

NO. 23171

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STANLEY S. NAWATANI, Petitioner-Appellant,

vs.

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

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(CASE NO. JR 99-0081)

SUMMARY DISPOSITION ORDER

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

Petitioner-Appellant Stanley S. Nawatani (Petitioner) appeals from the December 7, 1999 judgment of the district court of the first circuit (the court)¹ affirming the October 19, 1999 order of Respondent-Appellee Administrative Director of the Courts, State of Hawai'i (the Director) revoking his driver's license for driving under the influence of intoxicating liquor, HRS § 291-4 (Supp. 1999).²

¹ The Honorable Russell Blair presided over this matter.

² The relevant section of HRS § 291-4 states as follows:

(a) A person commits the offense of driving under the influence of intoxicating liquor if:

(1) The person operates or assumes actual physical control of the operation of any vehicle while under the influence of intoxicating liquor, meaning that the person concerned is under the influence of intoxicating liquor in an amount sufficient to impair the person's normal mental faculties or ability to care for oneself and guard against casualty; or

(continued...)

On this appeal, Petitioner contends that the court erred in affirming the revocation because (1) the arresting officer did not properly inform Petitioner of the consequences of taking or refusing a blood alcohol concentration (BAC) test as required by State v. Wilson, 92 Hawai'i 45, 987 P.2d 268 (1999) and that (2) Petitioner did not refuse to take the test.

Petitioner agreed to take a BAC test. However, according to the arresting officer, Petitioner would not follow directions and the breath sample provided was insufficient. When the officer asked Petitioner to take a second test, Petitioner refused to sign a consent form for the test because he had already signed one. The officer interpreted this as a refusal to take the test.

In the administrative hearing conducted by the Administrative Director License Revocation Office, the hearing officer concluded that, by a preponderance of the evidence, Petitioner was driving under the influence of intoxicating liquor and that he had refused to take a breath test after being informed of the sanctions for such refusal.

²(...continued)

(2) The person operates or assumes actual physical control of the operation of any vehicle with .08 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood or .08 or more grams of alcohol per two hundred ten liters of breath.

In finding that Petitioner had in effect refused to take the test, the hearing officer considered the conflicting testimony of the officer and Petitioner and believed the officer's testimony. Credibility is a question to be decided by the fact-finder. See State v. Gella, 92 Hawai'i 135, 143 n.9, 988 P.2d 200, 208 n.9 (1999) ("The credibility of witnesses falls within the purview of the fact-finder[.]") (citation omitted). Under the evidence presented, the hearing officer's finding that Petitioner had refused to take the test was "[]supported by the evidence in the record." Farmer v. Administrative Director of Court, State of Hawai'i, 94 Hawai'i 232, 236, 11 P.3d 457, 461 (2000) (internal quotation marks and citation omitted).

With respect to Petitioner's other argument, Wilson held that a BAC test result obtained from a driver as a result of inaccurate advice by the police must be suppressed. Because no viable test result was obtained, Wilson is not applicable to this case.

Based on our review of the record, it cannot be said that the "Director . . . erroneously interpreted the law . . . or made a determination that was unsupported by the evidence in the record." Farmer, 94 Hawai'i at 236, 11 P.3d at 461 (internal quotation marks and citation omitted). Thus, the district court was right in affirming the Director's order. See id. Therefore,

IT IS HEREBY ORDERED that the district court's
December 7, 1999 judgment affirming the Director's October 19,
1999 order revoking the driver's license of Petitioner is
affirmed.

DATED: Honolulu, Hawai'i, August 22, 2001.

On the briefs:

Noah D. Fiddler for
petitioner-appellant.

Diane Erickson, John P.
Dellera, and Girard D. Lau,
Deputy Attorneys General,
State of Hawai'i, for
respondent-appellee.