

NO. 26323

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

FRANK D. SCHILLECI, Petitioner-Appellant

vs.

ADMINISTRATIVE DIRECTOR OF THE COURTS,  
STATE OF HAWAI'I, Respondent-Appellee

CLERK, APPELLATE COURTS  
STATE OF HAWAI'I  
E. J. RIMANDO

2005 JUL 29 AM 8:44

FILED

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT  
(CASE NO. JR03-0033)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama,  
Acoba, and Duffy, JJ.)

Petitioner-Appellant Frank D. Schilleci (Schilleci) appeals the December 23, 2003 judgment of the District Court of the First Circuit, Honolulu Division<sup>1</sup> (the court), affirming the administrative revocation of Schilleci's driver's license by Respondent-Appellee Administrative Director of the Courts, State of Hawai'i (Respondent). Schilleci also challenges the court's Findings of Fact (findings) and Conclusions of Law (conclusions) filed on December 23, 2003.

On appeal, Schilleci essentially argues that (1) the court erred in holding that Schilleci's state and federal constitutional rights to a public hearing were not violated with respect to (a) restrictions on public access to his hearing before the Administrative Drivers License Revocation Office

<sup>1</sup> The Honorable Clarence Pacarro presided.

(ADLRO), (b) his right to a hearing on the validity of those restrictions, (c) his right to challenge the validity on those restrictions on behalf of the public, and (d) the State's failure to justify the restrictions on the ADLRO hearings; (2) the court erred in ruling that Schilleci had not been denied due process of law based on (a) a seeming contradiction in HRS § 291E-38(a) which declares the revocation hearing will "review the [administrative review] decision" yet allows motorists to call witnesses and offer evidence, suggesting that the hearing is de novo, (b) the lack of a uniform hearing procedure, (c) the admission of Respondent's entire file, (d) Respondent's adherence to Desmond v. Admin Dir. of the Courts, 91 Hawai'i 212, 220, 982 P.2d 346, 354 (App. 1998) [hereinafter, "Desmond I"] (holding that hearing officers should inform the parties of the procedures at the beginning of the hearing), rev'd on other grounds, 90 Hawai'i 301, 978 P.2d 739 (1999), and (e) the apparent disregard of the procedure set forth in HRS chapter 291E, Part III, which, according to Schilleci, requires a valid chemical test result or refusal to confer jurisdiction on Respondent; (3) the court erroneously upheld the revocation because Honolulu Police Department (HPD) form 396B (a) informed Schilleci that operating a vehicle on a public street meant that he had consented to a blood or breath test, but failed to tell him he had a right to withdraw that consent, (b) implied that the only issue in an administrative revocation is whether a test is over .08 or is refused, and (c) failed to inform Schilleci that the word

"vehicle" includes a "vessel" and "moped"; (4) the court erred in holding that HRS § 291E-34(a)(2) was not violated in view of the fact that HPD form 396B does not adequately explain the distinction between administrative revocation and criminal suspension; and (5) Respondent reversibly erred in citing to unpublished district court decisions to justify the hearing officer's decision.

Schilleci's arguments have been raised before and have been disposed of contrary to his position. As to arguments (1)(a) and (1)(d), a majority of this court has held that the State did justify its restrictions on public access to the hearings and that these restrictions comported with due process. See Freitas v. Admin. Dir. of the Courts, No. 25323, slip op. at 8 (July 25, 2005) [hereinafter, "Freitas II"]. As to argument (1)(b), we hold there is no reason to conduct another hearing on the validity of the hearing restrictions when the facts of the case are nearly identical. See Dunaway v. Admin Dir. of the Courts, No. 26616, slip op. at 10 (July 29, 2005). As to argument (1)(c), we hold that Schilleci has no standing to challenge the restrictions on behalf of the public. See Freitas v. Admin Dir. of the Courts, 104 Hawai'i 483, 486, 92 P.3d. 993, 996 (2004) [hereinafter, "Freitas I"]. As to argument (2)(a) and (2)(b), we hold that there is no contradiction in HRS § 291E-38 and that the hearing procedure comports with due process. See Freitas II, slip op. at 22-24.

As to argument (2)(c), we hold that the hearing officer did not err. With respect to Schilleci's objections to certain reports, although Schilleci lists the objections made at the hearings in the facts section of his opening brief, he does not raise points about the specific documents in the argument section of the brief. "Inasmuch as Defendant 'presents no discernable argument in support of this contention[,] . . . it is our prerogative to disregard this claim.'" State v. Bui, 104 Hawai'i 462, 464 n.2, 92 P.3d 471, 473 n.2 (2004) (quoting State v. Moore, 82 Hawai'i 202, 206, 921 P.2d 122, 126 (1996)). In any event, the hearing officer "separately" concluded without consideration of the preliminary alcohol screening test result, the intoxilyzer report, and the standardized field sobriety tests objected to by Schilleci that, based on the remainder of the record, Schilleci was operating a vehicle under the influence of an intoxicant (OUI). See Spock v. Admin. Dir. of the Courts, 96 Hawai'i 190, 193, 29 P.3d 380, 383 (2001) (upholding license revocation despite suppression of breath test results based upon the hearing officer's separate findings of being under the influence).

The "further findings of fact" nos. 1, 2, 3, 5, 6, 8, and 10 and finding of fact no. 5 and the conclusions of law nos. 5 and 6 made by the hearing officer were supported by sworn statements with respect to the matters following. See Castro v. Admin. Dir. of the Courts, 97 Hawai'i 463, 470-71, 40 P.3d 865, 872-73 (2002); Spock, 96 Hawai'i at 193, 29 P.3d at 383.

Officer Sean Nahina observed Schilleci speeding and traveling over the lane markings in the right lane for about fifteen feet without signaling. Officers Nahina and Lance Yashiro indicated that they noticed a strong odor of an alcoholic type beverage coming from Schilleci's breath as he spoke, that Schilleci's eyes were red, glassy, watery and bloodshot and that Schilleci's speech was slurred. Officer Yashiro also observed that Schilleci "swayed back and forth." Transporting officer Buanventura Claunan corroborated that he "observed Schilleci to have red glassy eyes and . . . detected a strong odor resembling an alcoholic beverage emitting from his [Schilleci's] breath as I spoke to him from about 2 [feet] away." Such matters constituted an alternative independent basis for sustaining the hearing officer's determination of OUI. See Castro, 97 Hawai'i at 470-71, 40 P.3d at 872-73; Spock, 96 Hawai'i at 193, 29 P.3d at 383.

As to argument (2) (d), we decline to overrule Desmond I. See Freitas II, slip op. at 22-24. As to argument (2) (e), we hold the notice of the implied consent law is not a jurisdictional prerequisite to a license revocation hearing. See id. at 28. As to argument (3) (a), we hold that HPD form 396B did inform Schilleci of his right to withdraw consent to a breath or blood alcohol test. See Dunaway, slip op. at 14-17. As to argument (3) (b), we hold that the police need only provide statutorily-mandated warnings. See id. at 17-19. As to argument (3) (c), we hold that HPD form 396B did put Schilleci on notice that the term "vehicle" includes "moped" and "water vessel." See

id. at 19-20. As to argument (4), we hold the notice of administrative revocation does explain the distinction between administrative revocation and criminal suspension. See id. at 20-21. As to argument (5), we held that a lower court decision will be reversed only if the legal result adopted by the lower court is found to be erroneous as a matter of law. See Freitas II, slip op. at 29. Therefore,

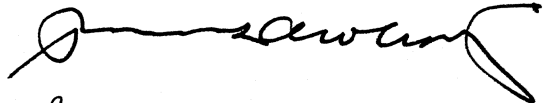
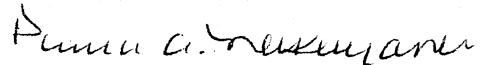
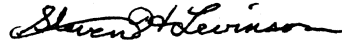
IT IS HEREBY ORDERED that the court's judgment filed on December 23, 2003, from which the appeal is taken, is affirmed.

DATED: Honolulu, Hawai'i, July 29, 2005.

On the briefs:

Earle A. Partington  
(Partington & Foley),  
for Petitioner-Appellant.

Girard D. Lau,  
Deputy Attorney General,  
for Respondent-Appellee.



James E. Duggan, Jr.