

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

CASE NO.: 2021-CA-009849-O

JIMMY JUAN KAY,  
Petitioner,

v.

DEPARTMENT OF HIGHWAY SAFETY  
AND MOTOR VEHICLES,

Respondent.

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Petition for Writ of Certiorari  
from the decision of the Department  
of Highway Safety and Motor Vehicles  
Samantha Simpkins, Hearing Officer.

Matthew P. Ferry, Esquire, for Petitioner.

Mark L. Mason, Esquire, for Respondent.

Before CRANER, CALDERON, and RODRIGUEZ, J.J.

Petitioner, Jimmy Juan Kay (“Petitioner”), seeks review of the “Final Order” issued by a hearing officer of the Department of Highway Safety and Motor Vehicles (“DHSMV” or “Respondent”) denying Petitioner’s request for a formal review hearing under Section 322.2615, Florida Statutes (2021).

**FACTUAL SUMMARY**

Petitioner was involved in a multiple vehicle accident on August 13, 2020. Law enforcement made contact with Petitioner at the hospital, but no arrest or citation was made or issued at that time. On August 24, 2020, law enforcement submitted a medical record subpoena request to the hospital. The results were received by law enforcement on December 2, 2020. On

December 31, 2020, the Tavares Police Department filed an affidavit of probable cause asserting that the medical records and other circumstances supported an arrest warrant for Petitioner for Driving Under the Influence with Property Damage in violation of Section 316.193(3)(c)(1), Florida Statutes. Yet, records provided to the court by the parties include a Florida DUI Uniform Traffic Citation which lists December 25, 2020—*six days before* the affidavit of probable cause for Petitioner’s arrest was signed by law enforcement-- as the date of the DUI offense.

Respondent asserts that on January 21, 2021, it provided notice to Petitioner that his driver’s license had been suspended for six months effective December 26, 2020. Yet, Petitioner asserts that he was wholly unaware of the suspension of his driver’s license until August 30, 2021. Petitioner asserts that immediately upon learning of the suspension on August 30, 2021, Petitioner, through counsel, made a “Request for Formal Review Hearing.” Respondent denied the request as untimely and refused Petitioner’s request for a formal hearing.

### **Standard of Review**

“The duty of the circuit court on 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 the 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); *see also Education Development Center, Inc. v. City of West Palm Beach Zoning Bd. of Appeals*, 541 So. 2d 106, 108 (Fla. 1989); *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982).

### **Analysis**

In the instant case, Petitioner asserts that he never received notice of the suspension of his license, either at the time of his arrest nor at any later date. As reflected in both parties’ briefs and the record provided to this court, there are problematic discrepancies in the relevant Tavares Police

records regarding the date of the offense, the date of the probable cause warrant application, and the date of the arrest. Furthermore, there is a critical lack of information regarding whether Petitioner was provided notice regarding the suspension, and if so, when and how.

Respondent's primary argument is that Petitioner's request for a formal hearing was untimely. Petitioner concedes that he did not make a formal request for a hearing until August 30, 2021, more than seven months after the effective date of the suspension as noted in his driving record. Respondent contends that the indication on Petitioner's driving record that notice was provided on January 21, 2021 conclusively establishes Petitioner's knowledge of the suspension and that he was required by statute to file his request for a hearing within ten (10) days of that notice.

By statute and case law, the court recognizes that the date notice was provided as reflected on the driving record is deemed conclusive proof of notice. However, in this case, the driving record itself indicates that there are circumstances in which Respondent did not in fact mail a notice of suspension. In particular, the driving record indicates that "when a law enforcement agency provides the notice upon an arrest, a notice will not be mailed from DHSMV." Accordingly, the court finds the troubling discrepancies regarding Petitioner's date of arrest to be relevant to the question of whether Petitioner truly received notice of the suspension and whether Petitioner was afforded appropriate procedural due process.

In light of these unique discrepancies, and based on the specific facts presented here, the Court **GRANTS** Petitioner's Petition for Writ of Certiorari and quashes the "Final Order" denying Petitioner a formal hearing regarding his suspension. Respondent shall conduct a formal review hearing pursuant to Section 322.2615, Florida Statutes, within **thirty (30) days** of the rendition of this order.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this 21<sup>st</sup> day of Sept, 2023.



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A. JAMES CRANER  
Presiding Circuit Judge

CALDERON and RODRIGUEZ, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to: Matthew P. Ferry, Lindsey & Ferry, P.A., 1150 Louisiana Avenue, Suite 2, Winter Park, FL 32789 at matt@lindseyandferry.com; and Mark L. Mason, Esq., Office of General Counsel of Department of Highway Safety and Motor Vehicles, 2900 Apalachee Way, A-432, Tallahassee, Florida 32399 at MarkMason@flhsmv.gov, on this 21<sup>st</sup> day of Sept, 2023.



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Judicial Assistant