STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C. RHODE ISLAND TRAFFIC TRIBUNAL

TOWN OF BRISTOL :
:
v. : C.A. No. T10-0089
:
:
RICHARD DION

DECISION

PER CURIAM: Before this Panel on December 8, 2010—Judge Ciullo (Chair, presiding), Administrative Magistrate Cruise, and Magistrate Goulart, sitting—is Richard Dion's (Appellant) appeal from a decision of Magistrate DiSandro to impose sanctions for a violation of G.L. 1956 § 31-27-2.1 "Refusal to Submit to a chemical test." The Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel[1]

We note the uniqueness of this appeal as it comes to us from an order imposing sanctions that we as an Appeals Panel, in a prior decision , ordered the trial magistrate to impose. The winding procedural travel of this matter is as follows.

Back on April 28, 2008, Bristol police cited Appellant for the aforementioned violation of the motor vehicle code. The matter proceeded to trial on July 16, 2008 before a magistrate of the Traffic Tribunal. On August 6, 2008, at the conclusion of the trial, the trial magistrate dismissed the charge against Appellant. Thereafter, the State of Rhode Island, through its Department of Attorney General timely filed an appeal of that

[1] A full recitation of the facts and circumstances concerning Appellant's arrest, trial and original appellate proceeding can be found in Town of Bristol v. Richard Dion, T08-0106 (RITT 2007).

dismissal before this Panel. That appeal was heard on December 10, 2008, at which time this Panel granted the State's appeal, reversed the trial magistrate's decision, and remanded the matter to said trial magistrate for an imposition of sanctions. On December 15, 2008, Appellant appealed to the District Court, this Panel's decision to reverse and remand. For reasons unknown, the formal written decision of this Panel's December 2008 reversal was not issued until August 7, 2009.

In the Sixth Division District Court, the matter was scheduled for conferences on October 5, 2009; October 13, 2009; and again on March 18, 2009.[2] The record lay dormant until December 1, 2010, at which time the trial magistrate from the Traffic Tribunal, in accordance with this Panel's December 2008 decision, imposed the applicable sanctions. (Tr. at 16.) Aggrieved by the trial magistrate's decision to impose such sanctions, Appellant filed this Appeal. We also note that in addition to this Appeal, on December 2, 2010, Appellant motioned for, and was granted, by a Magistrate of the District Court, an order staying the imposition of sanctions imposed by the trial magistrate. That stay is in effect until January 7, 2011. The Order Granting Stay of Imposition of Sanctions also notes that the matter is to be rescheduled for a hearing in front of a District Court magistrate at some point before the stay expires.

Again, for clarity's sake, the issue on appeal before us today is the propriety of the trial magistrate's decision to impose sanctions on December 1, 2010. Forthwith is this Panel's decision.

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[2] See Richard Dion v. RITT, A.A. No: 6AA-2009-00151 (2009)

Standard of Review

Pursuant to G.L. 1956 § 31-41.1-8, the Appeals Panel of the Rhode Island Traffic Tribunal possesses appellate jurisdiction to review an order of a judge or magistrate of the Rhode Island Traffic Tribunal. Section 31-41.1-8(f) provides in pertinent part:

> The appeals panel shall not substitute its judgment for that of the judge or magistrate as to the weight of the evidence on questions of fact. The appeals panel may affirm the decision of the judge or magistrate, or it may remand the case for further proceedings or reverse or modify the decision if the substantial rights of the appellant have been prejudicial because the judge's findings, inferences, conclusions or decisions are:
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> (1) In violation of constitutional or statutory provisions;
> (2) In excess of the statutory authority of the judge or magistrate;
> (3) Made upon unlawful procedure;
> (4) Affected by other error of law;
> (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
> (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

In reviewing a hearing judge or magistrate's decision pursuant to § 31-41.1-8, this Panel "lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge [or magistrate] concerning the weight of the evidence on questions of fact." Link v. State, 633 A.2d 1345, 1348 (R.I. 1993) (citing Liberty Mutual Insurance Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). "The review of the Appeals Panel is confined to a reading of the record to determine whether the judge's [or magistrate's] decision is supported by legally competent evidence or is affected by an error of law." Link, 633 A.2d at 1348 (citing Environmental Scientific Corp. v. Durfee,

621 A.2d 200, 208 (R.I. 1993)). "In circumstances in which the Appeals Panel determines that the decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record or is affected by error of law, it may remand, reverse, or modify the decision." Link, 633 A.2d at 1348. Otherwise, it must affirm the hearing judge's [or magistrate's] conclusions on appeal. See Janes, 586 A.2d at 537.

Analysis

Appellant listed a variety of reasons in support of his appeal, some of which were repetitious, others were not supported with any authority.[3] Forthwith is the Panel's decision regarding the claims presented properly before this Panel.

State's Ability To Appeal

On appeal, Appellant claims that in August of 2008, the State of Rhode Island through its Department of Attorney General was statutorily prohibited from appealing the trial magistrate's decision to this Panel. Therefore, Appellant contends, the earlier appeal was improperly presented before this Panel, and the original decision of the trial magistrate dismissing the charge should not have been overturned.

In support of this claim, Appellant cites State v. Robinson, 972 A.2d 150 (R.I. 2009). However, the "right to appeal" jurisprudence of Robinson is not applicable to Appellant's position. There, our Supreme Court held that at the time, there was no statutory authority granting the State the ability to appeal final decisions of the *Traffic*

[3] The first two reasons Appellant cites as a basis for his appeal are "Lack of Continuance for One Week" and "Lack of Stay." While those may be reasons why Appellant feels he is aggrieved by the proceedings, they are not a basis for an appeal. Such reasoning is akin to a criminal defendant appealing a guilty verdict to a higher court and citing as his reason for appeal, "I was found guilty, and was sent to prison." Furthermore, some other reasons found on the appeal form—i.e. basic unfairness, denial of an evidentiary hearing, the comparison of Appellant's plight to that of a man who was the subject of a 1998 Providence Journal article—are merely listed and never briefed, discussed or supported with any authority. Therefore, this Panel will not engage in any meaningful discussion of these issues and they are hereby foreclosed for purposes of this review. See Plainfield Pike Gas & Convenience, LLC v. Plainfield Pike Realty Corp., 994 A.2d 54, 58 (R.I. 2010)

Tribunal Appeals Panel to the District Court. Id. at 158 (emphasis added). Here, the only appeal ever taken by the State was from a ruling of a trial magistrate of the Traffic Tribunal to the Appeals Panel of the Traffic Tribunal, which is—and was at the time—allowed pursuant to Rule 21 of the Rhode Island Traffic Tribunal Rules of Procedure. Rule 21 provides: "Any party aggrieved by a sentence of judgment of a court in a civil traffic violation may appeal therefrom to the appeals panel of the traffic tribunal." The State made its appeal to this Panel, and not to the District Court, making Robinson's holding inapplicable.

Thus,, Appellant's reliance on State v. Robinson is misplaced. We therefore conclude that the State of Rhode Island had the statutory authority to appeal a decision of the trial magistrate to this Appeals Panel in December of 2008, and at that time, this Panel properly had jurisdiction over the matter. The trial magistrate's decision to issue sanctions consistent with that order was not affected by error of law or in violation of statutory provisions.

Jurisdiction of the Trial Magistrate

Appellant next argues that because the case had already been appealed to the District Court, the trial magistrate lacked jurisdiction to issue the sanctions. Although District Court appeals process is beyond this Panel's jurisdiction we note for the purposes of our review, that this case was prematurely appealed to the District Court. Section 8-8.2-2 of the Rhode Island General Laws states holds that "[a] party aggrieved by a final order of the Traffic Tribunal shall be entitled to a review of the order by a judge of the district court." In this case, our 2008 decision was not a final order, but a remand to the trial court for further proceedings. Therefore, taking an appeal on the heels of that

decision was untimely. See Kolc v. Maratta, 113 R.I. 160, 161, n.2, 319 A.2d 14, n.2 (1970) ("[there is] a well settled principle that the second action should be abated if there is a prior action pending in the same court among the same parties and involving the same or substantially same subject matter[]").

The final order from the Traffic Tribunal did not come about until December 1, 2010 when the trial magistrate complied with our 2008 decision and entered sanctions. Again, we are not attempting to provide the District Court with an instruction on appellate procedure; we are merely noting that the trial magistrate's jurisdiction to impose sanctions remained. The imposition of sanctions by the trial magistrate was in compliance with an order stemming from a previous decision of this Panel. We therefore conclude that his decision to impose sanctions was not in excess of his jurisdiction and that Appellant's appeal to the District Court had no effect on his ability to do so.

Delay in Sentencing

Because there was a two year delay from the time this Panel remanded the case for sentencing and the actual imposition of the sentence, Appellant urges us to vacate the sanctions imposed. In support of this claim, Appellant relies on another Rhode Island Supreme Court case Taft v. Pare, 536 A.2d 888. (R.I. 1988). Similar to the issue before us today, Taft involved a motorist challenging the suspension of his license Id. The motorist, a holder of a Rhode Island driver's license, had been convicted of drunk driving in Massachusetts, and for unstated reasons, the Rhode Island Department of Motor Vehicles did not order his license suspension until almost two years after his arrest in Massachusetts. Id. at 537. While our Supreme Court did note disapproval with the untimely imposition of the suspension, it relegated its displeasure to a short footnote, as

the crux of the decision had nothing to do with the two year delay, but rather concerned the legality of ex parte license revocations. Taft, 536 A.2d at 889 n1.

Whether or not a delay in sentencing was unreasonable "depends on circumstances." Pollard v. U.S., 352 U.S. 354, 361 (1957). In such cases, where there is a question of "speedy sentencing," reviewing courts look to a balancing of factors such as the reason for the delay, its length, and any resulting prejudice to the defendant. Barker v. Wingo, 407 U.S. 514, 534 (1972). It is important to note again that after rendering our previous decision in this matter in December of 2008, Appellant immediately filed an appeal in the District Court. While nothing was placed formally on the record in District Court, as noted above, three separate conferences were scheduled, and presumably held in the spring and fall of 2009. We can only speculate that the trial magistrate likely delayed sentencing pending this Panel's formal written decision, and then perhaps further delayed the imposition of sanctions in anticipation of the appeal in District Court.

One thing we are sure of, however, is that the Appellant suffered no prejudice as a result of this delay. Once this Panel remanded the case for sentencing, Appellant was assured that he would be subject to, at least, the mandatory minimums required under § 31-27-2.1: fines, DWI school, and a six month loss of license. As of December 1, 2010, approximately two years after the case was remanded for sentencing, Appellant had not paid one cent in fines, had not attended any classes, nor had he ever been without the privilege of driving.

Given the totality of the circumstances, we find that the delay, although lengthy, has not unduly prejudiced the Appellant, or so offended justice as to warrant the sanctions be vacated. See Barker supra; see also Perez v. Sullivan, 793 F.2d 249, 256

(10th Cir. 1986) (holding that in post-conviction situations, speedy sentencing situations, "the necessity of showing substantial prejudice. . . dominate[s] the balancing test.").

Conclusion

This Panel has reviewed the entire record before it. Having done so, this Panel is satisfied that the trial magistrate's decision to impose sanctions pursuant to § 31-27-2.1 was not affected by error of law, clearly erroneous based on the reliable, probative, characterized by abuse of discretion, or in violation of constitutional provisions. Finding that substantial rights of Appellant have not been prejudiced, we hereby deny his appeal and sustain the violation charged against him.

ENTERED: