)). The Florida Supreme Court has ruled "that 'applied the correct law' is synonymous with 'observing the essential requirements of law.'" *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995). Rule 15A-6.013(7), Fla. Admin. Code.

Put simply, Petitioner was represented by counsel at a formal hearing where he presented evidence, including witness testimony, to support his argument that the suspension should be invalidated. The burden of proof at the formal hearing is whether the driver license suspension issued by law enforcement was supported by a preponderance of the evidence, and the hearing officer is the sole decision maker as to the weight, relevance, and credibility of any evidence presented. In this case, the hearing officer considered the evidence presented and found the suspension should be upheld. The hearing officer applied the correct law in making his determination that, subsequent to a lawful arrest, Petitioner refused to provide a breath sample after being informed that refusal would result in the suspension of his license.

Based on the foregoing the Petition for Writ of Certiorari is DENIED.

ORDERED on the date imprinted with 24-CA-001724 4/4/2025 8:59:58 AM

  
24-CA-001724 4/4/2025 8:59:58 AM  
Judge Melissa Polo

**MELISSA M. POLO**, Circuit Court Judge

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