

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

APPELLATE DIVISION: AY
CASE NO.: 50-2020-CA-006391-XXXX-MB

PAUL PHILLIP MASTROLEO,
Petitioner,

v.

DEPARTMENT OF HIGHWAY
SAFETY AND MOTOR VEHICLES,
Respondent.

Opinion filed: May 14, 2021

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

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PER CURIAM.

On May 14, 2020, a hearing officer with the Bureau of Administrative Review affirmed a decision by the Department of Highway Safety and Motor Vehicles (the “Department”) to revoke Petitioner’s hardship license. Petitioner filed a Petition for Writ of Certiorari in this Court to seek

review of that May 14, 2020 decision. The Department responded by arguing that the instant Petition was untimely because Petitioner should have instead sought review of the Department's initial November 25, 2019 decision to revoke Petitioner's license. After reviewing the record and applicable statutes and regulations, the Court concurs with the Department and finds that the Petition must be dismissed as untimely.

Factual and Procedural Background

Petitioner's driver license was revoked for ten (10) years pursuant to section 322.28(2)(a), Florida Statutes, following his third conviction for driving under the influence. The Department later issued Petitioner a hardship license that was contingent upon him enrolling in a "Special Supervision Services Program" ("SSSP") called Metro Traffic School ("Metro"). *See* § 322.271(2)(c), Fla. Stat. (2019). As a term of his supervision, Metro required that Petitioner take, and pass, regular drug tests. On September 26, 2019, the results of a drug test indicated that Petitioner tested positive for THC. Although Petitioner claimed that he had a valid medical marijuana card issued by the State of Arizona (where Petitioner lives part-time), Metro found that the card was issued after Petitioner had taken the drug test. After its investigation, Metro informed Petitioner that he would be removed from the program and that it would recommend the revocation of his hardship license to the Department. *See* § 322.271(2)(c), Fla. Stat.; Fla. Admin. Code 15A-10.031(2) (2019).

Pursuant to regulations, Petitioner appealed Metro's decision to terminate his enrollment to another SSSP: Pride Integrated Services ("Pride"). *See* Fla. Admin. Code 15A-10.031(2). After holding a hearing on the matter, Pride issued its final decision on January 6, 2020 affirming Metro's decision to remove Petitioner. Prior to Pride's decision, on November 25, 2019, Petitioner also received notice from the Department that, due to Metro's recommendation, it revoked his

hardship license effective December 16, 2019.

On March 4, 2020, Petitioner formally requested a hearing with the Department's Bureau of Administrative Review to contest the revocation of his hardship license.¹ During the hearing, the hearing officer asked Petitioner and his counsel why they did not seek a hearing within thirty days of receiving the Department's November 25, 2019 order revoking Petitioner's hardship license. Both Petitioner and his counsel indicated that they believed they timely sought a hearing based on Pride's January 6, 2020 decision. In a May 14, 2020 final order, the hearing officer noted that Petitioner's request for a hearing was untimely due to it being made more than thirty days after the Department revoked his license. Nevertheless, the hearing officer considered the merits of Petitioner's argument and found that the Department's decision was supported by competent, substantial evidence. Petitioner filed the instant Petition in the circuit court seeking review of the May 14, 2020 order.

Legal Analysis

The Department claims that the Court lacks jurisdiction over this action because the Petition was not filed within thirty days of a reviewable final order. *See* § 322.31, Fla. Stat.; Fla. R. App. P. 9.100(c). The thrust of the Department's argument is that Petitioner should have sought review of the Department's November 25, 2019 order and not the hearing officer's May 14, 2020 order. While Petitioner contends that he had to await Pride's final decision and the decision of a hearing officer in order to exhaust all administrative remedies, the first-tier of review for the Department's decision to revoke a hardship license is via a petition for writ of certiorari and not (as most Department decisions are) by an administrative hearing.

¹ Other record evidence suggests that an initial request for a hearing was made no later than February 5, 2020. However, according to the hearing officer's final order, a formal request was not made until March 4, 2020, and so the court considers this date to be the proper one.

First, the Court notes that two parallel, but separate, administrative decisions occurred almost simultaneously with one another: Petitioner's removal from SSSP supervision and the revocation of his hardship license. SSSP operating procedures are governed by chapter 15A-10 of the Florida Administrative Code. *See Midgett v. Dep't of Highway Safety & Motor Vehicles*, 16 Fla. L. Weekly Supp. 795b (Fla. 4th Cir. Ct. Apr. 20, 2009). The SSSP's regulations allow a driver to appeal their removal from a SSSP to a second SSSP entity. If the second SSSP agrees with the initial decision, its decision to affirm becomes a final decision that is directly appealable to the circuit court via a petition for writ of certiorari. Fla. Admin. Code R. 15A-10.031(2), (6); *see, e.g., Ventre v. State of Fla., Dep't of Highway Safety & Motor Vehicles*, 23 Fla. L. Weekly Supp. 667a (Fla. 6th Cir. Ct. Dec. 14, 2015).² Applying these regulations to the instant case, Pride's January 6, 2020 decision to uphold Petitioner's removal from Metro was a final, reviewable order.

In contrast, the revocation of a hardship license implicates chapter 322, Florida Statutes. If a driver fails to comply with the terms of supervision, the driver's SSSP must inform the Department and the Department must revoke the hardship license. § 322.271(2)(c), Fla. Stat. While removal from a SSSP and the revocation of a hardship license are linked, they are not part of one larger, unitary decision since the Department can independently revoke a hardship license even if the driver is in the process of appealing the SSSP's decision. Fla. Admin. Code R. 15A-10.031(2). An order revoking a hardship license is a final order that is immediately appealable to the circuit court. §§ 322.27(7), 322.31, Fla. Stat. Unlike other decisions rendered by the Department, there is no "statutory right of a driver, whose license has been summarily revoked without notice, to an administrative hearing in which he has an opportunity to present his case." *Johnson v. State*, 709 So. 2d 623, 624 (Fla. 4th DCA 1998) (quoting *Mellon v. Cannon*, 482 So. 2d 604, 607 (Fla. 5th

² If the second SSSP does not agree, the Department makes a final decision that is then appealable to the circuit court. Fla. Admin. Code R. 15A-10.031(2)(d), (6).

DCA 1986)); *see also Dep't of Highway Safety & Motor Vehicles v. Sperberg*, 257 So. 3d 560, 561–62 (Fla. 3d DCA 2018) (recognizing that the petitioner properly sought review of an order revoking his license by filing a petition for writ of certiorari with the circuit court).³

The facts in this case are very similar to that of a decision rendered by our sister circuit court in *Campbell v. State of Florida, Department of Highway Safety & Motor Vehicles*, 20 Fla. L. Weekly Supp. 778a (Fla. 17th Cir. Ct. May 14, 2013). In *Campbell*, a driver challenging the revocation of his license first sought an administrative hearing with the Department before filing a petition for writ of certiorari challenging the hearing officer's decision more than thirty days after his license was initially revoked. The *Campbell* court dismissed the driver's petition as untimely. It held that chapter 322 does not provide for an administrative hearing to review a license revocation and that it was unlawful for the Department to hold a hearing. *Id.* (citing *Johnson*, 709 So. 2d at 624). Instead, the circuit court noted that the statute “provides the only mechanism through which a licensee or cardholder may seek review of an order or suspension, which is by filing a petition for writ of certiorari.” *Id.* (citing §§ 322.27(7), 322.31, Fla. Stat.).

The applicable statutes and regulations indicate that Petitioner had the opportunity to seek review of two separate final orders: the Department's November 25, 2019 revocation order and Pride's January 6, 2020 decision. Petitioner did not file a timely petition for writ of certiorari for either. We agree with *Campbell* and hold that, when the Department revokes a license pursuant to its authority under sections 322.27 and 322.271, a driver seeking review of that decision must

³ A driver does have the right to a “record review” in front of a hearing officer, but this “record review” is not considered a full administrative hearing and must be completed within thirty days of the Department's final order—i.e. before filing a petition for writ of certiorari in the circuit court would become untimely. *See Johnson*, 709 So. 2d at 624; *Vichich v. Dep't of Highway Safety & Motor Vehicles*, 799 So. 2d 1069, 1072–73 n.6 & n.7 (Fla. 2d DCA 2001); *Mikell v. Dep't of Highway Safety & Motor Vehicles*, 11 Fla. L. Weekly 683a (Fla. 2d Cir. Ct. Mar. 8, 2004).

timely file a petition for writ of certiorari in the circuit court. Petitioner did not need to request an administrative hearing to exhaust administrative remedies as there is no statutory basis for the hearing in the first place. *Johnson*, 709 So. 2d at 624; *Campbell*, 20 Fla. L. Weekly Supp. at 778a. Since the hearing officer's May 14, 2020 decision was not authorized by law, Petitioner also cannot rely on equitable tolling to overcome the untimely filing of his petition. *See Deal v. Deal*, 783 So. 2d 319, 321 (Fla. 5th DCA 2001).⁴ Because Petitioner did not seek relief within thirty days of a reviewable final decision, the Court must dismiss the instant Petition for lack of certiorari jurisdiction. *See* Fla. R. App. P. 9.100(c).

Conclusion

While dismissing the instant Petition is the proper outcome, we note that the law concerning this issue is confusing at best and deceptive at worst. The record below indicates that Petitioner, his counsel, and the hearing officer herself were all unfamiliar with the contours of the applicable law, giving credence to the Second District Court of Appeal's assessment that "the current statutes do not provide clear procedures" for the review of license revocations. *Vichich v. Dep't of Highway Safety & Motor Vehicles*, 799 So. 2d 1069, 1072 n.6, 1074 (Fla. 2d DCA 2001). We echo the concerns of the *Vichich* court and urge the Department and the Legislature to consider amending the relevant statutes and regulations to create a more consistent and common-sense regulatory framework.

Accordingly, the Petition for Writ of Certiorari is **DISMISSED**.

SCHER, KERNER, and WILLIS, JJ., concur.

⁴ While the Seventh Judicial Circuit held that a decision by a hearing officer regarding a license revocation "invites judicial review," and thus creates an independent thirty-day window for a petitioner to seek review in a circuit court, this decision has almost certainly been abrogated by *Johnson* which is binding on this Court. *See Holland v. Dep't of Highway Safety & Motor Vehicles*, 4 Fla. L. Weekly Supp. 573a (Fla. 7th Cir. Ct. Feb. 13, 1997).