

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

WILLIAM MEILE,
Petitioner,

CASE NO.: 2007-CA-11757-O
WRIT NO.: 07-51

v.

**STATE OF FLORIDA, DEPARTMENT
OF HIGHWAY SAFETY AND MOTOR
VEHICLES, DIVISION OF DRIVER
LICENSES,**
Respondent.

Petition for Writ of Certiorari
from the Florida Department of
Highway Safety and Motor Vehicles,
Division of Driver Licenses,
J. Kuritz, Hearing Officer.

William R. Ponall, Esquire,
for Petitioner.

Heather Rose Cramer, Assistant General Counsel,
for Respondent.

Before MIHOK, THORPE and FLEMING, J.J.

PER CURIAM.

FINAL ORDER GRANTING PETITION FOR WRIT OF CERTIORARI

Petitioner William Meile timely filed this petition seeking certiorari review of the Florida Department of Highway Safety and Motor Vehicles' (the Department) Final Order of License Suspension, sustaining the suspension of his driver's license pursuant to section 322.2615, Florida Statutes. This Court has jurisdiction. 322.2615, 322.31, Fla. Stat. (2004); Fla. R. App. P. 9.030(c)(3); 9.100.

At approximately 11:11 p.m. on July 8, 2007, Officer Latham-Long of the Orlando Police Department observed a 2003 Acura driving very slowly in the 700 block of Bentley Street. Officer Latham-Long "ran the tag on her mobile computer which

revealed the owner ha[d] a [W]inter [P]ark address.” Officer Latham-Long noted that the 700 block of Bentley Street “is a high crime area, high drug area which has a history of known prostitution.” Officer Latham-Long “initiated her emergency equipment on her vehicle to conduct an investigatory stop . . . [in order] to speak with the driver.” The driver failed to stop the vehicle and continued east on West Robinson Street. “The vehicle finally stopped on West Robinson Street about 50 feet west of North Hughey Avenue.”

Upon making contact with the driver, Officer Latham-Long detected an odor of alcoholic beverages emanating from the driver. Officer Latham-Long also observed that the driver’s eyes were red and bloodshot. Officer Latham-Long asked the driver how much he had to drink, the driver replied, “nothing.” Officer Latham-Long then asked the driver to submit to field sobriety testing. The driver agreed. Based on her training and experience and the driver’s driving pattern, Officer Latham-Long felt that the driver was impaired and placed him under arrest. The driver was transported to the DUI testing center where he refused the breath test. The driver was identified as the Petitioner by his Florida driver’s license.

Pursuant to section 322.2615, Florida Statutes, and chapter 15A-6, Florida Administrative Code, on August 14, 2007, Petitioner was granted a formal review held by Department Hearing Officer Kuritz. Petitioner was not present, but was represented by counsel.

At the hearing, Petitioner moved to set aside the suspension on the basis that there was insufficient evidence to support probable cause that Petitioner was driving while impaired or under the influence. On August 21, 2007, the hearing officer entered a Final Order of License Suspension denying Petitioner’s motions and sustaining the suspension of his driver’s license.

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).

In a case where the individual’s license is suspended for refusal to submit to a breath, blood, or urine test, “the hearing officer shall determine by a preponderance of the evidence whether sufficient cause exists to sustain . . . the suspension.” § 322.2615(7), Fla. Stat. (2005). The hearing officer’s scope of review is limited to the following issues:

1. Whether the arresting law enforcement officer had probable cause to believe that the person was driving or in actual physical control of a motor vehicle in this state while under the influence of alcoholic beverages or controlled substances.
2. Whether the person was placed under lawful arrest for a violation of s. 316.193.
3. Whether the person refused to submit to any such test after being requested to do so by a law enforcement officer or correctional officer.
4. Whether the person was told that if he or she refused to submit to such test his or her privilege to operate a motor vehicle would be suspended for a period of 1 year or, in the case of a second or subsequent refusal, for a period of eighteen months.

§ 322.2615(7)(b), Fla. Stat. (2005).

Petitioner asserts that the hearing officer failed to “establish that the Petitioner’s vehicle was lawfully stopped.” Thus, Petitioner argues that the stop and arrest were unlawful and therefore, the hearing officer’s decision was not supported by competent substantial evidence. On the other hand, the Department contends that: 1) the Department’s order is supported by competent substantial evidence, does comport with the essential requirements of the law and did not result in a denial of due process; 2) certiorari review is not the proper procedural vehicle to challenge the constitutionality of a statute or ordinance; and 3) even if the lawfulness of the arrest should have been addressed by the hearing officer, remand is the proper remedy.

Petitioner filed a notice of supplemental authority, thus giving this Court notice of the Fifth District's decision in *Dep't of Highway Safety and Motor Vehicles v. Pelham*, 979 So. 2d 304 (Fla. 5th DCA 2008). Subsequently, the Department filed a Motion to Abate Petition for Writ of Certiorari and Remand for Further Proceedings wherein it admitted that the hearing officer did not consider the lawfulness of Petitioner's stop and arrest. Petitioner filed a response arguing that this Court should not remand the case for further proceedings, but should grant the Petition for Writ of Certiorari.

The Fifth District's opinion in *Pelham* is binding upon this Court. Petitioner in this case, like the petitioner in *Pelham*, argues that his license suspension was not supported by competent substantial evidence because the hearing officer failed to make a determination as to whether Petitioner was lawfully stopped or arrested. *Id.* at 305. In *Pelham*, the Fifth District concluded that a license suspension could not be based on an individual's refusal to take a breath test following an unlawful arrest. *Id.* at 306-07. Furthermore, the Fifth District held that an administrative hearing officer, who reviews the suspension of a motorist's driver's license after the motorist refused to take a breath test, following his arrest for driving under the influence, had the authority to determine whether the request for said test was incident to a lawful arrest. *Id.* at 308. Here, Petitioner argues and the Department conceded, in its motion, that the hearing officer, on August 21, 2007, failed to consider the lawfulness of Petitioner's stop and subsequent arrest. Accordingly, pursuant to *Pelham*, it appears that the hearing officer's decision was not supported by competent substantial evidence.

In light of this conclusion, this Court finds it unnecessary to address the additional arguments made by Petitioner and the Department.

Accordingly, it is hereby

ORDERED AND ADJUDGED that:

1. The Petition for Writ of Certiorari is **GRANTED** and the hearing officer's Final Order of License Suspension is **QUASHED**.
2. The Department's Motion to Abate Petition for Writ of Certiorari and Remand for Further Proceedings is **DENIED**.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida
on this 5 day of May , 2009.

 /S/
A. THOMAS MIHOK
Circuit Judge

 /S/
THEOTIS BRONSON
Circuit Judge

 /S/
JANET C. THORPE
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 to **William R. Ponall, Esquire**, Kirkconnell, Lindsey, Snure and Yates, P.A., Post Office Box 2728, Winter Park, Florida 32790 and **Heather Rose Cramer**, Assistant General Counsel, 6801 Lake Worth Road, #230, Lake Worth, Florida 33467 on the 6 day of May , 2009.

 /S/
Judicial Assistant