

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

**DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT**

v.

RICHARD MORSILLI

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**C.A. No. T14-0006
07417002575**

DECISION

PER CURIAM: Before this Panel on April 9, 2014—Administrative Magistrate Cruise (Chair, presiding), Judge Almeida, and Magistrate Goulart, sitting—is Richard Morsilli’s (Appellant) appeal from a decision of Judge Parker, sustaining the charged violation of DEM Parks and Recreation Regulation 2.1, “Dog off leash” referred to as violation code 927, authorized through G.L. 1956 § 32-2-4, “Enforcement Powers of Director.” Appellant appeared before this Panel pro se. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On December 18, 2013, Richard Morsilli plead guilty to the above charged violation at an arraignment before Chief Magistrate Guglietta. The Chief Magistrate did not accept the plea and the matter was continued to January 29, 2014. At the subsequent arraignment in front of Judge Parker, Mr. Morsilli again plead guilty. After accepting the guilty plea of the Appellant, Judge Parker sustained the charged violation. Aggrieved by the Decision of the trial judge, Appellant filed a timely appeal.

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

The Appellant contends that the trial judge's decision was affected by error of law. Specifically, Appellant asserts that the trial judge erred when he found Appellant guilty without knowing the reason for Appellant's ticket. At the hearing, Appellant challenges the policy behind the law but does not raise a justiciable issue on appeal. Policy determinations are made by the legislative branch and our role is to interpret the case before us.

The Rhode Island Supreme Court has held that "the general rule is that a plea of guilty waives all nonjurisdictional defects." Torres v. State, 19 A.3d 71, 79 (R.I. 2011) (internal citation omitted). However, a guilty plea "does not bar appeal of claims that the applicable statute is unconstitutional or that the indictment fails to state an offense." Id. (quoting United States v. Broncheau, 597 F.2d 1260, 1262 n. 1 (9th Cir.1979)).

At the hearing before this Panel, Appellant admitted that he was not in control of the leash attached to his golden doodle. See Tr. at 1. This constitutes a violation of the leash requirement. See DEM Parks and Recreation Regulation 2.1, "Dog off leash." The Appellant plead guilty to the offense of violating the leash law, and has failed to raise any issues on appeal, which the Panel could use to overturn the violation. See Torres, 19 A.3d at 79. Thus, the appeal must fail.

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel conclude that the trial judge's decision was not affected by error of law, or in violation of constitutional provisions, and was supported by the reliable, probative, and substantial evidence of record. Substantial rights of the Appellant have not been prejudiced. Accordingly, the Appellant's appeal is denied.

ENTERED:

Judge Lillian M. Almeida

Magistrate Alan R. Goulart

DATE: _____

Note: Administrative Magistrate R. David Cruise participated in the decision but resigned prior to its publication.