

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

JONATHAN CARTER,

Petitioner,

vs.

SPENCER R. MOORE, in his capacity as
Commissioner of GEORGIA DEPT. OF
DRIVER SERVICES,

Respondent.

CIVIL ACTION FILE
NO. 2022CV371006

FINAL ORDER

On January 10, 2023, the above-styled civil action come before this Court for oral argument on Petitioner Jonathan Carter's Petition for Judicial Review and Respondent Spencer R. Moore, in his capacity as Commissioner of the Georgia Department of Drivers Services' Response in Opposition to same. After considering the pleadings, the arguments of the parties and the relevant case law, the Court finds as follows:

I. FACTUAL BACKGROUND

On January 22, 2022, at or around 3:30 AM, Petitioner was driving on a Georgia roadway when he was stopped by law enforcement for failure to maintain his lane. It appears to be undisputed¹ that the arresting officer, Deputy Deandre Loucks, observed signs of inebriation including bloodshot eyes, slurred speech, and swaying, as well as smelling an odor of alcohol and marijuana emanating from Petitioner's vehicle and breath. Petitioner admitted to consuming an alcoholic beverage approximately one hour prior to the stop, and, according to Respondent, declined Deputy Louck's request for an Alco-Sensor preliminary breath test. Petitioner was then placed under arrest, after which Deputy Louck demanded Petitioner submit to a blood draw,

which Petitioner also refused.

Petitioner's driver's license was subsequently suspended for a period of twelve (12) months as a result of his refusal to submit to the designated blood test, pursuant to the Georgia Implied Consent Act, O.C.G.A. § 40-5-67.1. After he received notice of the suspension, on February 16, 2022, Petitioner requested a hearing before an Administrative Law Judge ("ALJ") in the Office of State Administrative Hearings. On June 3, 2022, Petitioner's case came before the ALJ, and on July 6, 2022, Respondent rendered a final order which kept in place the suspension of Petitioner's license. After Petitioner filed a Motion to Reconsider and Motion to Request a Specific and Distinct Ruling on Each Issue, on September 9, 2022, Respondent issued an order on same, and again affirmed the suspension. On October 4, 2022, Petitioner filed the instant Petition for Judicial Review, asking this Court to find that the ALJ erred by affirming the suspension, and to find that the implied consent statute that allows the for the automatic suspension of drivers licenses under these circumstances is unconstitutional.

Respondent argues that there is well-established state and federal law holding that an administrative license suspension is a civil penalty which does not violate drivers' due process rights, provided they have been arrested upon probable cause.

II. LEGAL STANDARD

Pursuant to O.C.G.A. § 40-5-66(a), any person aggrieved by a decision rendered by the Department "shall have the right to enter an appeal in the superior court of the county of his or her residence or in the Superior Court of Fulton County." *See also Barrow v. Mikell*, 298 Ga. 429 (2016) ("[o]ur statutory law permits judicial review of 'any decision rendered by the [D]epartment,' so long as the petition for review is filed within thirty days of the decision").

Such review "shall be conducted by the court without a jury and shall be confined to the

¹ Although Petitioner's counsel pointed out the 'canned' nature of observations in drunk driving arrests.

record.” O.C.G.A. § 50-13-19(g). “The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (1) In violation of constitutional or statutory provisions; (2) In excess of the statutory authority of the agency; (3) Made upon unlawful procedure; (4) Affected by other error of law; (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.” O.C.G.A. § 50-13-19(h). Put more simply, “courts review agency findings of fact to determine whether they are supported by any evidence. And in considering agency conclusions of law, courts conduct a de novo review.” *Infinite Energy, Inc. v. Marietta Nat. Gas, LLC*, 349 Ga. App. 343, 344, 826 S.E.2d 189, 191 (2019).

III. ANALYSIS

Petitioner does not appear to dispute the facts in the record, namely, the circumstances surrounding his arrest. Rather, Petitioner argues that the officer’s demand for a blood test was unconstitutional, and challenges more generally the constitutionality of the implied consent statute. Specifically, Petitioner argues that this Court should reverse the suspension of his driver’s license because it violated: his right to freedom from unreasonable, warrantless searches as provided by the Fourth Amendment of the U.S. Constitution and Article I, Section I, Paragraph XIII of the Georgia Constitution; his substantive and procedural due process rights as provided by the Fourteenth Amendment of the U.S. Constitution and Georgia Constitution; and the Privileges and Immunities Clause of the Fourteenth Amendment of the U.S. Constitution and

of Article I, Section I, Paragraph VII of the Georgia Constitution.

Respondent counters that Petitioner's arguments are contrary to precedent from both the Supreme Court of the United States and the Georgia Supreme Court, both of which have recognized that implied consent statutes such as the one at issue here are constitutional. *See Birchfield v. North Dakota*, 579 U.S. 438, 447-448 (2016); *Olevik v. State*, 302 Ga. 228, 247-248 (2017). Subsequently, in *Elliott v. State*, 305 Ga. 179, 223 (2019), the Georgia Supreme Court struck down the provision of Georgia's implied consent statute that permitted the refusal to take a chemical test to be admitted as evidence in a subsequent criminal prosecution; a holding which was more recently extended to urine samples, preliminary breath tests and field sobriety tests. But, importantly for purposes of this analysis, the *Elliott* Court explained that:

unaffected [by this decision] is the core component of the implied consent enforcement scheme: the administrative license suspension provided by OCGA § 40-5-67.1 (c) and (d). Additionally, the holding that a driver's refusal to take a breath test may not be used in a criminal proceeding does not forbid its use in an administrative proceeding concerning suspension of a driver's license, and that core function of the implied consent law remains in force, notwithstanding the Court's opinions today and in *Olevik*.

Elliott v. State, *supra*, 305 Ga. at 224.

Central to the conclusions in *Olevik* and its progeny is the distinction between civil and criminal penalties. In *Olevik*, the Court reasoned that “[t]he Supreme Court of the United States has approved the ‘general concept of implied-consent laws that impose civil penalties and evidentiary consequences on motorists who refuse to comply’ ... Georgia’s implied consent statute does not impose criminal penalties for refusing to submit to chemical testing, squarely putting our implied consent notice within the category of statutes that the Supreme Court of the United States has deemed not unconstitutionally coercive.” *Id.*, 302 Ga. at 248.

Indeed, a review of the pertinent case law makes clear that there is sufficient precedent to

deem the constitutionality of the license suspension at issue here (and, more broadly, the of the implied consent statute) decided; that is to say, the suspension was constitutional, as is the law from whence its authority was derived. Although it is true that one has a constitutional right to decline a chemical test, it is also true that one does *not* have a constitutional right to drive on Georgia's roadways. And one does not *acquire* a right to drive simply by initially obtaining a license in the first instance. As Respondent put it, "nothing in the constitution prohibits a state from conditioning the privilege of driving with consent to chemical testing incident to arrest for drunk driving."

On the other hand, this Court recognizes that the dichotomization of a civil penalty and a criminal penalty in this context is a distinction without a difference: the outcome for the driver is, in the end, the same either way. To say, as the Georgia Court of Appeals has,² that the administrative license suspension procedure is "not a punishment" is, in this Court's view, somewhat abstruse. It is surely a punishment, as it imposes a direct consequence for an unwanted action. Similarly, although the Court can find no support for the proposition that the arresting officer was required to offer any particular type of test over any other type of test – i.e. a "less intrusive" alternative³ – it acknowledges that there are perfectly legitimate reasons why a driver might be willing to take one type of test but not another. For example, a driver on blood thinners may reasonably wish to avoid a blood draw, while a driver with COPD might opt for a blood or urine sample because if he cannot blow hard enough to register, it would go down as a refusal.

That being said, the law is settled, and this Court is bound to follow that precedent. The

² *Miles v. Kemp*, 233 Ga. App. 850, 852, 506 S.E.2d 141, 143 (1998).

³ Although there is apparently some discrepancy in the facts here, as Respondent contends Petitioner was offered a breathalyzer test, but refused it. The Court is not entirely clear on whether or not this claim is accurate, but also notes it has heard no evidence to refute it. To the extent Petitioner declined a breathalyzer test prior to declining a

Court finds no error enumerated in O.C.G.A. § 50-13-19(h) that would justify the reversal or modification of the ALJ, and accordingly, the Court AFFIRMS the decision below. As this Order disposes of the case in its entirety, the CLERK is DIRECTED to CLOSE this case.

SO ORDERED this 16 day of February, 2023.



Hon. James Altman
Sitting by designation for Hon. Shukura L. Ingram
Superior Court of Fulton County
Atlanta Judicial Circuit

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