

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

**JOHN K. MALATESTA, II**

**CASE NO.: 2011-CA-873-O  
WRIT NO.: 11-06**

Petitioner,

v.

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

Respondent.

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Petition for Writ of Certiorari.

John M. Vallillo, Esquire,  
for Petitioner.

Kimberly A. Gibbs, Assistant General Counsel,  
for Respondent.

BEFORE MUNYON, APTE, EVANS, JJ.

PER CURIAM.

**FINAL ORDER DENYING SECOND AMENDED  
PETITION FOR WRIT OF CERTIORARI**

John K. Malatesta, II (“Petitioner”) timely filed this second amended petition seeking certiorari review of the Florida Department of Highway Safety and Motor Vehicles’ (“Department”) Final Order of License Suspension. Pursuant to section 322.2615, Florida Statutes, the order sustained the suspension of his driver’s license. This Court has jurisdiction under section 322.2615(13), Florida Statutes, and Florida Rule of Appellate Procedure 9.030(c)(3). We dispense with oral argument. Fla. R. App. P. 9.320.

### *Findings of Fact*

As gathered from the hearing officer's findings of fact, on November 20, 2010, at approximately 12:01 a.m., Officer Anthony Fairbanks of the Winter Park Police Department noticed a black Ford Explorer driven by Petitioner cross a solid double yellow line, drift into the median lane twice, and travel at 44 mph in a 30 mph zone. Accordingly, Officer Fairbanks conducted a traffic stop of Petitioner who was the sole occupant of the vehicle. Officer Fairbanks approached Petitioner's vehicle at the passenger's window and immediately detected the strong odor of alcohol impurities and marijuana emitting from within the vehicle. He noticed that Petitioner's eyes were watery and glazed and that his words were slurred as he spoke. Petitioner admitted to Officer Fairbanks that he consumed alcoholic beverages and smoked marijuana.

Officer Fairbanks became concerned that Petitioner was too impaired to operate a motor vehicle safely and requested Petitioner to submit to field sobriety exercises. Petitioner consented to perform the exercises. Upon performing the exercises poorly, Petitioner was placed into custody for driving under the influence of alcohol beverages and a controlled substance ("DUI") and taken to the Winter Park Police station where he provided two samples of his breath exceeding 0.08 and a sample of his urine.

Petitioner requested a formal review hearing pursuant to section 322.2615, Florida Statutes, that was held on December 22, 2010. On the same date, the hearing officer entered a written order denying Petitioner's motion and sustaining his driver's license suspension. Petitioner now seeks certiorari review of this order.

### *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.” *Dep’t of Highway Safety & Motor Vehicles v. Satter*, 643 So. 2d 692, 695 (Fla. 5th DCA 1994).

In a formal review of an administrative suspension, the burden of proof is on the State, through the Department. In cases where the individual’s license is suspended for an unlawful breath-alcohol level, the hearing officer must find that the following elements have been established by a preponderance of the evidence:

1. Whether the law enforcement officer had probable cause to believe that the person whose license was suspended was driving or in actual physical control of a motor vehicle in this state while under the influence of alcoholic beverages or chemical or controlled substances.
2. Whether the person whose license was suspended had an unlawful blood-alcohol level or breath-alcohol level of 0.08 or higher as provided in s. 316.193.

§ 322.2615(7)(a), Fla. Stat. (2010).

### *Arguments*

In the Second Amended Petition for Writ of Certiorari, Petitioner’s arguments involve the related Marchman Act action that occurred immediately following his arrest for DUI in the instant case. On November 20, 2010, after Petitioner was arrested for DUI, he was transported to the Winter Park Police station where he provided the breath samples. Immediately thereafter, Officer Fairbanks, believing that Petitioner was substance abuse

impaired, initiated the Marchman Act process placing him into the Addiction Receiving Facility/Center on Central Avenue in Orlando.

At the formal review hearing, Petitioner objected and moved to exclude all documentary evidence as to the DUI arrest basically claiming that the Marchman Act process nullified his arrest for DUI pursuant to section 397.6772, Florida Statutes. Petitioner also attempted to introduce into evidence the Marchman Act document executed by Officer Fairbanks. The hearing officer noted Petitioner's objection, denied his motion, and did not accept the Marchman Act document into evidence.

In the Petition, Petitioner argues that the hearing officer's denial of his motion to exclude the arrest documents, denial to admit the Marchman Act document, and denial to invalidate his license suspension was a departure from the essential requirements of the law and a denial of due process. Petitioner also seeks an award of attorney's fees, costs, and damages pursuant to Florida Rule of Appellate Procedure 9.400.

Conversely, among the Department's arguments in its Response, the Department argues that the formal review hearing adhered to the essential requirements of the law and the hearing officer's order was supported by competent substantial evidence. Specifically, as to the Marchman Act, the Department argues that Petitioner misapplies the language of section 397.6772, Florida Statutes, because while the statute seeks to prevent an individual who is being involuntarily committed from having an arrest record, it is not intended to exonerate the arrest record of a criminal defendant.

#### *Court's Analysis and Findings*

Subsection 397.6772(1), Florida Statutes (2010), provides that detention under the Marchman Act is not to be considered an arrest for any purpose, and no entry or other record

may be made to indicate that the person has been detained or charged with any crime. This Court, applying the plain and obvious meaning of the statute, concurs with the Department that the statute provides that the involuntary commitment for substance abuse should not in itself create an arrest record against the person being committed. However, the statute does not automatically protect persons who are involuntary committed from being held accountable for criminal offenses they commit even for offenses that occur simultaneously with the Marchman Act process. Ample case law exists that provides guidance for reviewing the meaning of statutes: “When the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning.”

*Maddox v. State*, 923 So. 2d 442, 449 (Fla. 2006), citing *Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984) (quoting *A.R. Douglass, Inc. v. McRainey*, 137 So. 157, 159 (Fla. 1931)).

This rule respects the statutory text as the most reliable and authoritative expression of legislative intent. Therefore, “[e]ven where a court is convinced that the legislature really meant and intended something not expressed in the phraseology of the act, it will not deem itself authorized to depart from the plain meaning of the language which is free from ambiguity.”

*Maddox v. State*, 923 So. 2d 442, 449-450 citing *St. Petersburg Bank & Trust Co. v. Hamm*, 414 So. 2d 1071, 1073 (Fla. 1982) (quoting *Van Pelt v. Hilliard*, 75 Fla. 792, 78 So. 693, 694 (Fla. 1918)).

When a statute is clear, courts will not look behind the statute's plain language for legislative intent or resort to rules of statutory construction to ascertain intent. Instead, the statute's plain and ordinary meaning must control, unless this leads to an unreasonable result or a result clearly contrary to legislative intent.

*State v. Burris*, 875 So. 2d 408, 410 (Fla. 2004) citing *Lee County Elec. Coop., Inc. v. Jacobs*, 820 So. 2d 297, 303 (Fla. 2002).

Accordingly, the Marchman Act action taken did not nullify the DUI arrest of Petitioner. Therefore, the hearing officer was not required to exclude the documents relevant to the DUI arrest and the license suspension. Also, the hearing officer was not required to admit into evidence and review documents pertaining to the Marchman Act action which was separate from the DUI arrest and license suspension.

Upon review of the hearing officer's order in conjunction with the transcript from the formal review hearing, and the other documents in the court record, competent substantial evidence existed that the traffic stop and arrest were lawful in this case. Accordingly, this Court finds that procedural due process was followed and the hearing officer's decision to sustain Petitioner's license suspension did not depart from the essential requirements of the law and was supported by competent substantial evidence.

Based upon the foregoing, it is hereby **ORDERED AND ADJUDGED** that Petitioner, John K. Malatesta, II's Second Amended Petition for Writ of Certiorari is **DENIED** and Petitioner's request for attorney's fees, costs, and damages is also **DENIED**.

**DONE AND ORDERED** in Chambers at Orlando, Orange County, Florida, this 17th day of January, 2012.

/S/  
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**LISA T. MUNYON**  
Circuit Court Judge

/S/  
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**ALAN S. APTE**  
Circuit Court Judge

/S/  
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**ROBERT M. EVANS**  
Circuit Court Judge

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished via U.S. mail or hand delivery to **John M. Vallillo, Esquire**, 37 N. Orange Avenue, Suite 500, Orlando, Florida 32801 and to **Kimberly A. Gibbs, Esquire**, Assistant General Counsel, Department of Highway Safety and Motor Vehicles - Legal Office, P.O. Box 570066, Orlando, FL 32857, on this 17th day of January, 2012.

/S/ \_\_\_\_\_  
Judicial Assistant