

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
FOR HILLSBOROUGH COUNTY, FLORIDA
Circuit Civil Division

KIMBERLY McCARTHY,
Petitioner,

Circuit Civil Case No.: 20-CA-9474
Division G

vs.

STATE DEPARTMENT OF HIGHWAY
SAFETY AND MOTOR VEHICLES,
Respondent.

ORDER DENYING PETITION FOR WRIT OF CERTIORARI

This case is before the court to review the administrative denial of Petitioner's request for early reinstatement of her driving privileges on hardship grounds. Petitioner's driving privileges were revoked because she sustained three convictions for driving under the influence—of drugs, specifically—not alcohol. She is eight years into a 10-year revocation. To her credit, Petitioner says she has been drug-free ever since losing her driving privilege. Her filings with the court suggest her efforts to do what is required to restore her privilege to operate a motor vehicle are sincere. In her hearing for reinstatement, however, she admitted to consuming alcohol on rare occasion within the past year, which resulted in the denial of reinstatement. She petitioned this court for relief, indicating that she did not know that she was to also refrain from using alcohol, or she would have done so.

This court admits the law is confusing to many except those schooled in the law, but it is nonetheless bound to apply it. The law is well-established that alcohol is a "drug" for purposes of determining whether an applicant for a hardship license has remained drug-free for at least five years before a

hearing on the application even though statute does not specifically require an applicant to be alcohol-free. § 322.271(4)(a) 3, Fla. Stat.; *DHSMV v. Walsh*, 204 So. 3d 169, 172 (Fla. 1st DCA 2016)(alcohol is a “drug,” for purposes of determining whether an applicant for hardship license has remained drug-free for at least five years prior to hearing on application); *Dept. of Highway Safety & Motor Vehicles v. Abbey*, 745 So. 2d 1024, 1025 (Fla. 2d DCA 1999) (Department acted reasonably in requiring applicant for hardship license to be alcohol-free for five years as part of being “drug-free,” even though statute does not specifically require an applicant to be alcohol-free.) *See also Charkin v. Dept. of Highway Safety & Motor Vehicles*, 304 So. 3d 822, 829 (Fla. 2d DCA 2020).

Petitioner does not cite any legal error committed by the Department. Rather, her petition demonstrates her hardship, her misunderstanding of the law, and asks this court to intervene more as an act of clemency than anything else. Unfortunately, this court cannot legally grant the requested relief. Despite this, this court hopes that, with renewed understanding, Petitioner will continue to maintain a healthy, drug-free lifestyle, and reapply at her earliest opportunity.

It is ORDERED that the Petition is DENIED without need for a response on the date imprinted with the Judge’s signature.

Electronically Conformed 4/16/2021
Christopher Nash

Christopher C. Nash, CIRCUIT JUDGE

Copy to:

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