

Matter of Walters v Delligatti
2009 NY Slip Op 31697(U)
July 20, 2009
Supreme Court, Nassau Couty
Docket Number: 9465/09
Judge: Antonio I. Brandveen
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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present: ANTONIO I. BRANDVEEN
J. S. C.

In the Matter of the Application of DOUGLAS
A. WALTERS,

TRIAL / IAS PART 31
NASSAU COUNTY

Petitioner,

Index No. 9465/09

For a Judgment Pursuant to Article 78 of the
Civil Practice Law and Rules

Motion Sequence No. 001

- against -

HON. ANGELO A DELLIGATTI, as Judge of the
District Court, County of Nassau HON.
KATHLEEN M. RICE, as District Attorney of
Nassau County, HON. ANDREW CUOMO, as
Attorney General of the State of New York, New
York State Department of Motor Vehicles,

Respondents.

The following papers having been read on this motion:

Notice of Motion, Affidavits, & Exhibits	<u>1</u>
Answering Affidavits	<u>2</u>
Replying Affidavits	_____
Briefs: Plaintiff's / Petitioner's	_____
Defendant's / Respondent's	_____

The petitioner seeks order pursuant to CPLR Article 78 to review the respondents' March 27, 2009 determination suspending the petitioner's New York State driver's license, and directing the respondents to reinstate the petitioner's license, or in the alternative for an order mandating a *Pringle* hearing be held. So, the petitioner claims

this petition is in the nature of prohibition, and argues, in the alternative, in the nature of a writ of *mandamus*. The respondent Hon. Kathleen M. Rice, as District Attorney of Nassau County opposes the petition, and argues the suspension of the petitioner's license is proper pending the prosecution of the petitioner for violation of Vehicle and Traffic Law § 1192.2A. This Court has carefully reviewed and considered all of the papers submitted with respect to this petition.

Vehicle and Traffic Law § 510 (7) provides: "Except as expressly provided, a court conviction shall not be necessary to sustain a revocation or suspension. Revocation or suspension hereunder shall be deemed an administrative act reviewable by the supreme court as such." This Court has reviewed pursuant to CPLR Article 78 the March 27, 2009 determination suspending the petitioner's New York State driver's license.

In an effort to reduce the incidence of drunk driving on New York's roadways, the State Legislature enacted the prompt suspension law (Vehicle and Traffic Law § 1193 [2] [e] [7]), which under certain circumstances mandates the suspension of a driver's license to operate a motor vehicle pending prosecution for driving while intoxicated. We hold that the prompt suspension law accords with due process requirements *Pringle v. Wolfe*, 88 N.Y.2d 426, 429, 646 N.Y.S.2d 82 [1996].

Here, the petitioner's driver's license was suspended, by the District Court of Nassau County, pursuant to Vehicle and Traffic Law § 510 (3). The petitioner asserts the Court proceeded extra legally under Vehicle and Traffic Law § 510 (3), and failed to provide him due process afforded by that statute; failed to allow him an opportunity to rebut any finding by the Court where the Court reviewed a supporting deposition, and

found it indicated a .19 blood alcohol level. The petitioner avers the Court suspend under an inapplicable statute without legal authority, and denied him due process rights under the 14th Amendment of the United States and New York State Constitutions. The petitioner contends the Court failed to perform a duty enjoined upon the Court by failing to suspend under the appropriate prompt suspension law, to wit Vehicle and Traffic Law § 1193 (2) (e) (7), and failed to grant a hearing mandated by CPLR 7804 (1).

The District Attorney of Nassau County asserts the application for suspension of the petitioner's license was properly made by the People, and granted within the Court's discretion. The District Attorney of Nassau County submits the petitioner's continued operation of a motor vehicle does present a danger to the public, and the Court acted lawfully with good, sound reason when the petitioner's license was suspended. The District Attorney of Nassau County points out, from the facts and circumstances of the underlying matter, the Court acted prudently because the petitioner was a danger to the public. The District Attorney of Nassau County notes the petitioner was arrested by New York State Troopers when they observed the petitioner's vehicle move from the central lane of the Southern State Parkway to the left lane almost causing a collision with another motor vehicle, and then the petitioner's vehicle entered the right lane and almost caused a collision with third motor vehicle. The District Attorney of Nassau County points to a breath sample of the petitioner at SP Farmingdale which yielded a .18% B.A.C. The District Attorney of Nassau County argues, under these circumstances, the petitioner is

[* 4]
not to a *Pringle* hearing, and adds, even if the Court used the .18% B.A.C. reading as a factor in suspending the petitioner's license, it was still within the Court's discretion to do so where the Court applied an appropriate statute.

Vehicle and Traffic Law § 510 (1) provides:

Who may suspend or revoke. Any magistrate, justice or judge, in a city, in a town, or in a village, any supreme court justice, any county judge, any judge of a district court, the superintendent of state police and the commissioner of motor vehicles or any person deputized by him, shall have power to revoke or suspend the license to drive a motor vehicle or motorcycle of any person, or in the case of an owner, the registration, as provided herein.

Vehicle and Traffic Law § 510 (3) provides:

Such licenses and registrations and the privilege of a non-resident of operating a motor vehicle in this state and of operation within this state of any motor vehicle owned by him and the privilege of an unlicensed person of obtaining a license issued by the commissioner and of obtaining a registration issued by the commissioner may be suspended or revoked: a. for any violation of the provisions of this chapter, except section eleven hundred ninety-two, or for any violation of a local ordinance or regulation prohibiting dangerous driving as shall, in the discretion of the officer acting hereunder, justify such revocation or suspension
the lack of a pre-suspension hearing is not violative of the petitioner's due process rights. In this case the State's interest is in keeping reckless drivers off the road as was the situation in *Matter of Horodner v. Fisher (supra)*. Under such circumstances, the available review pursuant to CPLR article 78 of the order issued is sufficient protection (*Dixon v. Love*, 431 U.S. 105, 97 S.Ct. 1723, 52 L.Ed.2d 172; *Matter of Horodner v. Fisher, supra*)
Harding v. Melton, 67 A.D.2d 242, 415 N.Y.S.2d 286 [4th Dept., 1979].

Significantly, a *Pringle* hearing is a civil administrative proceeding (*see Matter of Schmitt v Skovira*, 53 AD3d 918, 919-920 [2008]) which runs parallel to the criminal proceedings. It is not a plenary hearing requiring the same level of due process protection as a criminal trial (*see Pringle v Wolfe*, 88 NY2d at 435), nor is it "an opportunity for free-wheeling discovery regarding the criminal matter" (*Matter of Broome County Dist.*

Attorney's Off. v Meagher, 8 AD3d 732, 734 [2004], *lv denied* 3 NY3d 612 [2004])
Vanderminden v. Tarantino, 60 A.D.3d 55, at 59-60.

The Appellate Division holds:

Since a district attorney is a public servant (*see* CPL 1.20[31]; Penal Law §§ 10.00[15]; *Matter of Katherine B. v. Cataldo*, 5 NY3d 196, 203, n 5 [2005]), his or her limited role at a *Pringle* hearing is by “necessary implication” (*Czajka v. Breedlove*, 200 A.D.2d at 265; *see Matter of Schmitt v. Skovira*, 53 AD3d at 921)
Schermerhorn v. Becker, --- N.Y.S.2d ----, 2009 WL 1885453 [3rd Dept., 2009].

To succeed on a procedural due process claim, a plaintiff must establish (1) a deprivation of life, liberty or property; and (2) without due process of law. *Cf. Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428, 102 S.Ct. 1148, 71 L.Ed.2d 265 (1982) (describing the “familiar two-part inquiry” in which a court “must determine whether [the plaintiff] was deprived of a protected interest, and if so, what process was he due.”); *Narumanchi v. Bd. of Trustees*, 850 F.2d 70, 72 (2d Cir.1988). A driver’s license is a protected property interest, and the Due Process Clause thus applies to the deprivation of a driver’s license by the State. *See Bell v. Burson*, 402 U.S. 535, 539, 91 S.Ct. 1586, 29 L.Ed.2d 90 (1971) (“Suspension of issued licenses ... involves state action that adjudicates important interests of the licensees. In such cases the licenses are not to be taken away without that procedural due process required by the Fourteenth Amendment.”)
Evans v. City of New York, 308 F.Supp.2d 316, 323 [S.D.N.Y., 2004].

Vehicle and Traffic Law § 510(1) includes “any county judge” among the list of those authorized to suspend a driver’s license, and the final sentence of § 510(3)(i) provides, “A license * * * may, however, be temporarily suspended without notice, pending any prosecution, investigation or hearing.” Lower courts have construed this latter provision as authorizing temporary discretionary suspensions pending the prosecution of alcohol-related driving offenses (e.g., *Matter of Ryan v. Smith*, 139 Misc.2d 151, 152, 527 N.Y.S.2d 174; *Matter of De Vito v. Aylward*, 77 Misc.2d 524, 526-527, 354 N.Y.S.2d 395)
Buckson v. Harris, 145 A.D.2d 883, 883-884, 536 N.Y.S.2d 219 [3rd Dept., 1988].

This Court determines the petitioner has not met, as a matter of law, the burdens

with respect to this petition brought in the. The local Court did not exceed authorized powers here, nor acted arbitrary and capricious. The local Court had the authority to suspend petitioner's privilege to operate a motor vehicle as done here. The petition must be dismissed since the petitioner has not established a clear right to relief nor shown the action taken here was clearly without jurisdiction or in excess of authorized powers (see *Buckson v. Harris, supra*).

Accordingly, the petition is denied and this is the judgment and order of the Court.

So ordered.

Dated: July 20, 2009

ENTER:

J. S. C.

FINAL DISPOSITION xxx

NON FINAL DISPOSITION

ENTERED
JUL 23 2009
NASSAU COUNTY
COUNTY CLERK'S OFFICE