Johnson v. Department of Highway Safety & Motor Vehicles (Fla. 4th Cir. Ct. 2002)

Reported at 10 Fla. L. Weekly Supp. 144a. Duval County.

EUGENE CLIFFORD JOHNSON, Petitioner, vs. DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES, Respondent. Circuit Court, 4th Judicial Circuit in and for Duval County. Case No. 02-4189-CA, Division CV-A. December 13, 2002. Aaron K. Bowden, Judge. Petition for Writ of Certiorari arising from State of Florida, Department of Highway Safety and Motor Vehicles' Revocation of Hardship License. Counsel: David M. Robbins and Susan Z. Cohen, Jacksonville, for Petitioner. Kathy Jimenez, Assistant General Counsel, Tallahassee, for Respondent. OPINION This cause came before this Court upon the Petition for Writ of Certiorari filed by the Petitioner, Eugene Clifford Johnson (Johnson), on June 12, 2002.

Johnson seeks review of the Revocation of his hardship license by the Respondent, Department of Highway Safety and Motor Vehicles (Department). On March 31,1995, Johnson's driving privilege was revoked for ten (10) years. Subsequently, Johnson enrolled in the DUI Special Supervision Services through which he sought, and obtained, a business purpose only license. The agency, by letter of May 13, 2002, informed Petitioner: “Due to the fact that you have failed to meet the DUI Program requirements, your restricted driver license is being cancelled and we are enclosing a cancellation order.” Along with the letter were two orders, also dated May 13, 2002, both styled Order of License Revocation, Suspension, or Cancellation, one stating Petitioner's driving privilege is “REVOKED UNTIL 3/30/2005,” and the other stating Petitioner's driving privilege is “CANCELLED INDEFINITE.” (Pet.

Cert. App. at 3-5.) Pursuant to the orders of cancellation, Johnson was entitled to a record review of his license cancellation. Accordingly, Petitioner, on June 11, 2002, had a Record Review before a hearing officer of the Bureau of Driver Improvement. The transcript of that Record Review reveals the following statement of the hearing officer: The only documentation that I have on Mr. Johnson is that we called the Northeast Florida Safety Counsel [sic] to find out why he was dismissed from the special supervision services program. They stated there was an arrest. He falsified some information. (Adden. Pet. tr. at 3 (emphasis added).) Counsel for Petitioner asked whether there was written documentation regarding “why the Safety Counsel [sic] terminated Mr.

Johnson.” (Id. at 3-4.) The hearing officer replied that she had only a handwritten note to that effect, and that a phone call to the Northeast Florida Safety Counsel produced no further information, because the Council office was closed. (Id. at 4.) Johnson filed his Petition for Writ of Certiorari on June 12, 2002. An Order to Show Cause was issued by this Court on July 22, 2002, giving the Department twenty (20) days to show cause why Johnson's Petition should not be granted. The Department filed its Response on August 9, 2002, including within a Motion to Abate. In that Motion, the Department asked that this Court abate the proceeding “in order for the Department to receive final documentation from the Northeast Florida Safety Counsel [sic] regarding the Petitioner's status.” (Resp. at 1.) However, on the same day, a consent Order was entered by this Court staying the proceedings.

The Order states that “the Petitioner and the Respondent agree that the proceedings in this cause should be stayed pending the decision of the Florida Supreme Court in it's [sic] review of Department of Highway Safety and Motor Vehicles v. Critchfield, 805 So. 2d 1034 (Fla. 5th DCA 2002).” (Order Stay Proceedings at 1.) On October 2, 2002, this Court entered an Order Vacating Order to Stay Proceedings. In that Order, this Court stated that the cause had come to be heard on an ore tenus Motion by Johnson to Vacate the Order to Stay Proceedings. (Order Vacating Stay at 1.) This Court, having been advised that the Department had no objection, ordered: 1) that the Order staying the proceedings was vacated; 2) that the Motion to Abate filed by the Department in their Response that had been rendered moot by the Order Staying the proceedings was reinstated for review before this Court; and 3) that Johnson “shall file a Reply to the Respondent's Response to Order to Show Cause and Motion to Abate in this Cause no later than twenty (20) days after the entry of this Order.” (Id.) Johnson filed his Reply on November 8, 2002, having been granted additional time to file his Reply by Order of this Court.

Johnson also filed a pending Motion for Oral Argument on November 8, 2002. In his Petition Johnson alleges that at the record review, “the Department presented no documentation to explain or support the decision to cancel the Petitioner's driver's license. As a result, the Petitioner was afforded no opportunity to review the record supporting a cancellation of his driver's license.” (Pet. Cert. at 2.) In its Response, the Department initially “moves to abate this proceeding in order for the Department to receive final documentation from the Northeast Florida Safety Counsel [sic] regarding the Petitioner's status.” (Resp. at 1.) The Department continues: According to Jerry Webster at the Northeast Florida Safety Counsel [sic], Petitioner reapplied to re-enter the Special Supervision Services program (SSS) on July 2, 2002, and as of July 26, 2002, the Northeast Florida Safety Counsel [sic] was still awaiting information from the Department of Highway Safety and Motor Vehicles and from the Florida Department of Law Enforcement before making a final decision on his application.

Based on this additional information, the Department may be able to resolve this action to Petitioner's satisfaction. Otherwise, the Court can proceed with the merits and undertake further review. Respondent requests an abatement until the Northeast Florida Safety Counsel [sic] has made a decision regarding Petitioner's pending re-application to the SSS program. (Id. at 1-2.) The Department further alleges: Clearly, Petitioner has improperly sought the review of the decision rendered by [sic] Northeast Florida Safety Counsel [sic] by filing the instant petition for writ of certiorari consecutively with the reapplication to Northeast Florida Safety Counsel [sic].

The appropriate remedy if the Petitioner should be denied reapplication to the Northeast Florida Safety Counsel [sic] would be to appeal that program's decision to another SSS program pursuant to Rules 15A-10.031, F.A.C. (Id. at 2 (citation omitted).) The Department concludes that “based on the contents of the record below, the petition should be denied for failure to establish entitlement to the extraordinary relief requested and failure to appeal this possible decision of denial by the Northeast Florida Safety Counsel [sic] through the appropriate channels.” (Id. at 3.) Johnson, in his Reply, argues that the Department has not resolved this matter to his satisfaction, as “the Petitioner did reapply to the Special Supervision Services program,” but “he has not been accepted.” (Reply at 1.) Johnson alleges that, as such, abatement is not appropriate.

In his Reply, Johnson also includes a Motion to Strike Statement of Case and Facts, alleging that: In it's [sic] Response, the Department cites to documents that were not in the record before the hearing officer. At the review hearing before the hearing officer, there were no documents submitted by the Department. Therefore, any reference to a letter received by the Department should be stricken from the Department's statement of Facts and the Case and should be stricken from the Department's Appendix. The circuit court cannot consider documents that were not included in the record of the hearing below. (Id. at 1-2 (citations omitted).) Johnson argues: The Department argues that based upon the contents of the record below, competent substantial evidence exists to support the decision rendered by the Department.

This argument must fail, however, as there were no contents in the record below. At the review hearing in this case, there were no records to review. The Department had no documentation whatsoever supporting the cancellation of the Petitioner's driving privilege and therefore not only was there no competent substantial evidence to support the decision rendered by the Department, there was no evidence at all. The Department further argues that at the hearing, the hearing officer made conclusory statements regarding the Petitioner's dismissal from the Special Services program. This information was apparently contained in a telephone message from an undisclosed individual and provided to the hearing officer.

Certainly, a telephone message containing conclusory statements from an unnamed individual does not constitute evidence upon which a hearing officer can rely at a review hearing. (Id. at 2-3 (citation omitted).) Johnson further argues that: The Department completely fails to respond to the issues raised by the Petitioner. As argued in the initial Petition, there is no provision in the administrative rules or the statute that provides for a full evidentiary hearing and an opportunity to be heard under the circumstances of this case. As a result, the Petitioner's driving privilege was cancelled without notice and an opportunity to be heard. (Id. at 4.) Proceeding under the assumption that this Court has jurisdiction to hear this cause, it appears that Johnson has not exhausted his administrative remedies prior to bringing this Petition before the circuit court.

This Court notes that section 15A-10.031 of the Florida Administrative Code does provide for an appeal process from an “unfavorable recommendation of termination” by a DUI program such as the one from which Johnson was released. Fla. Admin. Code R.15A-10.031(2). As such, Johnson must exhaust his administrative remedies prior to seeking review before this Court. Upon consideration, it is hereby ORDERED AND ADJUDGED that: 1. Johnson's Petition for Writ of Certiorari is hereby DENIED without prejudice. 2. The Motion to Abate filed by the Department is hereby rendered MOOT. 3. The Motion to Strike Statement of Case and Facts filed by Johnson is hereby rendered MOOT. 4.

The Motion for Oral Argument filed by Johnson is hereby rendered MOOT.

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