

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA

CASE NO: 16-2020-AP-40

DIVISION: AP-A

JAMES E. HIGGINS, IV,
Petitioner,

v.

DEPARTMENT OF HIGHWAY
SAFETY AND MOTOR VEHICLES,
Respondent.

Petition for Writ of Certiorari from the decision of the State of Florida Department of Highway
Safety and Motor Vehicles

MARCH 18, 2022

PER CURIAM

Petitioner seeks certiorari review of the Department's decision to uphold the suspension of his driver's license. On certiorari review of an administrative action, this Court's standard of review is "limited to a determination of whether procedural due process was accorded, whether the essential requirements of the law had been observed, and whether the administrative order was supported by competent, substantial evidence." Dep't of Highway Safety and Motor Vehicles v. Luttrell, 983 So. 2d 1215, 1217 (Fla. 5th DCA 2008); see also Dep't of Highway Safety and Motor Vehicles v. Trimble, 821 So. 2d 1084, 1085 (Fla. 1st DCA 2002).

The hearing officer found as follows:

On March 15, 2020, at approximately 1:16 a.m., Officer M. Morrison of the Jacksonville Beach Police Department was standing at 602 1st Street North when he was flagged down in reference to a crash that had just occurred in the 600 block of 1st Street North. Officer Morrison turned around and observed two individuals standing outside of their vehicles in the idle of the road. Officer Morrison observed one of the individuals, subsequently identified as James Higgins (hereafter referred to as the Petitioner), standing in the driver's side doorway of his vehicle. Officer Morrison walked over and made contact with the parties.

Officer Morrison first spoke to Asif Khan, who identified the Petitioner as the driver of the vehicle that struck him. Mr. Khan pointed at the Petitioner and stated, "he hit my car." Mr. Khan indicated to Officer Morrison that the Petitioner had struck Mr. Khan's rear bumper. Officer Morrison observed paint transfer on the rear bumper of Mr. Khan's vehicle. Officer Morrison asked the Petitioner and Mr. Khan for their driver's licenses, registrations, and proofs of insurance. The Petitioner provided his driver's license, but stated that his insurance information was on his phone. After several minutes, Officer Morrison moved closer to the Petitioner to see if he could assist the Petitioner in finding his insurance information since he still had not produced it. At that time, Officer Morrison detected the strong odor of an alcoholic beverage emitting from the Petitioner. While speaking to the Petitioner, Officer Morrison also observed that the Petitioner's eyes were bloodshot and watery; and, his speech was slurred.

Officer Morrison called for a backup officer to respond to assist him, and he asked the Petitioner to walk to a nearby sidewalk. After the backup officer arrived, Officer Morrison asked the Petitioner to walk across the street to the sidewalk on the east side of 1st Street North, which was level and had minimal foot traffic. Officer Morrison observed that the Petitioner swayed as he walked across the street and was unable to walk in a straight line. Officer Morrison advised the Petitioner that the crash investigation was over, and he was beginning a driving under the influence (DUI) investigation. Officer Morrison read the Petitioner his Miranda warnings. The Petitioner acknowledged his understanding of his rights, and invoked. Officer Morrison asked the Petitioner to participate in field sobriety exercises, and the Petitioner agreed to do so.

During the eye exercise, the Petitioner swayed and almost lost his balance. During the instructional stage of the walk-and-turn exercise, the Petitioner could not maintain his balance and attempted to start the exercise prior to being instructed to do so. The Petitioner was unable to stand in the instructional position without losing his balance. After the fourth occurrence of the Petitioner losing his balance, Officer Morrison ended the exercise for the Petitioner's safety. During the one-leg

stand, the Petitioner used his arms for balance, swayed, and put his foot down during the 0-10 second mark and the 11-20 second mark of the exercise. Officer Morrison ended the exercise early for the Petitioner's safety after he almost fell. During the Rhomberg balance exercise, the Petitioner did not keep his eyes closed and swayed. Officer Morrison again had to end the exercise early for the Petitioner's safety after the Petitioner almost hit the ground, and Officer Morrison had to catch the Petitioner.

During his investigation, Officer Morrison also observed that the Petitioner's face was flushed; and, his eyelids were droopy. Based on the totality of the circumstances, Officer Morrison arrested the Petitioner for DUI and transported him to the Duval County Jail. Once there, Office Morrison made contact with Officer C. Dinkins of the Jacksonville Sheriff's Office, and requested that Officer Dinkins administer a breath test to the Petitioner. Officer Dinkins made contact with the Petitioner and requested that he submit to a breath test. The Petitioner refused. Officer Dinkins read the Petitioner the Implied Consent Warning, and again requested that the Petitioner submit to a breath test. The Petitioner still refused to submit to the requested test. Officer Morrison then check[ed] (sic) the Petitioner's record through the Driver and Vehicle Information Database (DAVID), and determined that the Petitioner had two prior refusals from February 23, 2013, and August 16, 2013. Officer Morrison then additionally charged the Petitioner with refusal to submit to a breath, urine, or blood test.

I

In his first ground for relief, Petitioner argues the hearing officer departed from the essential requirements of the law by administering an oath over the telephone. Petitioner has failed to demonstrate a departure from the essential requirements of the law because Rule 15A-6013 only requires that oral evidence be taken under oath.

II

In his second ground for relief, Petitioner argues he was denied procedural due process when the hearing officer sustained a suspension of eighteen months. His argument is without merit because the Department, not the hearing officer, determines the length of the suspension. §322.2615(8), Fla. Stat. (2013). The scope of the hearing officer's review is limited to the

following three issues:

1. Whether the law enforcement officer had probable cause to believe that the person whose license was suspended 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.
2. Whether the person whose license was suspended refused to submit to any such test after being requested to do so by a law enforcement officer or correctional officer.
3. Whether the person whose license was suspended was told if he or she 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.

Id. at (7). In this case, the hearing officer's findings were supported by competent, substantial evidence. Accordingly, the "Petition for Writ of Certiorari" is **DENIED**, and the "Motion for Oral Argument" is **DENIED** as **MOOT**.

CHARBULA AND SALEM, JJ., concur.

Susan Z. Cohen., counsel for Petitioner

Mark L. Mason, Esq., counsel for Respondent.