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

DALLAS ALLEN YATES,

Petitioner,

v. CASE NO.: 2021-CA-000085-P

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 February 24, 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 F.S.S. § 322.2615, Florida Statutes.

This case pertains to the arrest of the Petitioner, Dallas Allen Yates ("Yates") for DUI. On September 11, 2020, Yates was stopped at MM 94 for speeding by deputies of the Monroe County Sheriff's Office. Pursuant to observations of the deputies, Yates was placed under arrest for DUI. Yates was then transported to the Plantation Key DUI room where he was given a breath test. While in the breath testing room, Yates provided two invalid samples due to, "volume not met." Yates then contended he had asthma and requested EMS. EMS arrived, evaluated Yates, and cleared him of

respiratory issues. Yates then attempted a third breath test sample which again was invalid due to, “volume not met.” At this point, law enforcement deemed his failed attempts as “refusal to submit to a breath test.”

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) (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). While not technically and specifically required by Fl. R. App. P. 9.220, Yates has failed to provide this Court with a transcript of the administrative hearing to enable it to assess the testimony, the evidence presented, as well as the hearing officer’s rulings and considerations. This Court cannot overturn factual determinations without a transcript of the lower proceeding. Rodriguez v. Figueroa, 958 So. 2d 1041, 1042 (3rd DCA 2007). As a result, this Court cannot consider the alleged testimony proffered by Yates to determine whether there was competent substantial evidence to support the hearing officer’s rulings or even reverse the decision. Sugrim v. Sugrim, 649 So. 2d 936, 938 (5th DCA 1995).

Petitioner raises two claims in his Petition. First, he alleges that the hearing officer departed from the essential requirements of law in upholding the suspension regarding his refusal and the "volume not met" samples. Second, the Petitioner argues that the hearing officer departed from the essential requirements of law in upholding the suspension because, "evidence relied upon by Law Enforcement was conflicting [sic] had not been submitted to the Florida Department of Law Enforcement as required by law."

Based on a review of the Petition, the DHSMV response and record submitted, the Court finds there was competent substantial evidence to support the hearing officer's findings. As it pertains to the "refusal" and "volume not met" issue, Yates was given several opportunities to provide an adequate breath sample. Yates contended to law enforcement and at the administrative hearing that he suffered from asthma, which prevented him from giving an adequate sample. Yet in neither venue did Yates provide any evidence of such a condition. The hearing officer relied upon the EMS evaluation which states that Yates, after requesting help for a medical episode, was medically cleared and could continue the testing. There was record evidence that showed Yates only had "asthma" issues in the immediate seconds prior to the breath test and said issues quickly dissipated after the impending test had passed. In addition, there was record evidence that Yates was incorrectly blowing into the breath testing machine tube. Wherefore, based upon the record submitted, the Court finds

there was sufficient and competent evidence for the hearing officer to rely upon to reach the conclusion regarding the deemed “refusal” and “volume not met” suspension.

Next, Yates contends that because there was a conflict in the evidence regarding the serial number of the machine(s), documentation regarding the breath test machine(s) that had not been submitted to the Florida Department of Law Enforcement (“FDLE”) and there was a “regurgitation” during the testing process that the suspension should be invalidated.

Yates contends that at the administrative hearing, there was evidence presented that the probable cause affidavit indicated that breath testing machine 80-006693 was used. However, the evidence also showed on the breath test affidavit itself, that breath test machine 80-006471 was the one that was used for the breath test of Yates. Here, the correct serial number from the correct machine for all the breath tests was generated from the actual breath testing machine, 80-006471. It would be, and is, entirely reasonable to conclude that the deputy’s incorrect serial number in the probable cause affidavit was a scrivener’s error. The hearing officer is allowed to rely upon reasonable inferences from competent substantial inferences on the record. Avalon’s Assisted Living, LLC v. Agency for Health Care Admin., 80 So. 3d 347, 351 (1st DCA 2011). In addition, F.S.S. §316.1934 (5) does not require a serial number on a breath testing affidavit to be admissible at a hearing, therefore to this Court, it is irrelevant what the serial number is. Second, Yates contends that because the breath

testing documents from the breath testing machine(s) were not submitted to FDLE then the suspension should be invalidated. Yates cites in his pleadings, “as required by the regulations” and “as required by law” however he fails to cite any regulation, administrative code, statute or even case law to support such a contention. In addition, Yates provides no evidence, other than assertions, that any of these deputies were even responsible for “forwarding” documents relating to this machine to the FDLE. Yates provides no evidence, other than assertions, that FDLE did not in fact have the records in some form or another.

Yates goes onto argue that “Deputy Hradecky testified she violated the “regulations” when she administered the examination at 00:32…” Yates contends that this was “in violation of the rules” regarding the 20-minute observation period. Assuming this is a correct representation of the testimony, the Petitioner does not cite to, nor reference any rule, code, regulation, statute or case law to support such an assertion. However, it can be gleaned from the petition and response that Yates is arguing that there was a regurgitation at some point and that the deputy failed to restart the 20-minute observation period as mentioned in Florida Administrative Code, Rule 11D-8.007(3). As pointed out in the DHSMV response there is no evidence, other than Yates’ assertion, presented to this Court that there was in fact a regurgitation and this rule should apply.

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 Tuesday, February 22, 2022.

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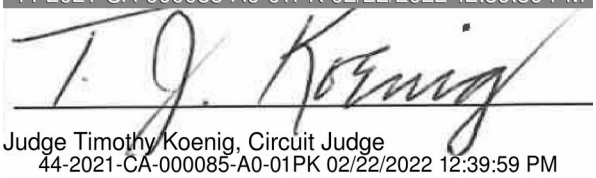

Judge Timothy Koenig, Circuit Judge
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