

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. T12-0012

IOLE RIBIZZI-AKHTAR

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STATE OF RHODE ISLAND  
TRAFFIC TRIBUNAL  
FILED

DECISION

PER CURIAM: Before this Panel on April 11, 2012—Judge Ciullo (Chair, presiding), Judge Parker, and Magistrate DiSandro, sitting—is Iole Ribizzi-Akhtar’s (Appellant) appeal from a decision of Chief Magistrate Guglietta (hearing magistrate), accepting Appellant’s plea of guilty to 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 December 12, 2011, a trooper from the Rhode Island State Police Department charged Appellant with the aforementioned violation of the motor vehicle code. At her arraignment, Appellant pleaded guilty to the violation.

At the arraignment, the hearing magistrate instructed the Appellant that pleading guilty meant that Appellant would have four convictions within an eighteen month period. Consequently, the Appellant was eligible to have her license suspended pursuant to G.L. 1956 § 31-27-24, also known as the Foote Act.<sup>1</sup> Empowered with this knowledge, the Appellant decided to plead guilty to violation of § 31-14-2. (Tr. at 1.)

<sup>1</sup> Section 31-27-24(a) states, in pertinent part, that:

“Every person convicted of moving violations on four (4) separate and distinct occasions within an eighteen (18) month period may be fined up to one thousand dollars (\$1,000), and shall be ordered to attend sixty (60) hours of driver

After accepting her guilty plea, the hearing magistrate imposed a sentence. Id. The hearing magistrate sentenced the Appellant as follows: a fine of two hundred fifty dollars; a six month license suspension; sixty hours of community service; and sixty hours of driver retraining. Id. The hearing magistrate imposed his sentence “because of [Appellant’s] continuing violation of the law.” Furthermore, the hearing magistrate determined that Appellant was sentenced solely “because of anything other than your own driving.” (Tr. at 2.) The hearing magistrate also highlighted the legislative intent behind the Foote Act. (Tr. at 1.)

### 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.

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retraining, shall be ordered to perform sixty (60) hours of public community service, and the person's operator license in this state may be suspended up to one year or revoked by the court for a period of up to two (2) years. Prior 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.

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

On appeal, Appellant argues that the hearing magistrate's sentencing decision was in violation of statutory provisions. Specifically, Appellant argues that the hearing magistrate did not make any specific findings of fact as to why the Appellant was sentenced pursuant to the Foote Act. Finally, Appellant argues that this Panel should reduce the sentence imposed by the hearing magistrate because it is unduly harsh.

Before any judge or magistrate of this Court can impose sanctions pursuant to the Foote Act, the judge or magistrate must make "specific findings of fact and determine if the [motorist's] continued operation of a motor vehicle would pose a substantial traffic safety hazard." § 31-27-24. Here, the Appellant argues that the hearing magistrate did not make any specific findings of fact, and therefore, her appeal should be granted. This Panel does not agree.

At the arraignment, the hearing magistrate specifically warned the Appellant that her license would be suspended if she pleaded guilty. The hearing magistrate even went so far as to advise the Appellant to obtain legal counsel. Instead, the Appellant decided to plead guilty to the violation. After accepting her plea, the hearing magistrate made sufficient findings of fact to satisfy the statute. The hearing magistrate instructed the Appellant that he was imposing sanctions pursuant to the Foote Act due to the Appellant's repeated violations. As such, the hearing magistrate determined that Appellant posed a substantial risk to traffic. Finally, the hearing magistrate informed the Appellant that he was imposing sanctions pursuant to the Foote Act solely because of her driving. This Panel finds that the hearing magistrate's statements to the Appellant and his reasoning for imposing an increased sentence amounts to sufficient findings of fact to satisfy § 31-27-24.

Finally, Appellant's contention that the sentence should be reduced by this Panel is misguided. This Panel's review of the proceedings before the hearing magistrate is limited in scope. This Panel's responsibility is to ensure that the hearing magistrate did not make an error of law or abuse his discretion. See Link, 633 A.2d at 1348. As discussed infra, the hearing magistrate did not make an error of law. Additionally, the hearing magistrate did not abuse his discretion because his sentence was entirely within the confines of the Foote Act. Therefore, this Panel holds that the hearing magistrate's decision was not unduly harsh and must be affirmed.

### Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the hearing magistrate's decision is in not violation of statutory provisions and was not an abuse of discretion. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.