

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

ROBERT CORNELIO,

Petitioner,

v.

DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES,

Respondent.

No. 2D22-1683

February 24, 2023

Petition for Writ of Certiorari to the Circuit Court for the Sixth Judicial Circuit for Pasco County; sitting in its appellate capacity.

Keeley R. Karatinos of Karatinos Law, PLLC, Dade City, for Petitioner.

Christie S. Utt, General Counsel, and Kathy A. Jimenez-Morales, Chief Counsel, Tallahassee, for Respondent.

BLACK, Judge.

Robert Cornelio seeks second-tier certiorari review of the circuit court's order dismissing as moot his petition for certiorari review of the administrative order upholding Mr. Cornelio's driver license suspension. During the pendency of the first-tier certiorari proceeding, the six-month suspension of Mr. Cornelio's license expired; citing the expiration of the

suspension and *McLaughlin v. Department of Highway Safety & Motor Vehicles (McLaughlin II)*, 128 So. 3d 815 (Fla. 2d DCA 2012), the circuit court dismissed the petition for writ of certiorari as moot. Mr. Cornelio then filed the petition for a writ of certiorari in this court. We grant Mr. Cornelio's petition and quash the circuit court's dismissal of the petition for first-tier certiorari review.

"Our certiorari review of a circuit court's review of an administrative decision is limited to determining whether the circuit court afforded due process and whether it applied the correct law." *Forth v. Dep't of Highway Safety & Motor Vehicles*, 148 So. 3d 781, 782 (Fla. 2d DCA 2014). "This two-part analysis allows this court to 'decid[e] whether the lower court "departed from the essential requirements of [the] law." ' " *Parker v. Dep't of Highway Safety & Motor Vehicles*, 338 So. 3d 450, 455 (Fla. 2d DCA 2022) (alterations in original) (quoting *Dep't of Highway Safety & Motor Vehicles v. Hofer*, 5 So. 3d 766, 770 (Fla. 2d DCA 2009)).

In his petition before this court, Mr. Cornelio argues that the circuit court departed from the essential requirements of the law by denying him due process when it dismissed as moot his first-tier petition for a writ of certiorari. He specifically contends that the circuit court failed to apply the "capable-of-repetition-but-evading-review" exception to mootness and that he was denied due process of law when the circuit court thereafter failed to consider the merits of his petition.

This court, in *McLaughlin v. Department of Highway Safety & Motor Vehicles (McLaughlin I)*, 2 So. 3d 988, 990 (Fla. 2d DCA 2008), which was quashed on other grounds by *Florida Department of Highway Safety & Motor Vehicles v. Hernandez*, 74 So. 3d 1070, 1080 (Fla. 2011), recognized and applied the capable-of-repetition-but-evading-review exception to mootness and found that Mr. McLaughlin's second-tier

petition for certiorari review presented a question likely to recur such that resolution on the merits of the petition was necessary. On remand from the supreme court, this court issued the *McLaughlin II* opinion, which granted the second-tier certiorari petition and stated that "the issue of the validity of the suspension of Mr. McLaughlin's driver[] license is moot" such that no further proceedings are necessary "other than quashing the administrative order." 128 So. 3d at 815. That is, this court directed the circuit court to grant the first-tier certiorari petition and quash the administrative order upholding the license suspension. *See also Forth*, 148 So. 3d at 782 ("The *McLaughlin [II]* court held that, in such circumstances [where the driver license suspension had expired while the matter was being reviewed on certiorari], we would remand to the circuit court to quash the administrative order but that 'no further proceedings [were] necessary on remand because the issue of the validity of the suspension of [the] driver[] license is moot.' " (third and fourth alteration in original) (quoting *McLaughlin II*, 128 So. 3d at 815)); *Gordon v. Dep't of Highway Safety & Motor Vehicles*, 166 So. 3d 902, 905 (Fla. 4th DCA 2015) ("[The Second District] directed the circuit court to quash the administrative order upholding the license suspension. Nevertheless, because the license suspension had expired during appellate review, no further proceedings were necessary on remand other than quashal of the administrative order.").¹

¹ Although the Fourth District in *Gordon* concluded that the collateral consequences of license suspension prevent the issue from being moot and certified conflict with *McLaughlin II* on that point, it accurately discussed the posture of the *McLaughlin II* and *Forth* opinions, including the due process issues. 166 So. 3d at 905.

McLaughlin I expressly stated that the substantive license suspension issue was capable of repetition but evaded review and therefore considered the issue on its merits. Although quashed by *Hernandez* on the merits determination, it is apparent that the capable-of-repetition-but-evading-review exception to mootness still applied. Without application of that exception, *McLaughlin II*, *Forth*, and *Gordon* would have been dismissals of the second-tier certiorari proceedings as moot. But all three cases address the merits of the second- and first-tier petitions. *McLaughlin II* necessarily applied the exception in order to reach the conclusion that the circuit court's order would be quashed and then concluded that further administrative hearings were moot because the license suspension had expired.

In dismissing as moot Mr. Cornelio's certiorari petition, the circuit court failed to apply the capable-of-repetition-but-evading-review exception to mootness and denied Mr. Cornelio the due process to which he was entitled. *See, e.g., Pankau v. Dep't of Highway Safety & Motor Vehicles*, 147 So. 3d 1031, 1032 (Fla. 2d DCA 2014) (granting second-tier certiorari where the license suspension had expired and the circuit court had quashed the administrative order because the circuit court "failed to apply the correct law when it remanded the moot issue to the administrative tribunal" for further proceedings (citing *Forth*, 148 So. 3d at 782)). Whether Mr. Cornelio's first-tier petition will be granted or denied is not at issue here. The merits of his petition must first be addressed by the circuit court. *Cf. Gonzalez v. Dep't of Highway Safety & Motor Vehicles*, 91 So. 3d 924, 925 (Fla. 2d DCA 2012) (granting second-tier certiorari petition but expressing no opinion on the merits of the issues presented); *Arenas v. Dep't of Highway Safety & Motor Vehicles*, 90 So. 3d 828, 834 (Fla. 2d DCA 2012) ("We grant Mr. Arenas' petition for

certiorari and remand the case to the circuit court to determine the mechanism by which the lawfulness of Mr. Arenas' arrest may be decided.").²

Petition granted; order quashed.

VILLANTI and SLEET, JJ., Concur.

Opinion subject to revision prior to official publication.

² Accordingly, we do not address the collateral consequences issue addressed in *Gordon*, 166 So. 3d at 905, or in this court's decision in *Rudolph v. Department of Highway Safety & Motor Vehicles*, 107 So. 3d 1129, 1131 n.2 (Fla. 2d DCA 2012).