

Mark Aubrey	:	
	:	A.A. No. 2013 – 002
v.	:	(C.A. No. T12-054)
	:	(12-001-00507526)
State of Rhode Island	:	
(RITT Appeals Panel)	:	

FINDINGS & RECOMMENDATIONS

Ippolito, M. In this appeal, Mr. Mark Aubrey urges that an appeals panel of the Rhode Island Traffic Tribunal (RITT) erred when it affirmed a trial magistrate’s verdict adjudicating him guilty of two moving violations: “Speeding” in violation of Gen. Laws 1956 § 31-14-2(A) and “Laned Roadway Violations” in violation of Gen. Laws 1956 § 31-15-11. Jurisdiction for the instant appeal is vested in the District Court by Gen. Laws 1956 § 31-41.1-9 and the applicable standard of review is found in § 31-41.1-9(d). This matter has been referred to me for the making of findings and recommendations pursuant to General Laws 1956 § 8-8-8.1.

The basis for Mr. Aubrey’s appeal is somewhat unusual. He does not claim error in the conduct of the trial; instead, he urges the charges upon which he was convicted should be dismissed pursuant to an agreement made with the State — not in the Traffic Tribunal, but in the District Court, during negotiations regarding related charges. And, after a review of the entire record I find that the decision of the appeals panel should be affirmed. But since it is already clear that the travel of this case is rather Byzantine, I believe we should lay out the travel of the case before attempting to explain our rationale.

I

FACTS AND TRAVEL OF THE CASE

On February 13, 2012, Mr. Aubrey was charged by members of the Division of State Police with four traffic offenses — reckless driving,¹ a misdemeanor within the jurisdiction of the District Court, and three civil violations to be heard by the Traffic Tribunal (the aforementioned speeding and laned-roadway violations plus a count of “Obedience to Traffic Control Devices”).

¹ The decision of the appeals panel references three misdemeanor charges: reckless driving, drag racing, and eluding a police officer. They were charged in a single count. This was proper — and the complaint is not duplicitous — since they are cognate offenses within Gen. Laws 1956 § 31-27-4. See State v. Berker, 112 R.I. 624, 626-27, 314 A.2d 11, 13 (1974).

The three Traffic Tribunal offenses went to trial on April 25, 2012 before Chief Magistrate Guglietta. Mr. Aubrey was found guilty of the first two and not guilty on the last. He was fined \$365.00 on the speeding charge and \$85.00 on the laned-roadway. See Traffic Summons Judgment Card 04/25/12. From this judgment Mr. Aubrey filed an appeal on May 23, 2012.²

Then, on May 25, 2012, in the Sixth Division District Court, Mr. Aubrey pled nolo contendere to the charge of Reckless Driving and the charge was filed pursuant to Gen. Laws 1956 § 12-10-12. The State also agreed to dismiss the related charges at the Traffic Tribunal. But this was never done.

Mr. Aubrey's appeal from his conviction on the two civil violations came before an Appeals Panel of the Traffic Tribunal comprised of Judge Albert Ciullo (Chair), Judge Edward Parker, and Magistrate William Noonan on October 31, 2012. On December 27, 2012, the Chairman entered an order denying Mr. Aubrey's appeal because the State had not moved to dismiss the charges against him (on which he had been adjudicated).³ In essence, the

² Thus, Mr. Aubrey's appeal came after the expiration of the 10-day appeal period enumerated in Gen. Laws 1956 § 31-41.1-8(d). The appeals panel did not comment on his tardiness, and I shall not raise it sua sponte.

³ The appeals panel's resolution of this matter by order, without an accompanying decision, is unusual by not expressly prohibited by Gen. Laws 1956 § 31-41.1-8(d).

appeals panel took the position that there was no case or controversy pending in the Traffic Tribunal. Four days later, on December 31, 2012, Mr. Aubrey filed the instant appeal pursuant to Gen. Laws 1956 § 31-41.1-9.

II STANDARD OF REVIEW

The standard of review which this Court must employ is enumerated in Gen. Laws 1956 § 31-41.1-9(d), which provides as follows:

(d) Standard of review. The judge of the district court shall not substitute his or her judgment for that of the appeals panel as to the weight of the evidence on questions of fact. The district court judge may affirm the decision of the appeals panel, or 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 appeals panel's findings, inferences, conclusions or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the appeals panel;
- (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.

This standard is akin to the standard of review found in Gen. Laws 1956 § 42-35-15(g), the State Administrative Procedures Act (APA).

Under the APA standard, the District Court “* * * may not substitute its judgment for that of the agency and must affirm the decision of the agency

unless its findings are ‘clearly erroneous.’ ”⁴ Thus, the Court will not substitute its judgment for that of the panel as to the weight of the evidence on questions of fact.⁵ Stated differently, the findings of the panel will be upheld even though a reasonable mind might have reached a contrary result.⁶

III ISSUE

The issue before the Court is whether the decision of the appeals panel was supported by reliable, probative, and substantial evidence in the record or whether or not it was clearly erroneous or affected by error of law. More precisely, was the appeals panel correct when it held that the issue of the State’s failure to dismiss the RITT charges was not properly before it?

IV ANALYSIS

Before the appeals panel Mr. Aubrey raised the issue of the State’s failure to follow through on its promise to dismiss the RITT charges — which it had made at the District Court. The appeals panel found that it could

⁴ Guarino v. Department of Social Welfare, 122 R.I. 583, 584, 410 A.2d 425 (1980) citing Gen. Laws 1956 § 42-35-15(g)(5).

⁵ Cahoone v. Board of Review of the Department of Employment Security, 104 R.I. 503, 246 A.2d 213 (1968).

⁶ Id., at 506-507, 246 A.2d at 215.

not consider this issue, since it had not been raised before the trial magistrate. This is undoubtedly correct, since the appeals panel's review is limited to determining whether the trial judge or magistrate committed any errors of law. Gen. Laws 1956 § 31-41.1-8. Neither party has perfected the issue — the State has not attempted to fulfill its commitment by dismissing the charges;⁷ similarly, Mr. Aubrey has not raised the issue at the Tribunal⁸ by means of a motion to vacate the verdict or a motion to enforce the agreement.⁹

⁷ In its Memorandum, the State urges that it could not dismiss the case, due to a prohibition contained in Traffic Tribunal Rule 26(c). However, that rule was not made effective until July 22, 2013 — well after Appellant entered his plea in the District Court.

⁸ Mr. Aubrey could also have sought to enforce the agreement in the District Court, which he has chosen not to do. He reiterated his disinclination to vacate his plea or to otherwise reopen the District Court case at the conference conducted by the undersigned on March 18, 2014.

⁹ These are the two remedies for a prosecutorial breach of a plea agreement. See ANNOT., Choice of Remedies Where State Prosecutor Has Breached Plea Agreement, 9 A.L.R. 6th 541 (2005). See also 21 Am. Jur.2d Criminal Law § 654. (Although the defendant may request a particular remedy, the Court must ultimately decide what is proper).

V
CONCLUSION

Upon careful review of the evidence, I recommend that this Court find that the decision of the appellate panel was made upon lawful procedure and was not affected by error of law. Gen. Laws 1956 § 31-41.1-9. Furthermore, said decision is not clearly erroneous in view of the reliable, probative and substantial evidence on the whole record. Id. Accordingly, I recommend that the decision of the appeals panel be **AFFIRMED**.

_____/s/_____
Joseph P. Ippolito
MAGISTRATE
March 26, 2014