

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

DEPARTMENT OF HIGHWAY SAFETY AND)
MOTOR VEHICLES,)
)
Appellant,)
)
v.)
)
MICHAEL RIGAU,)
)
Appellee.)
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)
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)
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Case No. 2D04-2854

Opinion filed May 4, 2005.

Appeal from the Circuit Court for Hillsborough
County; Vivian C. Maye, Judge.

Enoch J. Whitney, General Counsel, and
Judson W. Chapman, Assistant General
Counsel, Tallahassee, for Appellant.

Roger V. Rigau of Rigau & Rigau, Tampa,
for Appellee.

DAVIS, Judge.

The Department of Highway Safety and Motor Vehicles ("DHSMV")
challenges the trial court's order sealing the record of the suspension of the driver's
license of Michael Rigau. Because the trial court lacked authority to seal the record, we
reverse.

Rigau was stopped for driving under the influence of alcohol and refused the breathalyzer test. Although the underlying DUI charge was dismissed, Rigau's driver's license was suspended for his failure to take the breath test. Rigau sought certiorari review of the suspension in circuit court and was denied the requested relief. Rather than seeking review of that decision, Rigau moved below to seal DHSMV's suspension record. The trial court granted Rigau's motion and sealed the record of his driver's license suspension. It is that order that DHSMV now appeals.

Rigau argues that the trial court's authority to seal these records is found in sections 943.0585 and 943.059, Florida Statutes (2003). He suggests that the suspension is punitive in nature, especially since the underlying charge was dismissed. DHSMV argues that the suspension record is not a "criminal history record" and thus is not covered by chapter 943.

The suspension of a driver's license is an administrative proceeding and is a civil, not a criminal, sanction. See State Dep't of Highway Safety & Motor Vehicles v. Degrossi, 680 So. 2d 1093, 1096 (Fla. 3d DCA 1996). Sections 943.0585 and 943.0589 specifically refer to the sealing and expunging of "criminal history information." Since the suspension of a license is not criminal in nature, these records do not fall within the scope of sections 943.0585 and 943.0589. The only way to remove these records is to successfully challenge the issuance of the suspension by obtaining certiorari relief from the circuit court. Rigau attempted this and failed. Since he did not seek review of that decision, he has waived the benefit of that procedure.

The trial court was without authority to enter the order. Accordingly, the order sealing the record regarding the suspension of Rigau's driver's license for refusing a breath test is reversed.

Reversed.

ALTENBERND, C.J., and STRINGER, J., Concur.