

PARTIDA V. MOTOR VEHICLE DIVISION

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IRIS PARTIDA,
Petitioner-Appellant,
v.
MOTOR VEHICLE DIVISION
DEPARTMENT OF TAXATION
AND REVENUE, STATE OF NEW
MEXICO, KEITH PERRY, DIRECTOR,
Respondent-Appellee.

No. 33,698

COURT OF APPEALS OF NEW MEXICO

December 30, 2014

APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY, John A. Dean, Jr.,
District Judge

COUNSEL

Victor Titus, Farmington, NM, for Appellant

N.M. Taxation and Revenue Department, Julia A. Belles, Santa Fe, NM, for Appellee

JUDGES

CYNTHIA A. FRY, Judge. WE CONCUR: RODERICK T. KENNEDY, Chief Judge, M.
MONICA ZAMORA, Judge

AUTHOR: CYNTHIA A. FRY

MEMORANDUM OPINION

FRY, Judge.

{1} Petitioner appeals from an order affirming the revocation of her driver's license. We previously issued a notice of proposed summary disposition in which we proposed to affirm. Petitioner has filed a memorandum in opposition, which we have duly considered. Because we remain unpersuaded by Petitioner's assertions of error, we affirm.

{2} The only issue before us on direct appeal is a challenge to the district court's failure to hold a de novo hearing on the constitutionality of the stop and arrest preceding the revocation of Petitioner's license. [DS 9] As we observed in the notice of proposed summary disposition, the district court appropriately reviewed the MVD's determination in its appellate capacity. [RP 263-65] See *Schuster v. State of N.M. Taxation & Revenue Dep't*, 2012-NMSC-025, ¶¶ 22-23, 283 P.3d 288.

{3} In her memorandum in opposition Petitioner contends that the district court erred in conducting appellate review of the MVD's determination, *Schuster* notwithstanding, on grounds that she "has never had a full and fair hearing on the constitutionality of her arrest before any tribunal." [MIO 2] Petitioner contends that the district court "could not simply review the MVD record and make a constitutional decision on the facts below when the MVD would not allow a full development of the facts, [and did not conduct] any analysis of the constitutional issue." [MIO 7]

{4} If the MVD had disallowed evidence and failed to evaluate the constitutionality of the arrest as Petitioner suggests, we would have serious concerns about the underlying proceedings. However, the record belies Petitioner's assertions. As we previously observed in the second notice of proposed summary disposition, as well as in the course of the preceding appeal, the hearing officer clearly considered both the evidence and the arguments advanced by Petitioner concerning the constitutionality of the traffic stop and the ensuing arrest, and issued thoughtful rulings on those matters. [RP 49-52, 260-61] Under the circumstances, we reject Petitioner's characterization of the scope of the proceedings before the MVD. See generally *State v. Calanche* 1978-NMCA-007, ¶ 10, 91 N.M. 390, 574 P.2d 1018 (observing that while we generally accept the statements of fact within the docketing statement, we will not accept such factual recitations if the record shows otherwise). Insofar as MVD admitted the relevant evidence and evaluated the constitutionality of the arrest, we perceive no basis for departing from *Schuster*. Therefore, the district court's refusal to conduct de novo proceedings was proper.

{5} Accordingly, for the reasons stated above and in the notice of proposed summary disposition, we affirm.

{6} IT IS SO ORDERED.

CYNTHIA A. FRY, Judge

WE CONCUR:

RODERICK T. KENNEDY, Chief Judge

M. MONICA ZAMORA, Judge