

NO. 26524

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STEVEN T. SMITH, Petitioner-Appellant,
v.
ADMINISTRATIVE DIRECTOR OF THE COURTS, STATE OF HAWAII,
Respondent-Appellee

E.M. RIMANDO
CLERK, APPELLATE COURTS
STATE OF HAWAII

2006 DEC -4 AM 10:16

FILED

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(JR 03-0037, Original Case No. 03-03151)

SUMMARY DISPOSITION ORDER

(By: Burns, Chief Judge, Lim, and Nakamura, JJ.)

Petitioner-Appellant Steven T. Smith (Smith) appeals from the March 29, 2004, Judgment on Appeal of the District Court of the First Circuit (the district court),¹ which affirmed the one-year revocation of Smith's driver's license by Respondent-Appellee Administrative Director of the Courts.

On appeal, Smith argues that the district court erred in affirming the administrative revocation of his license because: (1) the completion and transmission of forms associated with his arrest by a Navy police officer to the Administrative Driver's License Revocation Office (ADLRO) violated the Posse Comitatus

¹ The Honorable Clarence A. Pacarro presided.

Act (PCA);² (2) ADLRO security measures violated Smith's right to a public hearing, and the ADLRO'S refusal to hold a hearing on the validity of its security measures violated the Hawai'i Supreme Court's decision in Freitas v. Admin. Dir. of the Courts, 104 Hawai'i 483, 92 P.3d 993 (2004); (3) the hearing procedures used by the hearing officer in Smith's administrative hearing were arbitrary and violated Smith's constitutional rights to due process of law and the statutory mandate contained in Hawaii Revised Statutes (HRS) Chapter 291E, Part III (Supp. 2003), because (a) the ADLRO lacks "uniform common procedure" for conducting administrative hearings, (b) the appropriate procedural posture in ADLRO administrative hearings is a "review" of the administrative review decision rather than a de novo hearing, (c) the entire ADLRO file cannot come into evidence, and (d) a valid chemical test or refusal is a prerequisite for ADLRO jurisdiction; and (4) the notice of administrative revocation did not adequately distinguish between administrative revocation and criminal suspension.

² The Posse Comitatus Act (PCA) is codified at 18 United States Code (U.S.C.) Section 1385 and provides that:

§ 1385. Use of Army and Air Force as posse comitatus

Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years, or both.

Petitioner-Appellant Steven T. Smith (Smith) asserts that the restrictions of the PCA have been extended to the Navy through directives issued by the Department of Defense and the Secretary of the Navy.

After a careful review of the record and the briefs submitted by the parties, we hold that each of Smith's arguments in the instant appeal have been previously addressed by the Hawai'i Supreme Court and found to be without merit.³ Therefore,

IT IS HEREBY ORDERED that the Judgment on Appeal filed on March 29, 2004, in the District Court of the First Circuit is affirmed.

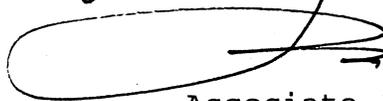
DATED: Honolulu, Hawai'i, December 4, 2006.

On the briefs:

Earle A. Partington
for Petitioner-Appellant

Girard D. Lau
Deirdre Marie-Iha
Deputy Attorneys General
Department of the Attorney General
for Respondent-Appellee


Chief Judge


Associate Judge


Associate Judge

³ As to Argument No. 1 in the instant appeal: See Brune v. Admin. Dir. of the Courts, 110 Hawai'i 172, 172-73, 130 P.3d 1037, 1037-38 (2006).

As to Argument No. 2 in the instant appeal: See Freitas v. Admin. Dir. of the Courts, 108 Hawai'i 31, 40, 116 P.3d 673, 682 (2005) [hereinafter Freitas II]; see also Dunaway v. Admin. Dir. of the Courts, 108 Hawai'i 78, 82-83, 117 P.3d 109, 113-14 (2005).

As to Argument No. 3(a) in the instant appeal: See Freitas II, 108 Hawai'i at 44-45, 116 P.3d at 686-87.

As to Argument No. 3(b) in the instant appeal: See id.; see also Dunaway, 108 Hawai'i at 83, 117 P.3d at 114.

As to Argument No. 3(c) in the instant appeal: See Freitas II, 108 Hawai'i at 45-46, 116 P.3d at 687-88.

As to Argument No. 3(d) in the instant appeal: See id. at 46, 116 P.3d at 688.

As to Argument No. 4 in the instant appeal: See Dunaway, 108 Hawai'i at 87, 117 P.3d at 118.