

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

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v.

C.A. No. T11-0075

JACOB BOTTELLA

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STATE OF RHODE ISLAND  
TRAFFIC TRIBUNAL  
FILED

DECISION

PER CURIAM: Before this Panel on December 14, 2011—Chief Magistrate Guglietta (Chair, presiding), Magistrate DiSandro, and Magistrate Goulart, sitting—is Jacob Bottella’s (Appellant) appeal from a decision from Judge Almeida (trial judge), sustaining the charged violation of G.L. 1956 § 31-14-2 “Prima facie limits.” Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On August 23, 2011, Trooper Kenneth Marandola (Trooper) of the Rhode Island State Police cited Appellant for the aforementioned violation of the motor vehicle code. The Appellant initially contested the charge, and the matter was scheduled for trial on November 16, 2011.

However, moments before the trial was to begin, Appellant decided to plead guilty to the violation. (Tr. at 3.) After accepting the Appellant’s guilty plea, the trial judge sentenced the Appellant. The trial judge sentenced the Appellant according to section 31-27-24 of the Rhode Island General Laws, also known as the Colin Foote Act (Foote Act). The Foote Act provides for increased penalties for habitual offenders of the motor vehicle code.

As a result of the enhanced sentencing, Appellant timely filed this appeal. Appellant contends that the trial judge's sentencing decision was made in excess of statutory authority and was an abuse of discretion.

### 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:

- (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

In support of his appeal, Appellant advances several arguments that the trial judge’s decision was made in excess of statutory authority and was an abuse of discretion. This Panel will address each argument in seriatim.

#### **A. Applicability of Enhanced Penalties**

Appellant first contends that the Foote Act was misapplied in this case because Appellant did not have four convictions within an eighteenth month period. The Foote Act states that “[e]very person convicted of moving violations on four (4) separate and distinct occasions within an eighteen (18) month period” is subject to increased penalties.<sup>1</sup>

For purposes of this analysis, the relevant convictions are the first and the last. Appellant contends that the first conviction was on May 8, 2010. However, that date was the day the citation was issued. Appellant was not convicted until June 2, 2010 when Appellant paid the ticket by mail. See Traffic Trib. R.P. 5(d) (“Payment of the summons shall be deemed an admission of guilt to the civil offense charged.”). A simple review of the calendar leads this Panel to the conclusion that December 2, 2011 was the date the eighteen month window expired as it relates to the Foote Act. It is undisputed that Appellant pled guilty on November 16, 2011

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<sup>1</sup> Those penalties are (1) a fine up to one thousand dollars (\$1,000); (2) a mandatory sixty hours of driver retraining; (3) a mandatory sixty hours of public community service; (4) and the operator’s driver’s license may be suspended up to one year or revoked for a period of up to two years. See § 31-27-27.

to his fourth violation, just two weeks before the eighteen month window shut. Thus, the trial judge did not err when she imposed sanctions pursuant to the Foote Act.<sup>2</sup>

### **B. Written Notice**

Appellant next argues that he should have been afforded written notice that if he was convicted for his most recent violation, his fourth in eighteen months, then he would be subject to the Foote Act's increased penalties. Appellant also contends that his due process rights were infringed because he was not informed of the enhanced penalties associated with the Foote Act.

As an initial matter, this Panel notes that the Foote Act does not require written notice to be given to the motorist. It is well-settled that everyone is presumed to know the law and ignorance of the law is not a defense or an excuse. This presumption holds true for sentencing provisions like the Foote Act, as well. See State v. Williams, 122 R.I. 32, 404 A.2d 814 (R.I. 1979); see also State v. Moran, 997 A.2d 210 (N.J. 2010) (The Court held that ignorance of a sentencing provision that is published in the codified laws of the State is not a defense; every person is presumed to know the law.). Moreover, Appellant was warned at his arraignment that he should be prepared for his trial date because he could face a loss of his license of up to two years. See Arr. Tr. at 3. The warning the Appellant received at his arraignment, in addition to the presumption that everyone should know the law, provided the Appellant with more than enough notice of the gravity of his situation. See e.g. State ex rel. Robinett v. Smith, 572 P.2d 346, 347 (Or. App. 1977) (A habitual traffic offender proceeding was not required to be dismissed simply because the motorist received minimal notice of the sanctions to be imposed.). Furthermore, Appellant was afforded the opportunity to a hearing to contest each one of the

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<sup>2</sup> This Panel's analysis rests solely on the dates of the conviction. Appellant's argument is that the dates of conviction are the relevant dates for computing time as it relates to Foote Act sanctions. At this time, this Panel does not adopt or reject this contention as Appellant's argument fails as a matter of law because Appellant's four citations/convictions clearly fall within eighteen months of each other.

violations. However, Appellant chose to plead guilty to the fourth violation,<sup>3</sup> knowing full well that the consequence of that plea was a possible license suspension. See State v Neather, 357 So. 2d 901 (La. App. 1978) (motorist was given notice and a hearing to dispute the violation that implicated the habitual offender act did comport with procedural due process).

This Panel finds no abuse of discretion on the part of the trial judge, nor did she act in excess of statutory authority. A written notice requirement is neither constitutionally nor statutorily mandated

### C. Trial Judge's Findings

Appellant next contends that the trial judge acted in excess of statutory authority and abused her discretion when she suspended the Appellant's license pursuant to the Foote Act without first ascertaining whether the Appellant's continued operation of a motor vehicle would pose a substantial traffic safety hazard. The Foote Act states, in pertinent part, that "[p]rior to the suspension or revocation of a person's license to operate within the state, the court shall make specific findings of fact and determine if the person's continued operation of a motor vehicle would pose a substantial traffic safety hazard." § 31-27-24.

The trial judge spent considerable time explaining the purpose of the Foote Act and its implications to the Appellant. (Tr. at 4-9.) The trial judge also noted and discussed the previous three tickets that triggered the Foote Act for the Appellant. (Tr. at 4.) However, the trial judge neglected to make specific findings of fact as required by the statute. While the Appellant did not contest the violation, this Panel is mindful that the statute requires the trial judge to make specific findings of fact beyond reciting the Appellant's driving record. The specific findings of

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<sup>3</sup> The Appellant did not contest the first two violations, and it is unclear if the third violation was contested. However, as will be discussed *infra*, it is only the fourth violation that is relevant to this analysis as it relates to the Foote Act and its increased penalties.

fact must relate to the motorist's risk of being a substantial traffic safety hazard. Here, the trial judge did not make such findings. Thus, the trial judge committed error.

#### **D. Unfair Sentence**

Next, Appellant contends that his sentence is patently unfair. Specifically, Appellant takes exception with the fact that he was never offered a driver retraining course for his three previous offenses. Additionally, Appellant contends that because his license had never been suspended, the sentence imposed upon him was overly severe.

The trial judge's sentence given to the Appellant was well within the confines of the Foote Act. See § 31-27-24. Furthermore, this Panel will not reduce a sentence that was not an abuse of discretion and was within a trial judge's statutory authority. See Link, 633 A.2d at 1348 (The Appeals Panel's review is limited to whether the decision is supported by legally competent evidence or is affected by an error of law.). Thus, this Panel concludes that the trial judge's decision was well within the statutory provisions of the Foote Act and was not an abuse of her discretion.

#### **E. Retroactive Application**

Appellant next argues that the trial judge's decision to impose sanctions pursuant to the Foote Act was in excess of statutory authority because the first violation was before the Foote Act took effect. The Foote Act became law on June 30, 2010. See P.L. 2010, ch. 242, § 2; P.L. 2010, ch. 253, § 2. As previously stated, Appellant was cited for his first citation, for purposes of this analysis, on May 8, 2010 and was convicted on June 2, 2010. Thus, the question before this Panel is whether Appellant's first violation, which was issued before the Foote Act became effective, can be computed as one of the four violations necessary to trigger Foote Act sanctions. This question is one of first impression for this Panel.

Essentially, Appellant argues that the trial judge impermissibly applied the Foote Act retroactively. Retroactivity in the law is disfavored. Am. Jur. Constitutional Law § 48. “The underlying policy of this prohibition is to prevent the legislature from interfering with the expectations of persons as to the legal significance of their actions taken prior to the enactment of a law.” State v. Washaw, 312 A.2d 692, 693 (N.H. 1973). However, “[p]roceedings to determine whether a driver is an habitual traffic offender are civil, not criminal, in nature, and such statutes are to be liberally construed to effectuate their purpose to remove dangerous drivers from the highway, in the interest of public safety.” Am. Jur. Automobiles § 143. Furthermore, enhanced sentencing provisions, such as the Foote Act, are not new in the law. See e.g. G.L. 1956 § 12-29-1 et seq. (“Domestic Violence Prevention Act” requires crimes related to domestic violence to be charged as a felony after two prior convictions); see also G.L. 1956 § 31-27-2 (“Driving under the influence” statute provides for increased penalties for subsequent offenses).

The Foote Act was passed with the intention of taking repeat traffic offenders off the road by suspending or revoking their licenses. Licenses would be not suspended arbitrarily; instead they would only be suspended if a motorist was convicted of four enumerated traffic violations within an eighteen month period.<sup>4</sup> Additionally, the Foote Act requires that a motorist, deemed to be a habitual offender, undergo driving retraining and perform community service. The purpose of the Foote Act is to both punish and rehabilitate habitual offenders.

With this in mind, this Panel rejects the Appellant’s contention that the trial judge impermissibly applied the Foote Act and its provisions retroactively. It was not the Appellant’s first violation that was relevant to the trial judge’s analysis in applying the Foote Act. See Washaw, 312 A.2d at 693 (The Supreme Court of New Hampshire held that it was the final

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<sup>4</sup> The violations are: (1) 31-13-4; (2) 31-14-1; (3) 31-14-2; (4) 31-14-3; (5) 31-15-5; (6) 31-15-11; (7) 31-15-12; (8) 31-15-16; (9) 31-17-4; (10) 31-20-9; and (11) 31-27.1-3.

violation that triggered their version of the Foote Act that was relevant, thus rejecting the motorist's argument that the law was impermissibly retroactive.); see also Indiana v. Rising, 310 N.E. 2d 873, 874 (Ind. 1974) (The Court determined that the motorist could face increased penalties under habitual offender act even though two violations occurred before the act went into effect.). Instead, it was the Appellant's fourth violation, which occurred long after the Foote Act went into effect.

A statute is not retroactive merely because it relates to prior facts or transactions when it does not change their legal effect. State v. Scheffel, 514 P.2d 1052, 1056 (Wash. 1973). The purpose of the Foote Act is to determine if a motorist's past driving record is such that the motorist is a traffic safety hazard. See § 31-27-24. It is at the time of the fourth violation, not the first, that the motorist is determined to be a habitual offender (four convictions within eighteen months) and that the Foote Act plays any role in determining sanctions. The motorist's driving history is looked at cumulatively, and the increased sanctions are not meant to act as a punishment for previous violations. Thus, the increased sanctions that are imposed in the Foote Act are not for prior convictions. The penalties are imposed because the motorist has been found to be a habitual offender—provided the latest conviction came after the passage date of the Foote Act. The Foote Act does not provide sanctions for acts occurring prior to the effective date of the act. The Foote Act is an enhanced penalty provision, which does not provide for a separate and new offense. See generally State v. Sitko, 457 A.2d 260 (R.I. 1983). Rather, the prior convictions serve as a condition precedent for imposing an increased penalty for the later offense. Similar reasoning has been used to uphold the “three strikes laws.” See Norman J. Singer, Sutherland Statutory Construction § 42.8 (2011) (“Three strikes laws” are often attacked, but are generally sustained. A statute prescribing heavier punishment for second offenders is not

invalid; the punishment is for the second offense only, but is more severe because of the class in which the defendant placed himself by his first offense.).

This Panel finds as a matter of law that the Foote Act was not applied retroactively to the Appellant. The first violation, while relevant, did not trigger the Foote Act; it was the fourth violation that was before the trial judge. Therefore, this Panel finds that the violations prior to the Foote Act can be computed as part of the required four violations within an eighteen month period as long as the fourth offense is committed after the passage of the act. Thus, the trial judge did not act in excess of statutory authority, and her decision was not affected by error of law.

#### **F. Right to an Attorney**

Finally, Appellant contends that his final conviction was unlawful because he was not afforded notice of his right to counsel pursuant to our rules of procedure. See Traffic Trib. R. P. 6. Rule 6 is limited in scope to arraignments. The purpose of Rule 6 is to prevent unintelligent and involuntary pleas that occur at arraignments, the earliest stage in the litigation process for civil motor vehicle infractions. This Panel cannot conclude, as Appellant contends, that a violation of Rule 6 should result in vacating a plea that was made a month after Appellant's arraignment.

However, assuming arguendo that Rule 6 was not complied with,<sup>5</sup> Appellant cannot demonstrate how a violation of Rule 6 violated his rights when he appeared for his trial a month later. At the arraignment, Appellant was warned by the magistrate that a conviction to the pending violation would lead to loss of his license. The warning the Appellant received was not required, but given as a courtesy to the Appellant so that he would understand the gravity of his

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<sup>5</sup> Appellant has submitted to this Panel limited evidence from the arraignment, which only outlines the exchange between the Appellant and the magistrate on duty during the arraignment.

situation. Appellant then appeared at his trial without counsel and decided to change his plea to guilty—knowing the consequences of the plea based on the warning provided just a month prior at his arraignment.

It is also readily apparent that the Appellant's decision to plead guilty to the violation was made knowingly and voluntarily. The construction and interpretation of our rules is to provide the just determination of all civil traffic violations. See Traffic Trib. R. P. 2. This Panel concludes that an injustice would result by vacating a plea that was entered into knowingly and voluntarily before Appellant's trial.

Finally, it is well-established that there is no right to counsel in a civil court. For example, our Supreme Court has clearly stated that a motorist does not have a right to an attorney for a violation of section 31-27-2.1, the refusal statute. Dunn v. Petit, 120 R.I. 486, 388 A.2d 809 (R.I. 1978). Following Dunn, it is clear to this Panel that Appellant is not guaranteed a right to counsel for a civil traffic violation. Substantial rights of the Appellant have not been prejudiced.

### Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the trial judge's decision was in part in violation of statutory provisions. The Appellant's case shall be remanded to the trial judge so that she can make specific findings of fact as required by the Foote Act. After making such findings, the trial judge shall impose sentencing as she sees fit. This Panel concludes that the Appellant's other grounds for appeal are without merit and fail. The matter is to be remanded for the sole purpose of the trial judge to make specific findings of fact. This Panel sees no abuse of discretion in the trial judge's decision, including her sentencing decision. Accordingly, Appellant's appeal is granted in part and remanded in part for proceedings not inconsistent with this opinion.