

Matter of Thompson v New York State Dept. of Motor Vehs.

Supreme Court of New York, Appellate Division, Fourth Department

March 22, 2019, Decided; March 22, 2019, Entered

381 TP 18-00451

Reporter

170 A.D.3d 1657 *; 94 N.Y.S.3d 916 **; 2019 N.Y. App. Div. LEXIS 2234 ***; 2019 NY Slip Op 02237 ****; 2019 WL 1304100

[****1] In the Matter of Gregory Thompson, Petitioner, v New York State Department of Motor Vehicles et al., Respondents.

Counsel: [***1] TULLY RINCKEY PLLC, ROCHESTER (ZACHARY T. RUETZ OF COUNSEL), FOR PETITIONER.

BARBARA D. UNDERWOOD, ATTORNEY GENERAL, ALBANY (BRIAN D. GINSBERG OF COUNSEL), FOR RESPONDENTS.

Judges: PRESENT: SMITH, J.P., PERADOTTO, CARNI, LINDLEY, AND TROUTMAN, JJ.

Opinion

[*1657] [**916] Proceeding pursuant to [CPLR article 78](#) (transferred to the Appellate Division of the Supreme Court in the Fourth Judicial Department by order of the Supreme Court, Monroe County [William K. Taylor, J.], entered October 27, 2017) to review a determination of respondents. The determination revoked petitioner's driving privileges in the State of New York.

It is hereby ordered that the determination is unanimously confirmed without costs and the petition is dismissed.

Memorandum: Petitioner commenced this proceeding pursuant to [CPLR article 78](#) seeking to annul the determination revoking his driver's license and commercial driver's license based on his refusal to submit to a chemical test following his arrest for driving while intoxicated. We confirm the determination.

Contrary to petitioner's contention, the determination is supported by substantial evidence (see [Matter of Peeso v Fiala](#), 130 AD3d 1442, 1443, 13 NYS3d 742 [4th Dept 2015], lv denied 26 NY3d 910, 20 NYS3d 545, 42 NE3d 215 [2015]). The arresting officer's testimony at the

hearing established that the officer lawfully stopped the vehicle driven [***2] by petitioner for a traffic violation (see generally *People v Grimes*, 133 AD3d 1201, 1202, 20 NYS3d 261 [4th Dept 2015]), possessed reasonable grounds to believe that petitioner had been driving while intoxicated based on, inter alia, petitioner's failure of [*1658] field sobriety tests (see [Peeso](#), 130 AD3d at 1443), and had probable cause to arrest petitioner (see [Matter of Sherwood v New York State Dept. of Motor Vehs.](#), [**917] 153 AD3d 1022, 1024-1025, 59 NYS3d 837 [3d Dept 2017]; *People v Lewis*, 124 AD3d 1389, 1390-1391, 999 NYS2d 661 [4th Dept 2015], lv denied 26 NY3d 931, 17 NYS3d 94, 38 NE3d 840 [2015]). In addition, the officer's testimony, "along with his refusal report, which was entered in evidence, established that petitioner refused to submit to the chemical test after being warned twice of the consequences of such refusal" ([Matter of Huttenlocker v New York State Dept. of Motor Vehs. Appeals Bd.](#), 156 AD3d 1464, 1464, 65 NYS3d 881 [4th Dept 2017]). The Administrative Law Judge was entitled to discredit petitioner's testimony to the contrary (see [Matter of Bersani v New York State Dept. of Motor Vehs.](#), 162 AD3d 1553, 1553, 77 NYS3d 822 [4th Dept 2018]).

We have reviewed petitioner's remaining contentions and conclude that they do not require a different result. Present—Smith, J.P., Peradotto, Carni, Lindley and Troutman, JJ.

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