STATE OF RHODE ISLAND

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND	**:**	
	:	
v.	**:**	**C.A. No. T24-0004**
	:	**23409512305**
SAYE ZULU	**:**	

DECISION

PER CURIAM: Before this Panel on May 1, 2024—Magistrate DiChiro (Chair), Magistrate Noonan, and Magistrate Abilheira—is the appeal of Saye Zulu (Appellant) from a decision of Magistrate Landroche (Trial Magistrate) of the Rhode Island Traffic Tribunal, denying the Appellant's Motion to Vacate Guilty Plea and thus sustaining the charged violations of G.L. 1956 § 31-19.1-2, "Operating a Motorized Bicycle on an Interstate Highway," and G.L. 1956 § 31-19-3, "Traffic Laws Applied to Bicycles." The Appellant appeared with his attorney, Saiken Gbehan Isijola, Esq., before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8. For reasons set forth in this Decision, Appellant's appeal is denied.

I

Facts and Travel

On December 21, 2023, Officer Jenna Heeder (Officer Heeder) of the Providence Police Department charged Appellant with violating G.L. § 31-19.1-2, "Operating a Motorized Bicycle on an Interstate Highway," and G.L. § 31-19-3, "Traffic Laws Applied to Bicycles." (Summons No. 23409512305.)

On January 30, 2024, Appellant, appearing *pro se*, pled guilty to the charged violations. (01/30/2024 Judgment Card). Thereafter, Appellant retained counsel and moved to vacate the guilty plea on February 2, 2024 on the ground that he "inadvertently" admitted guilt. (02/02/2024

Mot. to Vacate J.). The Motion Hearing was held on February 21, 2024. (02/21/2024 Judgment Card.) The Hearing Magistrate found that Appellant's guilty plea was knowing and voluntary and denied the Motion to Vacate Guilty Plea. (02/21/2024 Tr. 7:9-16.) Aggrieved by the decision, Appellant timely filed this appeal.

II

Standard of Review

Pursuant to § 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. 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." *Id.* (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 '[c]learly 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." *Id.* "Otherwise, it must affirm the hearing judge's [or magistrate's] conclusions" on appeal. *Id*.; *see Janes*, 586 A.2d at 537.

III

Analysis

As grounds for this Appeal, Appellant argues that he was "confused" and "inadvertently" pled guilty to the charged violations. *See* Notice of Appeal. Specifically, Appellant claims that he "lacked the knowledge to fully understand that paying the fines for the violations constituted an admission of guilt." (Appellant's Appeal Brief ¶ 2.) As such, he filed this appeal on March 1, 2024. *See* Notice of Appeal.

The record indicates that the Motion to Vacate Guilty Plea was filed approximately three (3) days after the sentence was imposed. *See* Docket. Rule 18(b) provides that, "A motion to withdraw a plea of guilty may be made only before sentence is imposed." R.I. Traffic Trib. R. P. 18(b). Therefore, because the sentence was imposed three days before the Motion to Vacate Guilty Plea was filed, it was untimely.

Nevertheless, even if the Motion was timely filed, the outcome would be the same. Our Supreme Court has created and used a test to determine whether withdrawal of a plea is "fair and just." *State v. Carroll*, 294 A.2d 187; 110 R.I. 532, 536 (R.I. 1972). The test consists of two questions: (1) "Did the accused fully understand the consequences of his earlier plea, and (2) if he

did, is he now offering to adduce evidence at trial which, if believed, would tend to cast doubt on his guilt?" *Id*.

Here, the Hearing Magistrate determined that Appellant was aware of the consequences of his guilty plea, as the Hearing Magistrate explained them to him. (01/30/2024 Tr. 4:23-5:7; *see also* 02/21/2024 Tr.9:17-23). The Hearing Magistrate (who was also the Magistrate at Appellant's first appearance) explained this to Appellant at the motion hearing, stating, "You do know that you had about 3 minutes and 25 seconds with me explaining everythin[g] in respect[] to the moving and non-moving violation." (02/21/2024 Tr. 5:11-14.) Appellant claims he did not have the capacity to understand that he was pleading guilty. *See* Notice of Appeal. However, his discourse with the Magistrate shows that he was aware he was pleading guilty. (01/30/2024 Tr. 7:25.)

The Court: It's two $85 fines if you [want to] plead guilty or you can have a trial and plead not guilty, sir. What would you like to do?
Appellant: Um, I really don't know what I should do.
The Court: Well, do you want some time? You can come back after you decide, in a week or two. You [want to] speak to a lawyer or someone?
Appellant: . . . Well, you [are] a blessing. Thank you. But . . . *Id*. at 4:23-5:7.

The Court: Traffic Laws applied to the bicycle you were driving. It was motorized . . .
Appellant: Okay. So that's the traffic law. What's the second one again? I'm sorry.
The Court: The first one was the motorized bicycle on the interstate.
Appellant: Well, I hope [the violation] doesn't happen again. I plead – I'll plead guilty (I guess).
The Court: All right. Guilty Plea. $85 on both counts with court costs. You have 45 days to pay Mr. Zulu. Is that enough time or do you need more time?
Appellant: What's the total today?
The Court: [$170.00]
Appellant: Okay. We'll pay that today. *Id*. at 7:9-26.

Appellant contends that he was confused and did not know that paying the fines would be taken as an admission of guilt. *See* Notice of Appeal. However, Appellant himself pled guilty in Court. (01/30/2024 Tr. 7:25.) The Trial Magistrate discussed the violations and explained what a guilty plea would be. *Id*. at 5:26-6:14. The magistrate answered questions honestly and explained

that it would go on his driving record. *Id*. He also gave Appellant the opportunity to take more time and/or hire a lawyer. *Id*. at 5:2-4. The Trial Magistrate went on to state that for the forestated reasons, he believed Appellant voluntarily and knowingly pled guilty. (02/21/2024 Tr. 7:9-16). In *Link v. State*, cited supra, our Supreme Court made it clear that this Panel "lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge concerning the weight of the evidence on questions of fact." *Link*, 633 A.2d at 1348 (*citing Janes*, 586 A.2d at 537). The Appeals Panel is "limited to a determination of whether the hearing justice's decision is supported by legally competent evidence." *Marran v. State*, 672 A.2d 875, 876 (R.I. 1996).

As the members of this Panel did not have an opportunity to view the live hearing testimony of Appellant, the Panel declines to second-guess the Hearing Magistrate's impressions as he was able to "appraise [the] witness['s] demeanor and to take into account other realities that cannot be grasped from a reading of a cold record." *A. Salvati Masonry Inc. v. Andreozzi*, 151 A.3d 745, 749 (R.I. 2017) (internal quotations omitted). Therefore, this Panel will not disturb the Hearing Magistrate's credibility determinations or his assessment of the weight of the evidence in this case. *See Link*, 633 A.2d at 1348. The second prong of the test requires new evidence that would cast doubt on the Appellant's guilt. *Carroll*, 110 R.I. at 536.

Here, Appellant has offered a Uniform Crash Report, medical reports, and the affidavits of two eyewitnesses as new evidence. *See* Mem. in Supp. of Mot. to Vacate J., Ex. 1-4. However, as the Hearing Magistrate stated:

> "So . . . we can't go on any of the outside matters that you attached to this motion that might [have] had to do with the case. This was his first appearance. I actually pulled all my rules of procedure. Everythin[g] that had to be done on his first appearance, taking his plea of guilty, explaining the statutes, certainly explaining the good driving record, which because it was an accident, I had to tell [him] that he couldn't use it in this instance. So from where I sit today and certainly as the magistrate at the time, if you'd like to s-, put anything

> on the record, do it now because I'm [going to] deny your motion to vacate this guilty plea." (02/21/2024 Tr. 8:10-20.)

Because the Motion to Vacate a Guilty Plea was not timely filed and the Appellant does not pass the *Carroll* test to withdraw a plea, this Panel finds no abuse of discretion nor error of law.

IV

Conclusion

This Panel has reviewed the entire record in this matter. Having done so, the members of this Panel are satisfied that the Trial Magistrate's decision was neither clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record nor arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. The substantial rights of the Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied.

ENTERED:

/s/
Magistrate Michael DiChiro (Chair)

/s/
Magistrate William T. Noonan

/s/
Magistrate Allison C. Abilheira

DATE: August 6, 2024