

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

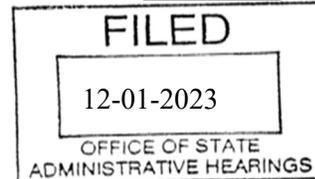
**ANTHONY HOOKS,
Petitioner,**

v.

**DEPARTMENT OF DRIVER SERVICES,
Respondent.**

**Docket No.: 2313601
2313601-OSAH-DDS-ALS-75-Walker**

Agency Reference No.: [REDACTED]



**ORDER DENYING PETITIONER’S MOTION TO VACATE AND/OR
MOTION FOR A HEARING**

I. Background

On or about November 6, 2022, Henry County Police Officer Orion Willcutt (also the Officer) arrested the Petitioner for violating O.C.G.A. § 40-6-391. Results of a state-administered test indicated that the Petitioner’s breath had an alcohol concentration of 0.08 grams or more. Pursuant to the provisions of O.C.G.A. § 40-5-67(a) and O.C.G.A. § 40-5-67.1(c),¹ the Officer took possession of the Petitioner’s driver’s license and sent it, along with a notice of intent to suspend or disqualify the Petitioner’s driver’s license, to the Department of Driver Services.

The Petitioner requested an administrative hearing under O.C.G.A. § 40-5-67.1(g). The request was forwarded to the Office of State Administrative Hearings on December 8, 2022, and

¹ Georgia Code Section 40-5-67.1(c) provides:

on the receipt of a report of the law enforcement officer that the officer had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a moving motor vehicle upon the highways or elsewhere throughout this state in violation of Code Section 40-6-391 . . . and that the person submitted to a chemical test at the request of the law enforcement officer and the test results indicate either an alcohol concentration of 0.08 grams or more or, for a person under the age of 21, an alcohol concentration of 0.02 grams or more, the department shall suspend the person’s driver’s license, permit, or nonresident operating privilege pursuant to Code Section 40-5-67.2, subject to review as provided for in this chapter.

an administrative hearing was scheduled for January 17, 2023. At the Petitioner's request, the hearing date was continued to February 21, 2023.

Prior to the commencement of the administrative hearing, the Petitioner, represented by attorney Michael Howard, and Officer Willcutt, the Respondent's representative, submitted a document styled Final Decision - Joint Motion to Withdraw Sworn Report (Joint Withdrawal) to the undersigned. The Joint Withdrawal indicated that the Petitioner agreed to plead guilty to the underlying charge of O.C.G.A. § 40-6-391. In turn, Officer Willcutt would withdraw the Sworn Report and rescind the Petitioner's driver's license suspension. The Petitioner also agreed that a copy of the Joint Withdrawal could be admitted into evidence in subsequent legal proceedings "as an admission by the Plaintiff of the Plaintiff's guilt" If the Petitioner failed to enter a plea of guilty, the Officer was authorized "to sign and file ex parte the Affidavit below with this court which shall immediately enter an order reinstating the administrative suspension without a hearing." The Joint Withdrawal was signed by the Petitioner, his counsel and Officer Willcutt. On February 23, 2023, the undersigned granted the Joint Withdrawal, subject to terms and conditions contained therein, and issued a Final Decision reversing the administrative suspension. See Court File.

On or about August 28, 2023, Officer Willcutt filed an ex parte Affidavit indicating that the Petitioner had failed to enter a guilty plea guilty to the underlying charge of O.C.G.A. § 40-6-391 and moved for an order reinstating the driver's license suspension. On September 8, 2023, the undersigned granted the motion, vacated the Final Decision, and reinstated the suspension of the Petitioner's driver's license.

On July 31, 2023, the Petitioner terminated Mr. Howard's representation and retained Greg Willis, Esq., as counsel. On September 15, 2023, more than six months after the Final Decision

was issued, the Petitioner filed a document styled Motion to Vacate And/Or Motion for A Hearing (Motion to Vacate). The Motion to Vacate averred that Mr. Howard had advised the Petitioner to sign the Joint Withdrawal without advising him of the stipulations contained therein. Additionally, the Motion to Vacate asserted that Mr. Howard did not inform the Petitioner that counsel had failed to review video evidence prior to signing the Joint Withdrawal; “[h]ad Former Counsel reviewed the video evidence before advising Petitioner to sign the Final Decision, he would have discovered the misinformation regarding Petitioner’s implied consent rights that was given to him by the arresting officer [and] . . . [i]t was improper and ineffective assistance for Former Counsel to advise Petitioner to enter into an agreement containing the stipulations in the Final Decision without first reviewing the video evidence.” Motion to Vacate at 1. The Petitioner does not allege that the Officer misled him regarding the stipulations contained in the Joint Withdrawal.

The undersigned issued an Order to Show Cause as to why the license suspension should be vacated and scheduled a hearing for October 17, 2023. During the hearing, Officer Willcutt testified as a witness; neither the Petitioner nor his former counsel testified. In addition to the Motion to Vacate submitted on September 15, 2023, the Petitioner submitted a filing styled Memorandum of Law In Support of Petitioner’s Motion to Vacate and Motion to Rescind on the October 17, 2023, hearing date (Initial Memorandum). The Petitioner also filed a second Memorandum of Law (Post Hearing Memorandum) on October 23, 2023.²

II. Conclusions of Law

A. The Motion to Vacate is Untimely

Under Ga. Comp. R. & Regs. 616-1-2-.28(1), Motions for Reconsideration or Rehearing will be considered only if filed within ten (10) calendar days of the entry of the Decision, unless

² Although the Petitioner’s Motion to Vacate and supporting memoranda principally discussed whether the Petitioner voluntarily consented to the state-administered testing of his breath, this issue is not before the court.

such period of time is extended by the Court for good cause. The Petitioner's Motion to Vacate is untimely. In each of the Petitioner's filings, he identifies the underlying basis for the Motion to Vacate as the Joint Withdrawal resulting in the February 23, 2023 Final Decision. See Motion to Vacate at 4 (moving for evidentiary hearing because "Petitioner was misinformed as to his Implied Consent Rights and the suspension should be reversed in the instant matter"); Initial Memorandum at 4 (requesting that "this Honorable Court find that Respondent did not and cannot meet its burden of proving Petitioner actually AND voluntarily consented to the warrantless, state-administered test of the Petitioner's breath"); Post Hearing Memorandum at 10 (asking Administrative Law Judge "to dismiss the final decision and provide Petitioner with a contested hearing"). Although the Petitioner's Motion to Vacate makes token reference to the September 8, 2023 Order granting the Respondent's Motion to Reinstate the Suspension, the issues raised in his pleadings and during the hearing principally concern the Joint Withdrawal adopted in the Final Decision entered on February 23, 2023. See Initial Memorandum at 1; see also Petitioner's Motion to Vacate styled Motion to Vacate *and/or Motion for Rehearing* (emphasis added).

Moreover, the undersigned declines to find good cause for the delay. The Petitioner hired new counsel on July 31, 2023;³ nonetheless, counsel failed to take any action regarding the Joint Withdrawal or February 23, 2023 Final Decision until September 15, 2023. Allowing litigants to challenge stipulations and/or agreements months or years after a Final Decision is issued would frustrate the fundamental objectives of O.C.G.A § 40-5-67.1(g) which are "to provide a quick,

³ Although the Motion to Vacate states that Mr. Willis was hired to represent the Petitioner on July 31, 2023, during the hearing, counsel stated that he was only hired to represent the Petitioner in the instant case "thirty or forty days" prior to the October 17, 2023, hearing date. Given that the Petitioner's agreement to plead guilty in the criminal case arose out of the administrative proceedings, and would have been dispositive in the criminal case, counsel should have been aware of the Joint Withdrawal when he was hired to represent the Petitioner on July 31, 2023.

informal procedure to remove dangerous drivers from Georgia's roadways and thereby protect public safety." Swain v. State, 251 Ga. App. 110, 113 (2001) (citations omitted).

B. Neither Clear Error nor Manifest Injustice Warrant Rehearing

Even if the Motion to Vacate was not untimely, the undersigned does not find clear error or manifest injustice warranting rehearing under Ga. Comp. R. & Regs. 616-1-2-.28 (4)(c).⁴ In his Motion to Vacate, the Petitioner argues that Officer Willcutt misinformed him regarding his implied consent rights during the traffic stop and suggests that "[i]t was improper and ineffective assistance for Former Counsel to advise Petitioner to enter into an agreement containing the stipulations in the Final Decision without first reviewing the video evidence." Motion to Vacate at 1. As an initial matter, the Petitioner has not provided a sufficient factual basis to support his claims. Neither the Petitioner nor his former attorney testified at the Order to Show Cause hearing as to the scope of Mr. Howard's investigation or the substance of any legal advice he offered to the Petitioner regarding the Joint Withdrawal. Although the Petitioner filed an affidavit regarding the Joint Withdrawal, given that the Petitioner did not testify, the undersigned deems the affidavit to be inadmissible hearsay. See O.C.G.A. § 24-8-801(c). Even if admissible, given that the undersigned was unable to assess the witness's credibility, the undersigned finds that it has little probative value.

Moreover, the Petitioner's argument that he is entitled to effective assistance of counsel because administrative license suspension hearings have "direct and collateral consequences" that

⁴ Ga. Comp. R. & Regs. 616-1-2-.28 (4) provides:

In determining whether to grant a motion for reconsideration or rehearing, the Court shall consider (a) whether the movant has set forth facts or law showing the discovery of new evidence; (b) an intervening development or change in the controlling law; or (c) the need to correct a clear error or prevent a manifest injustice.

are “intimately related to his criminal process” is unpersuasive. Post Hearing Memorandum of Law at 1. With limited exceptions, the constitutional right to effective assistance of counsel does not extend to participants in a civil dispute. Finch v. Brown, 216 Ga. App. 451, 452 (1995); Johnson v. Smith, 260 Ga. App. 722, 722 (2003); Mekdeci v. Merrell Nat’l Labs., Div. of Richardson-Merrell, Inc., 711 F.2d 1510, 1522 (11th Cir. 1983) (citations omitted).

Administrative License Suspension hearings are “an administrative device at the disposal of the defendant in which the defendant can halt the otherwise automatic suspension of his driving privileges.” Swain, 251 Ga. App. at 114 (citations omitted). There is no indication in the governing statutes or corresponding case law suggesting that a Petitioner may challenge a Final Decision by claiming he received ineffective assistance of counsel. Compare In the Interest of K.M.L., 237 Ga. App. 662, 664 (1999) (finding ineffective assistance of counsel claims warranted in civil cases involving the termination of parental rights because legislative scheme intended to provide effective representation to indigent parents); cf. DelGiudice v. Primus, 679 F. App’x 944, 950 (11th Cir. 2017) (no right to effective assistance of counsel in civil cases even if counsel court-appointed). Accordingly, the Petitioner’s complaint regarding his counsel’s representation must be addressed in another venue. See DelGiudice 679 F. App’x at 950 (“[A] party does not have any right to a new trial in a civil suit because of inadequate counsel, but has as a remedy a suit against the attorney for malpractice.”).

In this case, the motion does not set forth adequate grounds for reconsideration. Therefore, the motion is **DENIED**.

SO ORDERED, this 30th day of November, 2023.



Ronit Walker

Ronit Walker
Administrative Law Judge