

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

MARK SADOWSKI,

Petitioner,

v.

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

Respondent.

CASE NO.: 2010-CA-9188-O

WRIT NO.: 10-23

Petition for Writ of Certiorari
from the Florida Department of
Highway Safety and Motor Vehicles.

Robert L. Sirianni, Jr., Esq.
Paetra T. Brownlee, Esq.,
for Petitioner.

Richard M. Coln, Assistant General Counsel,
for Respondent.

Before POWELL, O'KANE, and APTE, J.J.

FINAL ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Petitioner Mark Sadowski seeks certiorari review of a final order of the Department permanently revoking his driver's license on the basis that he had been previously convicted of four DUIs.

Petitioner admits he was convicted of DUI twice, but argues that his two Michigan convictions of Operating While Impaired, a lesser included offense under section 257.625, Michigan Compiled Law, were not qualifying offenses under the Florida Statute.

We disagree, and deny the petition.

Section 322.28 (2), Florida Statutes, provides in pertinent part that where a driver has been convicted of four DUIs, ... the department shall revoke the drivers license [A] conviction of driving under the influence, driving while intoxicated ... **or any other similar alcohol-related traffic offense outside this state** is considered a conviction for the purpose of this paragraph.” (emphasis added). Chapter 322 is not punishment, but is for the protection of the public, and is to be liberally construed. *See Dep’t of Highway Safety & Motor Vehicles v. Bender*, 497 So. 2d 1332 (Fla. 2d DCA 1986). The Florida legislature intended that this section include a broad range of out-of-state offenses for enhancement purposes. *See DiPietro v. State*, 992 So. 2d 880 (Fla. 4th DCA 2008). The Department’s interpretation of this statute, which it is charged with enforcing, is entitled to great weight and persuasive force, and the courts will not depart from that interpretation unless it is clearly erroneous. *Cohen on Behalf of Cohen v. Sch. Bd. of Dade County, Fla.*, 450 So. 2d 1238, 1241 (Fla. 3d DCA 1984).

In *McAdam v. State*, 648 So. 2d 1244 (Fla. 2d DCA 1995), a conviction for Colorado’s offense of driving while impaired was held “sufficiently” similar to Florida’s offense of DUI to be counted as a prior qualifying conviction under section 322.28(2). Further, the court in *DePietro*, in holding that the New York lesser included offense of Driving While Ability Impaired offense was a similar qualifying conviction, noted that “the listed offenses all involve operating a motor vehicle while impaired by alcohol by some degree.” Although not controlling here, the Nevada Supreme Court held in *Marciniak v. State*, 911 P.2d 1197 (Nev. 1996), that the Michigan Driving While Visibly Impaired statute envisioned the same or similar conduct as the Nevada DUI statute, citing *McAdam*. These somewhat analogous cases illustrate the liberal interpretation other courts have given foreign alcohol related offenses.

Petitioner relies solely on the case of *Shaw v. State*, 783 So. 2d 1097 (Fla. 5th DCA 2001), but we do not think *Shaw* dictates a different result. For one thing, *Shaw* was a criminal DUI case, not an administrative one. For another, the issue was the impropriety of the prosecutor's closing argument, not whether a foreign offense was a similar alcohol-related offense. Whether the reasoning in *Shaw* would apply to the case before us we respectfully leave for the District Courts to say.

Consequently, for the foregoing reasons, we deny the Petition for Writ of Certiorari.

PETITION DENIED.

DONE AND ORDERED at Orlando, Florida this 5th day of April, 2012.

/S/

ROM W. POWELL
Senior Judge

/S/

JULIE H. O'KANE
Circuit Judge

/S/

ALAN S. APTE
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing order was furnished on this 5th day of April, 2012, to the following: **Robert L. Sirianni, Jr., Esq.**, 400 North New York Ave., Suite 215, Winter Park, Florida 32789; and **Richard M. Coln, Assistant General Counsel**, P.O. Box 570066, Orlando, Florida 32857.

/S/

Judicial Assistant