

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

APPELLATE DIVISION

CASE NO: 22-CA-372-K

DAVID WHYTE,

Petitioner,
vs.

STATE OF FLORIDA, DEPARTMENT OF
HIGHWAY SAFETY AND MOTOR VEHICLES

Respondent.

ORDER DENYING PETITION FOR WRIT OF CERTIORARI

THIS CAUSE is before the Court on Petitioner's Petition for Writ of Certiorari filed on May 26, 2022. Petitioner seeks certiorari review of Respondent's final order sustaining Petitioner's driver license suspension under section 322.2615, Florida Statutes, for the refusal to submit to a breath, blood, or urine test. 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, the Department's Response to Petition for Writ of Certiorari, and heard argument on December 20, 2022. Based on the foregoing, this Court finds as follows:

Factual Background:

On January 12, 2022, Petitioner was arrested by the Monroe County Sheriff's Office for driving under the influence (DUI). Subsequently, Petitioner's driver license was suspended as a result of Petitioner's refusal to submit to a breath test. Petitioner requested a formal administrative hearing with the Department to challenge the suspension, which was held on April 21, 2022.

Deputy Torres of the Monroe County Sheriff's Office appeared and testified. At the hearing, Deputy Torres testified that he requested Petitioner provide a sample of his breath, and Petitioner advised that because of health reasons he could not provide a sample. As a result, Petitioner was read the implied consent warning and he again refused to submit to a breath test.

The Hearing Officer sustained the suspension, finding there was probable cause that Petitioner was driving or in actual physical control of a motor vehicle in this state while under the influence of alcoholic beverages or chemical or controlled substances; Petitioner refused to submit to any such test after being requested to do so by a law enforcement officer or correctional officer, subsequent to a lawful arrest; and that Petitioner was told that if he refused to submit to such test his or her privilege to operate a motor vehicle would be suspended for a period of 1 year or in the case of a second or subsequent refusal for a period of 18 months. The hearing officer found that all elements necessary to sustain the suspension for refusal to submit to a breath, blood, or urine test under section 322.2615 of the Florida Statutes, were supported by a preponderance of the evidence.

Standard of Review:

A circuit court's review of an administrative agency decision is limited to the following 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. *City of Deerfield Beach v. Vaillant*, 419 So.2d 624, 626 (Fla. 1982). Further, it is axiomatic that where substantial competent evidence supports the findings and conclusions of the administrative agency and the record discloses neither an abuse of discretion nor a violation of law by the agency, [a] court should not overturn the agency's determination. *Cohen v. School Board of Dade County, Florida*, 450 So. 2d 1238, 1241 (Fla. 3d DCA 1984); *Campbell v. Vetter*, 392 So. 2d 6 (Fla. 4th DCA 1980), *pet. for review denied*, 399 So. 2d 1140 (Fla. 1981).

Analysis:

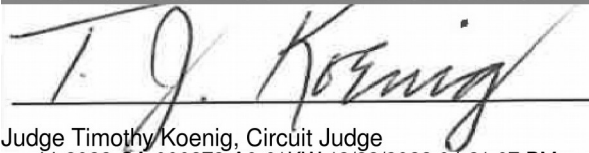
Petitioner argues that his refusal was not willful since he advised Deputy Torres that he could not provide a sample of his breath because of health reasons. Other than that statement to the deputy, there was no evidence in the record to support the Petitioner's statement that he suffered from a medical condition preventing him from providing a breath sample. Based on the caselaw cited by Petitioner and Respondent, the Petitioner's statement in and of itself is not sufficient to establish that this was not a willful refusal. Otherwise, everyone who is confronted with a request to provide a breath test would only need to say that they suffered from a medical condition to avoid providing a breath sample. In this case there was no evidence showing Petitioner made any effort to submit to the breath test or evidence presented by the Petitioner that his medical condition prevented him from providing a breath test to establish that his refusal was not willful.

Accordingly, this Court concludes that the Department's decision to uphold the Petitioner's driver license suspension is supported by competent substantial evidence, that the Petitioner was accorded procedural due process, and that there was no departure from the essential requirements of the law.

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

DONE and **ORDERED** in Chambers at Key West, Monroe County, Florida, this Thursday, December 22, 2022

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A handwritten signature in black ink, appearing to read "T. J. Koenig", is written over a horizontal line. The signature is cursive and somewhat stylized.

Judge Timothy Koenig, Circuit Judge
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