

*** NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER ***

NO. 26919

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

PAUL J. KEARNEY, Petitioner-Appellant,

vs.

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

NORMA T. YARA
 CLERK, APPELLATE COURTS
 STATE OF HAWAI'I

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FILED

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
 (Jud. Rev. No. 04-0022; ADLRO Case No. 04-02281)
 (HPD Rep. No. 04-246276)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, and Duffy, JJ.;
 and Acoba, J., dissenting)

The petitioner-appellant Paul J. Kearney appeals from the October 4, 2004 order of the district court of the first circuit, the Honorable William A. Cardwell presiding, affirming the Administrative Driver's License Revocation Office (ADLRO)'s lifetime revocation of his driver's license.

On appeal, Kearney contends that the district court erred in affirming the revocation inasmuch as (1) Kearney was denied his right to a hearing on the constitutionality of the ADLRO security procedures requiring signature and identification [hereinafter, "the I.D. procedure"], pursuant to Freitas v. Admin. Dir. of the Courts, 104 Hawai'i 483, 92 P.3d 993 (2004)

(Freitas I), and (2) the I.D. procedure denies Kearney his right to a public hearing.¹

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised, we affirm the judgment of the district court for the following reasons:

In Freitas I, this court stated that "the ADLRO denied [the petitioner] a hearing on his objections to the identification and sign-in procedures. Because he has a right to a public hearing, . . . he is entitled to show that the procedure limiting public access was not warranted." Id. at 489, 92 P.3d at 999. This court did not hold that a hearing on the I.D. procedure was required regardless of whether the petitioner requested it or not.

The record reflects that Kearney failed to request a hearing on the I.D. procedure at the July 30, 2004 hearing. Therefore, his argument on appeal to this court that he "was denied his hearing" (emphasis in original) which, he maintains, is required by Freitas I and State v. Coffee, 104 Hawai'i 193, 199, 86 P.3d 1002, 1008 (App. 2004), is unsupported by the record: he made no such request, and no denial was issued. Moreover, in contrast to Coffee, this court fails to apprehend any error in the reasoning of the district court in its ruling.

¹ Kearney also argues that, by denying him a public hearing, the ADLRO hearing officer also denied him his right to assert "the public's rights under the [f]irst, [f]ifth, and [f]ourteenth [a]mendments to the United States Constitution and Article I, §§ 4 and 5[] of the Hawai'i Constitution." Inasmuch as (1) Kearney's argument presupposes a violation of his right to a public hearing and (2) we conclude that Kearney's right to a public hearing was not violated, see infra, his argument lacks merit.

The district court concluded that, pursuant to HRS § 291E-40 (Supp. 2000), the basis for its appellate jurisdiction, it could not remand the matter to the ADLRO for a hearing on the I.D. procedure but, rather, could only affirm or reverse the ADLRO's revocation of Kearney's license.² Recognizing that the final adjudication of the constitutionality of the ADLRO's I.D. procedure was pending before this court at the time of its decision, the district court stated:

It seems clear that if the Supreme Court determined that reversal of the administrative revocation for failure to provide a hearing as to security procedures was the appropriate remedy, it could have done so in Freitas [I]. Instead, apparently[,] the Court intends to answer the question of the validity of those procedures in that case.

There is nothing in the record that indicates that there was any difference in the procedures used in this case and those used in Freitas [I]. Therefore, this court concludes that it would be inconsistent with the intent of the Supreme Court as expressed in Freitas [I] to reverse petitioner's revocation based upon either the Hearing Officer's failure to hold a hearing as to the validity of the procedures or his conclusion that the procedures are valid, under the specific circumstances of this case.

Kearney did not contest the district court's finding that the ADLRO I.D. procedure is identical to the procedures reviewed in Freitas I. The question whether those procedures violate a petitioner's right to a public hearing has since been settled by this court in Freitas v. Admin. Dir. of the Courts, 108 Hawai'i 31, 37, 116 P.3d 673, 679 (2005) (Freitas II).

² HRS § 291E-40(d) provides that "the court shall not remand the matter back to the director for further proceedings consistent with its order."

Accordingly, Kearney's arguments that he was improperly denied a hearing on the ADLRO I.D. procedure and that the ADLRO I.D. procedure violates his right to a public hearing lack merit.

Therefore,

IT IS HEREBY ORDERED that the judgment from which the appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, February 6, 2007.

On the briefs:

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