

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CIVIL): AY
CASE NO. 502017CA005668XXXXMB

LAWRENCE KORPECK,
Petitioner,

v.

THE STATE OF FLORIDA
DEPARTMENT OF HIGHWAY
SAFETY AND MOTOR VEHICLES,
Respondent.

Opinion filed: **NOV 14 2017**

Petition for Writ of Certiorari from the Bureau of Administrative Review, Department of Highway Safety and Motor Vehicles.

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PER CURIAM.

Petitioner appeals his driver license suspension, claiming that there was no competent, substantial evidence to support the hearing officer's finding that Petitioner maintained his refusal to provide a breath sample. We agree and grant the petition.

Petitioner was arrested for Driving Under the Influence and taken to the breath alcohol testing facility. At the facility, Petitioner was asked if he would provide a breath sample. Petitioner refused, and was read Implied Consent, immediately followed by *Miranda* warnings. Petitioner was then asked if he wanted to speak to the arresting officer, but was not asked if he would provide a breath sample after being advised of the consequences of his refusal. "[I]f a driver does not

consent *after* being warned of the consequences of his failure, his license may be suspended.” *Pardo v. State*, 429 So. 2d 1313, 1315 (Fla. 4th DCA 1983) (emphasis added). Although the hearing officer specifically found that Petitioner “maintained his refusal” after being read Implied Consent, the record does not support that finding. Because Petitioner did not refuse to provide a sample after being warned of the consequences of refusal, we **GRANT** the Petition for Writ of Certiorari and **QUASH** the hearing officer’s order affirming the license suspension.

OFTEDAL, BONAVIDA, and BLANC, JJ., concur.

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v.

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

DEPARTMENT OF HIGHWAY
SAFETY AND MOTOR VEHICLES,
Respondent.

Petition filed: May 19, 2017

_____/_____
DATE OF PANEL: OCTOBER 30, 2017

PANEL JUDGES: OFTEDAL, BLANC, BONAVIDA

GRANTED/DENIED/OTHER: PETITION GRANTED

PER CURIAM OPINION/DECISION BY: PER CURIAM

CONCURRING:	)	DISSENTING:	)	CONCURRING SPECIALLY:)
	)	With/Without Opinion	)	With/Without Opinion)
<u>11/8/17</u> <u>Peto</u>)))
DATE: _____ J.	)	_____ J.	)	_____ J.)
<u>11/9/17</u> <u>RZ</u>)))
DATE: _____ J.	)	_____ J.	)	_____ J.)
<u>11-9-17</u> <u>QZ</u>)))
DATE: _____ J.	)	_____ J.	)	_____ J.)