

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR SANTA ROSA COUNTY, FLORIDA, APPELLATE DIVISION

SHANE CURLE,

Petitioner,

vs.

Case No: 2010-AP-10

Division: B

STATE OF FLORIDA,
DEPARTMENT OF HIGHWAY
SAFETY AND MOTOR VEHICLES

Respondent.

ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Opinion filed on the 19th day of Oct, 2010.

Petition for Writ of Certiorari arising from Findings of Fact, Conclusions of Law and Decision entered by the Department of Highway Safety and Motor Vehicles affirming the administrative suspension of Petitioner's driver's license.

William R. Wade, Esq., for Petitioner

*Opinion not final until time expires to file motion for rehearing
and disposition thereof if filed.*

THIS CAUSE comes before the Court on Petitioner's Petition for Writ of Certiorari, filed July 26, 2010. Petitioner seeks review of the decision of the Department of Highway Safety and Motor Vehicles sustaining the administrative suspension of his driver's license for refusal to submit to a breath, blood, or urine test. This Court has jurisdiction pursuant to Rules 9.030(c), 9.100, and 9.190, Florida Rules of Appellate Procedure, and Sections 322.2615 and 322.31, Florida Statutes.

After full consideration of the petition, the record, and relevant legal authority, the Court finds that Petitioner has failed to demonstrate a preliminary basis for relief and therefore declines to issue an order directing Respondent to show cause why relief should not be granted. See Rule 9.100(h), Fla. R. App. P. This Court dispenses with oral argument pursuant to Rule 9.320, Florida Rules of Appellate Procedure, and denies the petition.

PROCEDURAL HISTORY

On May 9, 2010, Petitioner was placed under arrest for the offense of driving under the influence. On this same date, Petitioner declined to submit to a breath test and was issued a notice of suspension for violation of Section 322.2615, Florida Statutes, refusal to submit to an approved test to determine blood alcohol content. Petitioner's driver's license was administratively suspended the date of the notice of suspension. Upon Petitioner's request, a formal review hearing was convened on June 24, 2010. On June 25, 2010, the hearing officer entered an order upholding the administrative suspension of Petitioner's driver's license.

STANDARD OF REVIEW

"The duty of the circuit court on a certiorari review of an administrative agency is limited to three components: Whether procedural due process was followed; whether there was a departure from the essential requirements of law; and whether the administrative findings and judgment were supported by competent substantial evidence." Department of Highway Safety and Motor Vehicles v. Satter, 643 So. 2d 692, 695 (Fla. 5th DCA 1994). The Court may not reweigh the evidence and substitute its judgment for that of the hearing officer. See Department of Highway Safety and Motor Vehicles v. Favino, 667 So. 2d 305, 308 (Fla. 1st DCA 1995).

DISCUSSION

Petitioner argues that the hearing officer departed from the essential requirements of law, a violation of due process, in denying Petitioner's motion to invalidate the suspension of his drivers' license. Specifically, Petitioner contends that the jurat contained in the affidavit of probable cause is improper because it does not identify who is swearing to the contents of the document (the line where the notary was supposed to fill in the name of the person taking the oath was left blank). Petitioner argues that because the jurat is defective, the affidavit is not actually an affidavit and should neither have been considered, nor relied upon, in sustaining Petitioner's drivers' license suspension.

The Court finds the legal authority relied upon by Petitioner distinguishable and that the affidavit of probable cause as submitted was properly under oath. The cases of Gupton v. Department of Highway Safety, 987 So. 2d 737 (Fla. 5th DCA 2008), and Paras v. Department of Highway Safety and Motor Vehicles, 7 Fla. L. Weekly Supp. 490a (March 22, 2000), are persuasive.

In the Gupton case, Gupton argued that the probable cause affidavit was facially insufficient because the jurat did not indicate whether the attester was a law enforcement officer or a notary public, and therefore the document was not considered an "affidavit." The Gupton Court found that "the argument advanced by Gupton [was] an overly technical interpretation of the affidavit requirement," and reasoned that "Florida courts have concluded that minor technical defects in an affidavit do not render it a nullity." Id. at 738, *citing* Department of Highway Safety & Motor Vehicles v. McGill, 616 So. 2d 1212, 1213 (Fla. 5th DCA 1993) and Pepilus v. State, 554 So. 2d 667 (Fla. 2d DCA 1990).

In the Paras case, Paras argued that the DUI worksheet was not properly sworn to and

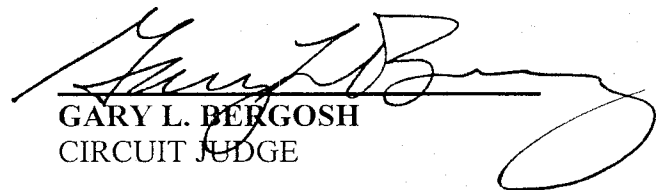
should have been inadmissible at the administrative hearing. Specifically, Paras argued that the jurat was defective because the line where the notary was supposed to fill in the name of the person taking the oath was left blank. Relying on Section 117.05(4), Florida Statutes, which provides: "It is presumed, absent . . . specific notation by the notary public, that notarization is to all signatures," the Paras Court found that the DUI worksheet as submitted was properly under oath. Id. The Paras Court concluded that "[w]hile the law enforcement officer who witnessed the deputy's signature failed to fill in a blank, there is no ambiguity as to who was being sworn," and therefore, the DUI worksheet was properly admitted into evidence. Id.

The Court has inspected the probable cause affidavit in question and finds that while the person who witnessed the arresting officer's signature failed to fill in a blank, there is no ambiguity as to who was being sworn. As minor technical defects in an affidavit do not render it a nullity, the Court finds that Petitioner was afforded due process; there was not a departure from the essential requirements of law; and the administrative findings and judgment were supported by competent substantial evidence.

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

DONE AND ORDERED in Chambers at Milton, Santa Rosa County, Florida, this

19th day of OCT, 2010.


GARY L. BERGOSH
CIRCUIT JUDGE

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