

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL
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STATE OF RHODE ISLAND

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v.

C.A. No. T08-0085

NEFALI REYES

DECISION

PER CURIAM: Before this Panel on July 23, 2008, Magistrate DiSandro (Chair), Judge Parker, and Magistrate Noonan sitting, is Nefali Reyes’ (Appellant) appeal from Judge Almeida’s entry of a default judgment, sustaining the charged violations of G.L. 1956 § 31-20-9, “Obedience to stop signs,” G.L. 1956 § 31-22-22, “Safety belt use,” and G.L. 1956 § 31-47-9, “Penalties – verification of proof of financial security.” The Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On April 4, 2008, Appellant was cited by a Cranston Police Officer for the aforementioned violations. The Appellant contested the charges, and the matter proceeded to trial.

At trial, the prosecuting officer for the Cranston Police Department failed to appear. Accordingly, the case was dismissed pursuant to Rule 17(c) of the Rules of Procedure for the Traffic Tribunal.¹

¹ Rule 17(c) of the Rules of Procedure for the Traffic Tribunal reads: “If the prosecution fails to appear for trial and/or arraignment, the matter may be dismissed.”

Following the dismissal, the prosecuting officer appeared and secured an order vacating the dismissal of Appellant's charged violations. The case then was scheduled for trial on May 21, 2008. However, no notice of the order to vacate the dismissal or notice of the new trial date was sent to Appellant.

At the second trial, Appellant failed to appear and a default judgment was entered against him. The Appellant has filed a timely appeal of the trial judge's decision. Forthwith is this Panel's decision.

Standard of Review

Pursuant to G.L. 1956 § 31-41.1-8(f), 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 on questions of fact. The appeals panel may affirm the decision of the judge or magistrate, may remand the case for further proceedings, or may 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 following unlawful procedure;
- (4) Affected by another error of law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary, capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.”

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 v. State, 633 A.2d 1345 (R.I. 1993). 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) (citing Link, 633 A.2d at 1348). The Panel may reverse a decision of a hearing judge where the decision is “clearly erroneous in view of the reliable, probative, and substantial evidence contained in the whole record.” Costa v. Registry of Motor Vehicles, 543 A.2d 1307, 1309 (R.I. 1988).

Analysis

On appeal, Appellant argues that the prosecuting officer for Cranston violated Rule 20 of the Rules of Procedure for the Traffic Tribunal (Rule 20) because he failed to file a motion to vacate the order dismissing Appellant’s charged violations.² The Appellant contends that the prosecuting officer’s ex parte communication with the trial judge, which resulted in the reinstatement of Appellant’s violations, violated Appellant’s constitutional rights as well the Supreme Court Rules of Judicial Conduct, Art. VI, Canon 3 (8).³

This Panel has reviewed the entire record before it. This Panel notes that the prosecuting officer failed to file a motion to vacate the original disposition of Appellant’s charged violations pursuant to Rule 20. Instead, the prosecuting officer engaged in an ex parte communication with the trial magistrate to reinstate the dismissed violations. Accordingly, the trial judge abused her discretion by reinstating the violations charged against Appellant. Because this Panel concludes that the trial judge violated Rule 20, this Panel declines to address Appellant’s remaining arguments. See Whyte v. Sullivan, 119

² Rule 20 of the Rules of Procedure for the Traffic Tribunal reads, in relevant part: “On motion and upon such terms as are just the court may relieve a party or the party’s legal representative from a final judgment, order, or proceeding for the following reasons” (Emphasis added.)

³ Canon 3 (8) provides: “A judge shall accord to every person who has a legal interest in a proceeding, or that person’s lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications made to the judge outside the presence of the parties concerning a pending or impending proceeding.”

R.I. 649, 382 A.2d 186 (1978) (stating that constitution question will not be addressed where it is not indispensably necessary to disposition of the case). Therefore, this Panel dismisses the violations charged against Appellant and grants his appeal.

Conclusion

Upon a review of the entire record, this Panel concludes that the trial judge's decision was clearly erroneous and was affected by error of law. Substantial rights of the Appellant have been prejudiced. Accordingly, this Panel dismisses the violations charged against the Appellant and grants his appeal.

ENTERED:

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