

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

JAMES LEONARD BAUMANN,

CASE NO.: 2015-CA-0006133-O

Petitioner,

v.

STATE OF FLORIDA, DEPARTMENT OF
HIGHWAY SAFETY AND MOTOR VEHICLES,
BUREAU OF ADMINISTRATIVE REVIEWS,

Respondent.

Petition for Writ of Certiorari
from the Department of
Highway Safety and Motor Vehicles,
R. Newton, Hearing Officer.

Daniel D. Archer, Esq., Danielle Contini, Esq.,
and Courtney S. Caillavet, Esq.,
for Petitioner.

Stephen D. Hurm, General Counsel, and Jason
Helfant, Senior Assistant General Counsel,
for Respondent.

Before LUBET, H. RODRIGUEZ, and S. KEST, J.J.

PER CURIAM.

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

Petitioner James Leonard Baumann seeks certiorari review of the denial of his request for early reinstatement of his driver's license following its permanent revocation. This Court has jurisdiction under Florida Statute section 322.31, and Florida Rule of Appellate Procedure 9.030(c)(3). Because Baumann was not denied due process regarding the denial of his petition for early reinstatement, the Second Amended Petition for Writ of Certiorari is denied.

The relevant facts regarding this certiorari proceeding began almost forty years ago. Baumann was convicted of DUIs in 1976, 1978, 1979, and 1990. Although the Department of Highway Safety and Motor Vehicles contends that Baumann's license was permanently revoked on July 3, 1990, due to the convictions, the Department did not enter an Order of Revocation until April 6, 2011, almost twenty-one years later. The Department discovered its failure to order revocation in 2011 when Baumann was ticketed for not wearing a seat belt. Baumann received the Order of Revocation on April 11, 2011.

The Order of Revocation states that Baumann may apply for a hardship license five years after his most recent DUI conviction, but to be eligible, he must not drink alcohol "in this five-year period." (App. Ex. B.) The order informs Baumann that he may appeal it "within 30 days of the date of this order by filing a petition for writ of certiorari described in Section 322.31, Florida Statutes." (*Id.*) Nothing indicates that Baumann appealed it.

Baumann did seek early reinstatement of his license. At the hearing before the Department to determine whether his request should be granted, held on June 9, 2015, Baumann testified that in 2012 he drank some wine during a toast at his son's wedding. The hearing officer determined that Baumann could not receive a hardship license because he drank alcohol within the five years preceding his petition for a hardship license. Although Baumann also drove within the preceding five years, as evidenced by the 2011 seatbelt citation, the hearing officer stated that she could refrain from counting that against him in determining whether he qualified for reinstatement because Baumann did not have notice that his license was revoked at that time.

The hearing officer denied Baumann's petition for early reinstatement, and then Baumann sought certiorari review in this Court.

In a certiorari proceeding, the circuit court is limited to determining whether competent substantial evidence supports the lower tribunal's decision, whether there was a departure from the essential requirements of the law, and whether procedural due process was accorded. *Dep't of Highway Safety & Motor Vehicles v. Luttrell*, 983 So. 2d 1215, 1217 (Fla. 5th DCA 2008).

Baumann's arguments boil down to two issues. First, he contends that he was denied due process by the Department waiting more than twenty years to revoke his driver's license. Second, he argues that he was denied due process because the hearing officer acted arbitrarily and capriciously in not reinstating his license due to the alcohol consumption, but ignoring his driving during the previous five years. Neither argument has merit.

First, this is not a petition to review the Order of Revocation. That order was entered in 2011, and, as stated in the order, the time to seek judicial review was within thirty days. *See* § 322.27(7), Fla. Stat. (2011); § 322.31, Fla. Stat. (2011); Fla. R. App. P. 9.030(c)(3); Fla. R. App. P. 9.100(c)(1). A circuit court is without jurisdiction to review an order of revocation when the petition for writ of certiorari is filed beyond that time limit. *Dep't of Highway Safety & Motor Vehicles v. Adams*, 338 So. 2d 542, 543 (Fla. 1st DCA 1976) (circuit court without jurisdiction to review petition for writ of certiorari filed more than thirty days after order denying petition for reinstatement of driver's license); *Wibbens v. Dep't of Highway Safety & Motor Vehicles*, 956 So. 2d 503, 504 (Fla. 1st DCA 2007) (thirty-day time limit in Rule 9.100(c)(1) to file petition for writ of certiorari to review driver's license suspension is jurisdictional). Thus, this Court does not have jurisdiction to review the Order of Revocation via a petition for writ of certiorari filed four years later and directed to the order denying reinstatement. *See Cappadona v. Keith*, 290 So. 2d 545, 546 (Fla. 4th DCA 1974) (petitioner that did not seek review of the order of revocation by

following the statutory procedure could “not be heard to complain that the revocation of his license was a deprivation of his constitutional rights.”).

Second, Baumann argues that the hearing officer choosing to deny the request for reinstatement based on his drinking alcohol within the past five years, and stating that she would have been able to disregard Baumann driving within the past five years, was an arbitrary and capricious decision. A look at the timeline of events and the hearing officer’s statement regarding this decision reveals that it is neither.

Under section 322.271(5)(a), Florida Statutes (2015), for reinstatement of a driver’s license, the petitioner must demonstrate at a hearing that he has been drug-free and not driven a car without a license “for at least 5 years prior to the hearing,” among other things.

Baumann received the seatbelt violation in 2011. This is the event that triggered issuance of the Order of Revocation. Thus, when he drove in 2011, Baumann did not have notice that his license should have been revoked and he should not have been driving. This was clearly the hearing officer’s reasoning when she decided that this 2011 drive was not a basis for denying reinstatement, as she stated in reference to the driving, “That one, we probably could have given a little leeway on because you didn’t get notification.” (Hr’g Tr. 20:5-7.)

The Order of Revocation, which states that Baumann can apply for reinstatement, but must not use alcohol during the five-year period, was issued in 2011. Baumann testified that he drank wine at his son’s wedding in 2012. When he drank the wine, Baumann was on notice that drinking alcohol could impede his chances of the Department reinstating his driver’s license.

Because Baumann had notice that drinking alcohol could preclude reinstatement of his license when he did it, but did not have notice that his license was revoked when he drove in

2011, the hearing officer's decision to deny reinstatement based on the drinking but not the driving was neither arbitrary nor capricious.

The Order of Revocation states that the driver must not use alcohol within five years after the driver's most recent DUI conviction. (App. Ex. B.) Florida Statute section 322.271(5)(a)(3) (2011), states that the driver must be "drug-free for at least 5 years prior to the hearing[.]" Baumann does not argue that he interpreted the Order of Revocation to mean that, for reinstatement, he did not have to use alcohol from 1990 until 1995, but then was free to do so thereafter. In contesting the timeliness of the Order of Revocation, Baumann does state,

Had the State chosen to revoke the Petitioner's license at anytime prior to September 1, 2012 the State would not have been able to rely on the sip of alcohol, taken in the toast at his son's wedding, in order [to] deny reinstatement of his driving privileges as the Petitioner did not consume any alcohol for twenty-one (21) years prior.

(Second Am. Pet. Writ Cert. ¶ 21.) This argument is without merit because the Department did revoke Baumann's license prior to September 1, 2012. The Order of Revocation is dated April 6, 2011, more than a year before Baumann's drink.

As neither one of Baumann's arguments regarding denial of due process have merit, it is hereby **ORDERED AND ADJUDGED** that the Second Amended Petition for Writ of Certiorari is **DENIED**.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this 6th day of January, 2016.

/S/

MARC L. LUBET
Presiding Circuit Judge

H. RODRIGUEZ and S. KEST, JJ., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished to: **Daniel D. Archer, Esq., Danielle Contini, Esq., and Courtney S. Caillavet, Esq.**, Post Office Box 2186, Minneola, Florida 34755; and **Stephen D. Hurm, General Counsel, and Jason Helfant, Senior Assistant General Counsel**, Department of Highway Safety and Motor Vehicles, P.O. Box 540609, Lake Worth, FL 33454; on this 6th day of January, 2016.

/S/ _____
Judicial Assistant