

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT
IN AND FOR MONROE COUNTY, FLORIDA

JEREMI WITKOWSKI,

Petitioner,

vs.

CASE NO.: 2021-CA-70-M

STATE OF FLORIDA, DEPARTMENT OF
HIGHWAY SAFETY AND MOTOR VEHICLES

Respondent.

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ORDER DENYING PETITION FOR WRIT OF CERTIORARI

THIS CAUSE is before the Court on Petitioner's Petition for Writ of Certiorari, filed on May 3, 2021. Petitioner seeks certiorari review of Respondent's final order suspending his driving privileges for refusing to submit to a breath, blood, or urine test under section §322.2615, Florida Statutes. This Court has jurisdiction pursuant to Article V, section 5(b), Florida Constitution, Florida Rule of Appellate Procedure 9.030(c), sections §322.2615(13) and §322.31, Florida Statutes. This Court reviewed the Petition, Appendix, and the Response to Petition for Writ of Certiorari and finds as follows:

I. Factual Background and Procedural History:

On February 14, 2021, Petitioner was arrested by the Florida Highway Patrol for DUI and his license was subsequently suspended. Petitioner requested a formal administrative hearing, which was held on

April 2, 2021. The hearing officer sustained the suspension, finding there was probable cause that Petitioner operated a motor vehicle under the influence of alcohol, refused to submit to a request for a breath test, and was warned of the consequences of refusal, specifically a one-year suspension of his driving privilege or an 18-month suspension in the case of a second refusal. Petitioner filed his petition with this Court, arguing that law enforcement did not read implied consent warnings to him after he refused to submit to a breath test. Respondent timely filed its response, arguing that based on law enforcement documents, Petitioner refused a request for a breath sample, was read implied consent warnings, and that Petitioner maintained his refusal.

II. Standard of Review:


A circuit court's review of an administrative agency decision is limited to the following three-part standard of review: (1) whether procedural due process was accorded, (2) whether the essential requirements of law were observed; and (3) whether the administrative findings and judgment are supported by competent substantial evidence. *Haines City Cmty. Dev. v. Heggs*, 658 So.2d 523, 530 (Fla. 1995) [20 Fla. L. Weekly S318a] (citing *City of Deerfield Beach v. Vaillant*, 419 So.2d 624, 626 (Fla. 1982)). When exercising certiorari review, the court is not permitted to reweigh the evidence or substitute its judgment for that of the agency. See *Department of Highway Safety and Motor Vehicles v. Trimble*, 821 So.2d 1084, 1085 (Fla. 1st DCA 2002).

III. Analysis:

This Court finds there was competent substantial evidence to support the hearing officer's determination that Petitioner refused to submit to a lawful request for a breath test and the final order does not depart from the essential requirements of law. Pursuant to §322.2615(2)(b), Florida Statutes, documents submitted by law enforcement to the Department shall be considered self-authenticating and will be considered by the hearing officer. The Affidavit of Refusal and the Implied Consent Warning documents submitted by Trooper Perlman establish that he requested Petitioner submit to a breath test after his arrest and Petitioner refused. The documents further state that Petitioner was then read implied consent warnings, after which he refused again. It is also noteworthy that Petitioner himself signed the Implied Consent Warning documents, stating that he refused the test after the reading of implied consent.

ACCORDINGLY, it is hereby **ORDERED** and **ADJUDGED** that Petitioner's Petition for Writ of Certiorari is **DENIED**.

DONE AND ORDERED at Key West, Monroe County, Florida
this Thursday, February 24, 2022.



Judge Timothy Koenig, Circuit Judge

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