

**IN THE TENTH JUDICIAL CIRCUIT
IN AND FOR HARDEE, HIGHLANDS
AND POLK COUNTY, FLORIDA**

County Case No.: CI03-007456-LD

Appeal No.: FF-52

HOWARD A. MATHIS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

OPINION OF THE COURT

This is an appeal from the county court of Polk County, Hearing Officer Joanna Conner presiding. The Appellant was cited for speeding, in violation of §316.189, Florida Statutes (2002). This court has jurisdiction. Fla. R. App. P. 9.030(c). The ruling of the county court is affirmed.

At the civil infraction hearing, Appellant requested a continuance because he claimed that his tape recorder malfunctioned and he wished to record the hearing to preserve the appellate record. The motion was denied and the hearing officer rendered a final judgment on August 23, 2003.

Appellant filed a request for oral arguments on December 8, 2003. However, pursuant to Rule 9.320, the Court dispenses with oral argument, as it is unnecessary in this matter. On appeal, Appellant claims that the trial court erred in denying his motion for continuance. Action of trial court on application for continuance will not be disturbed by appellate court unless complaining party clearly shows that there has been an abuse of judicial discretion. Biederman v. Cheatham, 161 So.2d 538 (Fla. 2 DCA 1964). Upon review of the record, the Court finds that the lower court did not abuse its discretion in denying the motion for continuance.

It is therefore ORDERED and ADJUDGED that the ruling of the county court is AFFIRMED.

DONE and ORDERED April 12, 2004.

RONALD HERRING, Chief Judge