

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

DAVID A. JOHNSON,

Petitioner,

CASE NO.: 2006-CA-9177-O

WRIT NO.: 06-83

v.

**STATE OF FLORIDA, DEPARTMENT
OF HIGHWAY SAFETY AND MOTOR
VEHICLES,**

Respondent.

Petition for Writ of Certiorari
from the Florida Department of
Highway Safety and Motor Vehicles,
M. Varnadore, Hearing Officer.

William R. Ponall, Esquire,
for Petitioner.

Heather Rose Cramer, Assistant General Counsel,
for Respondent.

Before MACKINNON, J. KEST, and EVANS, J.J.

PER CURIAM.

FINAL ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Petitioner David A. Johnson timely filed this petition seeking certiorari review of the Florida Department of Highway Safety and Motor Vehicles' (the Department) final order denying his request for a hardship license. This Court has jurisdiction. 322.31, Fla. Stat. (2006); Fla. R. App. P. 9.030(c)(3); 9.100.

On September 8, 2006, the Petitioner applied for a hardship license. On September 27, 2006, the Department held a hearing on the Petitioner's request. The Petitioner argued that he was eligible for a hardship license based on Department of Highway Safety and Motor Vehicles v. Critchfield, 842 So. 2d 782 (Fla. 2003). The Department issued its final order on September 27, 2006, finding that the Petitioner was statutorily ineligible for a hardship license because he has four previous convictions for DUI.

The Court's review of an administrative agency decision is governed by a three-part standard of review: (1) whether procedural due process was accorded; (2) whether the essential requirements of the law were observed; and (3) whether the decision was supported by competent substantial evidence. City of Deerfield Beach v. Vaillant, 419 So. 2d 624, 626 (Fla. 1982). "It is neither the function nor the prerogative of a circuit judge to reweigh evidence and make findings [of fact] when [undertaking] a review of a decision of an administrative forum." Dep't of Highway Safety & Motor Vehicles v. Allen, 539 So. 2d 20, 21 (Fla. 5th DCA 1989).

The Petitioner asserts that the statute relied upon by the Department in its decision is unconstitutional and cites Department of Highway Safety and Motor Vehicles v. Critchfield, 842 So. 2d 782 (Fla. 2003) in support of this assertion. The Petitioner contends that the 1997 version of section 322.271, Florida Statutes, is currently in effect, and under that version of the statute, he is entitled to a hardship license. Thus, the Petitioner maintains that the Department's decision departed from the essential requirements of the law. The Department, however, argues that the constitutional defect in chapter 98-223 was cured so that chapter 98-223 was revived and operated

prospectively beginning July 1, 2003. Therefore, the Department contends that it correctly denied the Petitioner's request for a hardship license.

In Critchfield, the Supreme Court of Florida determined that chapter 98-223, which created section 322.28, Florida Statutes, and amended section 322.271(4), Florida Statutes, violated the single subject rule. 842 So. 2d at 785. This decision became final on June 11, 2003. Id. at 782. As a result of this ruling, the statutes as they existed before the amendments were reinstated until the defect was cured. Jackson v. Dep't of Highway Safety & Motor Vehicles, 848 So. 2d 1165 (Fla. 2d DCA 2003). Prior to chapter 98-223, a driver whose license had been revoked due to four DUI convictions could request a hardship license after the expiration of five years after the date of revocation. Lescher v. Dep't of Highway Safety & Motor Vehicles, 985 So. 2d 1078 (Fla. 2d DCA 2006). However, chapter 98-223 eliminated that language. Id.

On May 21, 2003, the Legislature cured the defect when it readopted the 2002 statutes through House Bill 1017. Mullinix v. Dep't of Highway Safety & Motor Vehicles, 11 Fla. L. Weekly Supp. 1037a (Fla. 1st Cir. Ct. Sept. 3, 2004). The effective date of the re adoption of the 2002 statutes was July 1, 2003. Id. As a result, chapter 98-223 was revived and operated as good law beginning July 1, 2003 and thus, it is no longer subject to challenge. Id.; see also State v. Johnson, 616 So. 2d 1 (Fla. 1993) (finding that once an invalid law is reenacted, it is no longer subject to the challenge that it violates the single-subject rule).

As of July 1, 2003, section 322.28(2)(e), requires the Department to permanently revoke the driver's license of a person who has four convictions for DUI. It further provides that "[n]o driver's license or driving privilege may be issued or granted to any

