STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT **RHODE ISLAND TRAFFIC TRIBUNAL**

STATE OF RHODE ISLAND	:	
	:	
v.	:	**C.A. No. T13-0057**
	:	**13001518054**
NICHOLAS LIGHT	:	

DECISION

PER CURIAM: Before this Panel on September 18, 2013—Chief Magistrate Guglietta (Chair, presiding), Magistrate DiSandro III, and Magistrate Abbate, sitting—is Nicholas Light's (Appellant) appeal from a decision of Judge Parker, sustaining the charged violation of G.L. 1956 § 31-22-22 (g), "Safety belt use." The Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On June 11, 2013, a trooper of the Rhode Island State Police (Trooper) charged Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial on August 30, 2013.

Shortly before the stop, the Trooper was at a fixed traffic post on Thurber's Avenue at Eddy Street in the City of Providence. (Tr. at 1.) At trial, the Trooper testified that he first observed the Appellant operating his vehicle as the Appellant entered a gas station parking lot. Id. The Trooper also testified that he observed that the Appellant was not wearing a safety belt with a clear and unobstructed view. Id.

At the trial, the Appellant contended that he had his safety belt on when he turned into the gas station parking lot. (Tr. at 2.) Appellant also questioned the accuracy of the Trooper's

testimony, testifying, "[i]t must have been a misunderstanding" and "he might not have seen it." Id.

During the trial, Judge Parker sustained the charged violation and imposed as a penalty a suspension of Appellant's license for a two (2) month period. Appellant filed a timely appeal to this Panel. Our decision is rendered below.

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 prejudiced 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

On appeal, Appellant argues that the trial judge's sentence is in excess of the statutory authority of a trial judge or magistrate. Specifically, Appellant contends that the trial judge's decision was in excess of his statutory authority when he imposed a two (2) month suspension of Appellant's license, following his decision to sustain the charged violation of § 31-22-22 (g). According to Appellant, § 31-22-22, specifies in subsection (k) that "[a]ny person violating subsection (f) or (g) of this section shall be fined as provided in § 31-41.1-4." Appellant contends that the trial judge's decision to suspend Appellant's license for a violation of § 31-22-22 (g) was affected by error of law because the violation schedule of § 31-41.1-4 does not enumerate license suspension as the penalty for that violation. Appellant also asserts that § 31-22-22 (g) does not fall within § 31-27-24, "Multiple moving offenses," authorizing "[a] person's operator license in this state [to] be suspended up to one year or revoked by the court for a period of up to two (2) years."

The penalty for a violation of § 31-22-22(g), enumerated in the violation schedule of § 31-41.1-4, is forty (40) dollars. In addition, Appellant is accurate in stating that § 31-27-24 does not delineate § 31-22-22 (g) as subject to suspension.[1]

The issue raised by the Appellant is not new to this Panel. The question revolves around whether the Traffic Tribunal pursuant to § 31-41.1.-6 has authority to include license suspension as part of a sentence in a case where a fine is specified under § 31-41.1-4. Due to the importance of this issue we will restate the holdings of this Tribunal on this issue. Town of Cumberland v. Casey Rondeau, C.A. No. T 12-0010, November 30, 2012, R.I. Traffic Trib. (reaffirming that § 31-41.1-6 grants a judge or magistrate the authority to impose any penalty authorized by any provision of Title 31); State of Rhode Island v. Zigmond Coffey, C.A. No. T 12-0014, May 4, 2012, R.I. Traffic Trib. (finding that a plain reading of § 31-41.1-6 leads to the conclusion that the General Assembly intended to give a judge or magistrate of this Court broad discretion in imposing a sanction for a violation of any offense in Title 31); Town of South Kingstown v. Jon Lachapelle, C.A. No. T 10-0045, September 30, 2010, R.I. Traffic Trib. (holding that the General Assembly intended to give a trial judge or magistrate the discretion to impose any penalty that is authorized by any provision of Title 31, "Motor and Other Vehicles"). A reading of Chapter 41.1 of Title 31, § 31-41.1-6 also includes statutory language enacted by the Rhode Island

[1]c) For the purposes of this section only, the term "moving violations" shall mean any violation of the following sections of the general laws:
(1) 31-13-4. Obedience to devices.
(2) 31-14-1. Reasonable and prudent speeds.
(3) 31-14-2. Prima facie limits.
(4) 31-14-3. Conditions requiring reduced speeds.
(5) 31-15-5. Overtaking on the right.
(6) 31-15-11. Laned roadways.
(7) 31-15-12. Interval between vehicles.
(8) 31-15-16. Use of emergency break-down lane for travel.
(9) 31-17-4. Vehicle entering stop or yield intersection.
(10) 31-20-9. Obedience to stop signs.
(11) 31-27.1-3. "Aggressive driving" defined.

General Assembly that grants a judge or magistrate the discretion to impose penalties additional to those listed in § 31-41.1-4.

The pertinent language of § 31-41.1.-6 reads,

> [a] judge or magistrate may include in the order the imposition of any penalty authorized by any provisions of this title for the violation, including but not limited to, license suspension and/or in the case of a motorist under the age of twenty (20), community service, except that no penalty for it shall include imprisonment.

Relying on the language set forth in § 31-41.1-6, this Panel reiterates that any penalty that is authorized by any provision of Title 31, "Motor and Other Vehicles," may be imposed upon the motorist by the trial judge or magistrate. See Casey Rondeau, C.A. No. T 12-0010, November 30, 2012, R.I. Traffic Trib.; Zigmond Coffey, C.A. No. T 12-0014, May 4, 2012, R.I. Traffic Trib. After reading the language of § 31-41.1-6, the members of this Panel reaffirm that the General Assembly intended to give the judge or magistrate discretion in imposing a sanction for a violation of any offense in Title 31. See Jon Lachapelle, C.A. No. T 10-0045, September 30, 2010, R.I. Traffic Trib. These sanctions could include the suspension of a person's license to operate. See 2A Sutherland Statutory Construction § 45:5 ("An overwhelming majority of judicial opinions considering statutory issues are written in the context of legislative intent").

In the present case, the trial judge imposed a penalty of license suspension. License suspension is an authorized penalty under Title 31. For example, license suspension is permitted in § 31-27-12.3 (c) (3). The pertinent language of § 31-27-12.3 (c) (3) reads,

> The judge of any court in the state may, upon his or her own initiative, or upon the request of the division of motor vehicles or its agents, furnish to the division of motor vehicles the details of all particularly flagrant cases which may be heard before the judge and may make any recommendations to the division of motor vehicles as to the suspension of the license of the persons defendant in the case that the judge may deem necessary.

License suspension is also permitted pursuant to § 31-11-5. See Town of Cumberland v. Johnathan Felice, C.A. No. T 04-0076, September 9, 2004, R.I. Traffic Trib. The pertinent language of § 31-11-5 reads,

> The judge of any court in the state may, in his or her discretion, or upon the request of the division of motor vehicles or its agents, furnish to the division of motor vehicles the details of cases which have been heard before the court; and the judge may make an order to the division of motor vehicles as to the suspension of the license of the defendant in cases as he or she may deem necessary. The order shall be binding on the division of motor vehicles.

Thus, the trial judge has the statutory authority under § 31-41-1.6 to include license suspension as a penalty for the aforementioned violation of the motor vehicle code. See Jon Lachapelle, C.A. No. T 10-0045, September 30, 2010, R.I. Traffic Trib.

Furthermore, a driver's license is not a right, but a privilege. "[A] license may be taken away or encumbered as a means of meeting a legitimate legislative goal, or when the interest of public safety or welfare is at stake." 7A Am. Jur. 2d Automobiles § 104 (2010). Our Supreme Court has held that "[t]he importance of the license to drive lies in the fact that its possession allows a person to legally operate a motor vehicle. It is the right to drive, not the license that comes under the protection of due process." Dana v. Petit, 120 R.I. 168, 386 A.2d 189 (1978) (internal citations omitted) (also finding that "[e]very state has the power to suspend or revoke motor vehicle operating privileges of its citizens for just cause; however, the right to operate motor vehicle, absent exceptional circumstances, may be suspended or revoked only in manner consistent with procedural due process).

Here, Appellant presented his case during his trial before the judge, and again, he was granted the opportunity of due process during his appeal before this Panel. Moreover, it is within the discretion of the trial judge to determine the length of time that he or she will suspend the

motorist's license. Our Supreme Court has consistently reaffirmed a policy against interfering with a trial justice's discretion in sentencing matters. See State v. Tavera, 936 A.2d 599, 600 (R.I.2007). A trial justice's discretion is only abridged in extraordinary circumstances when the trial justice has imposed a sentence that is without justification and is grossly dissimilar from other sentences commonly imposed for similar offenses. See State v. Coleman, 984 A.2d 650, 654 (R.I. 2009). Confining our review of the record to its proper scope, this Panel is satisfied that the trial magistrate did not abuse his discretion.

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 not in excess of statutory authority or an abuse of discretion. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.

ENTERED:

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Chief Magistrate William R. Guglietta

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Magistrate Domenic A. DiSandro III

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Magistrate Joseph A. Abbate

DATE: _____