

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

CASE NO.: CVA1 09-61
Lower Court Case No.: 2009-TR-28445

NICHOLAS P. ALIX,
Appellant,

v.

STATE OF FLORIDA, DEPARTMENT OF
HIGHWAY SAFETY AND MOTOR VEHICLES,
Appellee.

Appeal from the County Court,
For Orange County,
Caroll S. Barco, Hearing Officer.

Nicholas P. Alix, Pro Se,
for Appellant.

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

Before POWELL, O'KANE, M. SMITH, J.J.

PER CURIAM.

FINAL ORDER AFFIRMING TRIAL COURT

Appellant Nicholas Alix seeks review of a final disposition order of a hearing officer finding him guilty of unlawful speed, imposing a fine and costs, and requiring attendance at an advanced driver improvement class. The Court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(c)(1)(A). The Court dispenses with oral argument pursuant to Florida Rule of Appellate Procedure 9.320.

Appellant neither objected when the charge was amended from failure to obey a traffic control device to unlawful speed at the outset of the hearing nor did he request additional time to

prepare. The Court finds that because Appellant did not object below, and he and his witness gave conflicting testimony as to his speed, Appellant failed to preserve the issue on appeal. *See Dober v. Worrell*, 401 So. 2d 1322 (Fla. 1981).

The Court further finds that denial of Appellant's motion for rehearing was not error. Appellant did not include the motion in the record on appeal and Appellant did not proffer in his brief what further evidence he would have presented had he been granted a rehearing.

Although the Court agrees with the statement in Appellee's brief that the "hearing officer could have handled things better . . .," the Court does not find that the hearing officer's extraneous comments rose to the level of prejudicial reversible error.¹

The standard of review in this type of proceeding is narrowly limited. *See State v. Kirby*, 752 Sol. 2d 36, 37 (Fla. 5th DCA 2000). The Court concludes that due process was afforded, essential requirements of the law were followed, and the decision was supported by substantial, competent evidence.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that the Final Judgment, rendered October 5, 2009, is **AFFIRMED**.

DONE and ORDERED at Orlando, Florida this __27__ day _____ October_____, 2010.

/s/
JULIE H. O'KANE
Circuit Judge

/s/
ROM W. POWELL
Senior Circuit Judge

/s/
MAURA T. SMITH
Circuit Judge

¹ There was no prosecutor or attorney representing the Department below. Thus, the hearing officer had to conduct the direct, cross, and clarifying examination of the witnesses in order to bring out the relevant, material testimony.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing order was furnished via U.S. mail on this 27 day of October, 2010, to the following: **Nicholas P. Alix**, 7803 Canyon Lake Circle, Orlando, Florida 32835 and **Kimberly A. Gibbs, Assistant General Counsel**, DHSMV, Post Office Box 570066, Orlando, Florida 32857.

/s/
Judicial Assistant