

NO. 26287

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

BANG JIAN WU, Petitioner-Appellant, v.
ADMINISTRATIVE DIRECTOR OF THE COURT, State of Hawai'i,
Respondent-Appellee

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
HONOLULU DIVISION
(JR03-0024)
(Original Case No. 03-00959)

SUMMARY DISPOSITION ORDER

(By: Burns, C.J., Lim and Fujise, JJ.)

EM. RIMANDO
SERIAL APPELLATE COURTS
STATE OF HAWAII

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FILED

In this secondary appeal, Petitioner-Appellant Bang Jian Wu (Wu) appeals from the November 17, 2003 Judgment on Appeal entered by the District Court of the First Circuit¹ (district court). The Decision and Order Affirming Administrative Revocation upon which this judgment was based, was also filed on November 17, 2003.

After careful review of the issues raised and the arguments made by the parties, as well as the record of the proceedings before the district court and the relevant case law, we affirm the district court's decision for the following reasons:

The district court did not err, Freitas v. Admin. Dir. of the Courts, State of Hawai'i, 104 Hawai'i 483, 484, 92 P.3d 993, 994 (2004), in ruling the Administrative Director of the

¹ The Honorable Lono J. Lee presided.

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

Courts, State of Hawai'i (Director) did not reversibly err in the following respects:

1. The Director did not "exceed" her authority in refusing to consider that Wu's first conviction for driving under the influence of alcohol (DUI) was set aside. Contrary to Wu's argument, the setting aside of his 1997 DUI conviction did not remove the basis for the Director's decision that he had three prior alcohol enforcement contacts prior to the instant revocation as the 1995 administrative revocation of his license stemming from the same arrest as his 1997 DUI conviction remained valid. The statutory definition of an "alcohol enforcement contact" includes "[a]ny administrative revocation ordered pursuant to part XIV of chapter 286, as that part was in effect on or before December 31, 2001." Hawaii Revised Statutes (HRS) § 291E-1 (2001).

2. The Director had ample evidence upon which to find that Wu validly refused to be tested for alcohol. The police officer who informed Wu of the administrative revocation process testified that (a) he read the warning form, and particularly the lifetime revocation provision, to Wu and (b) that Wu displayed no difficulty in understanding English and seemed to understand the questions posed to him, insofar as Wu (i) had lived in this country for approximately 20 years, and (ii) did not stop him or ask any questions, although Wu was told he could do so if he did not understand. The Director's explicit determination that Wu was incredible when he testified that he was not warned that he

could lose his license for life upon refusing to submit to testing will not be second-guessed.

3. The record of the Administrative Driver's License Revocation Office proceedings does not support Wu's contention that the Director became an advocate during the revocation review process. The Director has the authority to subpoena and examine witnesses, HRS § 291E-38(d)(2) and (4) (2002), and, once they were subpoenaed, the Director had no choice but to find the absence of the police officers from the hearing "good cause," warranting a continuance pursuant to HRS § 291E-38(k) ("The absence from the hearing of a law enforcement officer or other person, upon whom personal service of a subpoena has been made as set forth in subsection (h), constitutes good cause for a continuance.").

Therefore,

IT IS HEREBY ORDERED that the November 17, 2003 Judgment on Appeal entered by the District Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, October 5, 2006.

On the briefs:

Howard T. Chang,
for Petitioner-Appellant.

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


Chief Judge


Associate Judge


Associate Judge