

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

MICHAEL V. PALAZZO

CASE NO.: 06-CA-3468

WRIT NO.: 06-40

Petitioner,

v.

STATE OF FLORIDA, DEPARTMENT OF
HIGHWAY SAFETY AND MOTOR VEHICLES,
BUREAU OF DRIVER IMPROVEMENT

Respondent.

_____/

Petition for Writ of Certiorari

Paula C. Coffman, Esq., on behalf of Petitioner.

Heather Rose Cramer, Esq., Assistant General Counsel
Florida Department of Highway Safety and Motor Vehicles, on behalf of Appellee.

Before ADAMS, WHITEHEAD and JOHNSON, J.J.

PER CURIAM

ORDER DENYING PETITIONER'S PETITION FOR WRIT OF CERTIORARI

Petitioner, Michael V. Palazzo, timely appeals his license revocation pursuant to sections 322.27(5) and 322.31, Florida Statutes (2006).

When reviewing a petition for certiorari, this Court's standard of review is limited to determining whether the petitioner was accorded due process, the essential requirements of law were observed, and whether the findings of fact and judgment are supported by competent, substantial evidence. *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982). In conducting this review, this Court may not "reweigh the evidence or substitute its judgment for that of the" administrative hearing officer. *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995); *Dep't of Highway Safety & Motor Vehicles v. Allen*, 539 So. 2d 20 (Fla. 5th DCA 1989).

After being convicted a third time, within five (5) years, for driving with a suspended license on October 27, 2005, Respondent, Department of Highway Safety and Motor Vehicles, designated Petitioner a habitual traffic offender¹ and revoked his license for five (5) years effective April 17, 2006, pursuant to 322.27(5), Florida Statutes. On April 26, 2006, Petitioner filed his instant Petition for Writ of Certiorari.

Petitioner argues that his due process rights were violated when Respondent revoked his license before providing him with a hearing to challenge his license revocation. This argument has previously been addressed and rejected by the court in *Cappadona v. Keith*, 290 So. 2d 545 (Fla. 4th DCA 1974). As noted by the court in *Cappadona v. Keith*, 290 So. 2d at 546, section 322.27(5), Florida Statutes (2006), expressly allows Petitioner to challenge his license revocation by filing a petition with Respondent to show cause why his license should not be revoked. Unless and until Petitioner avails himself of this remedy, he simply cannot complain that his due process rights have been violated. *See id.* (a petitioner “cannot be heard to complain that the revocation of his license was a deprivation of his constitutions [sic] rights” when he does not avail himself of the procedure set forth in section 322.27(5)).

¹ Section 322.264, Florida Statutes (2006), defines a habitual traffic offender, in relevant part, as a person who is thrice convicted within a five year period of driving with a suspended or revoked license.

Furthermore, if Petitioner does not receive a favorable result at the administrative hearing, he may challenge that order by filing a subsequent petition for writ of certiorari. *See Dep't of Highway Safety & Motor Vehicles v. Spells*, 502 So. 2d 19 (Fla. 2d DCA 1986).

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

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, on this
26 day of September, 2007.

/S/_____
JOHN H. ADAMS, SR.
Circuit Judge

/S/_____
REGINALD K. WHITHEAD
Circuit Judge

/S/_____
ANTHONY H. JOHNSON
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished via U.S. mail or hand delivery to: **Paula C. Coffman, Esq.**, 200 East Robinson St., Suite 290, Orlando, Florida 32801 and **Heather Rose Cramer, Esq.**, Assistant General Counsel, Department of Highway Safety and Motor Vehicles, 6801 Lake Worth Road, #230, Lake Worth, Florida 33467 on this 26 day of September, 2007.

_____/S/_____
Judicial Assistant