STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT **RHODE ISLAND TRAFFIC TRIBUNAL**

STATE OF RHODE ISLAND	:	
	:	
v.	:	**C.A. No. T12-0017**
	:	**11507500751; 11507500752;**
	:	**11507500753**
LYLE TOPA	:	

DECISION

PER CURIAM: Before this Panel on July 11, 2012—Magistrate DiSandro (Chair, presiding), Magistrate Goulart, and Judge Ciullo, sitting—is Lyle Topa's (Appellant) appeal from a decision of Chief Magistrate Guglietta (hearing magistrate), sustaining the charged violations of G.L. 1956 § 31-14-2, "Prima facie limits"; G.L. 1956 § 31-10-6, "Graduated licensing for person under the age of eighteen (18)"; G.L. 1956 § 31-22-22, "Safety belt use"; and G.L. 1956 § 31-15-7, "Places where overtaking prohibited." Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

This appeal arises from a tragic motor vehicle accident that took place on October 23, 2011, in Charlestown, Rhode Island. The Appellant was the driver of a car carrying three teenage passengers, which crashed into a tree just before 2:00 a.m., leaving all four teens seriously injured. At the time of the accident Appellant was seventeen years old and held only his limited provisional license. A limited provisional license must be held by drivers under eighteen years of age for at least twelve months before they may apply for a full operator's license and can be obtained after holding a limited instruction permit for a minimum of six

months. See G.L. 1956 § 31-10-6.[1] Following a plea agreement, the Appellant pled guilty to violating § 31-14-2, "Prima facie limits"; § 31-10-6, "Graduated licensing for person under the age of eighteen (18)"; § 31-22-22, "Safety belt use"; and § 31-15-7, "Places where overtaking prohibited." The remaining charges filed against the Appellant were dismissed as part of a plea agreement, and one count was dismissed by the hearing magistrate for lack of jurisdiction.[2]

At the sentencing hearing on February 28, 2012, the hearing magistrate placed a six-month suspension on the Appellant's limited provisional license and imposed an eighty-five (85) dollar fine for the seat belt violation. The same penalty was imposed for the overtaking violation. As to the remaining two counts, the trial court decided to imposed sanctions under § 31-10-26(e) for the first time. Section 31-20-26(e), "Issuance of license" reads:

> If an applicant has been adjudicated for committing one moving motor vehicle violation, has been involved in one reportable motor vehicle accident, or both, he or she shall be summoned for a hearing before a judge of the traffic tribunal at which time the driving record will be reviewed. The traffic tribunal judge shall determine if the person should be granted an operator's license, be reissued a first license, or be denied a license to operate a motor vehicle in the state of Rhode Island.

The hearing magistrate stated that pursuant to § 31-10-26(e), the Appellant was prohibited from obtaining a license to operate a motor vehicle in the State of Rhode Island until further order of the court. The hearing magistrate imposed this penalty for both the graduated license violation and the speeding violation, and in addition imposed a two-hundred and ninety-five dollar fine for the speeding violation. In acknowledging the severity of the sentence, the hearing magistrate characterized the provision as "essentially the death penalty for license

[1] Section 31-10-26 uses the term "first license" instead of limited provisional license. Section 31-10-26(d) explains, "[a] first license shall be issued for a one year period after which time a permanent driver's license shall be issued according to this section."

[2] As part of a plea, the following charges were dismissed: § 31-14-3, "Conditions requiring reduced speed"; § 31-14-1, "Reasonable and prudent speeds"; and § 31-15-11, "Laned roadways." Appellant was also charged with violation of § 31-8-9, "Transportation of alcoholic beverages by underage persons," but this charge was dismissed by the trial court for lack of jurisdiction.

holders." The hearing magistrate further explained that it was his hope that the dramatic sentencing would send a message to the public, especially Rhode Island's young drivers, "that this Traffic Tribunal is no longer sitting idly by as our youth are killed and injured on our roads." Appellant timely filed this 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:
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> (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.

Additionally, when reviewing sentences imposed by a trial justice, the Rhode Island Supreme Court "consistently has followed a 'strong policy against interfering with the trial justice's discretion in sentencing matters.'" State v. Chhoy Hak, 30 A.3d 626, 628 (R.I. 2011) (quoting State v. Tavera, 936 A.2d 599, 600 (R.I. 2007) (mem.)). Therefore, interference with that discretion is only appropriate "in rare instances when the trial justice has imposed a sentence that is without justification and is grossly disparate from other sentences generally imposed for similar offenses." State v. Snell, 11 A.3d 97, 101 (R.I. 2011) (quoting State v. Ruffner, 5 A.3d 864, 867 (R.I. 2010)); cf. State v. Christodal, 946 A.2d 811, 817 (R.I. 2009) (holding that hearing justices in probation violation hearings possess "wide latitude in deciding whether a probation violator's suspended sentence should be removed in whole, in part, or not at all") (quoting State v. Tucker, 747 A.2d 451, 454 (R.I. 2000)).

Analysis

On appeal, Appellant argues that the hearing magistrate's decision was in violation of constitutional and statutory provisions and also affected by error of law. Specifically, Appellant argues that § 31-10-26(e) is applicable only to those seeking to obtain their operator's or chauffeur's license, and because he already holds his limited provisional license, the statute does not apply. Moreover, the Appellant contends that since he was previously issued a Rhode Island

limited provisional license and was before the court for multiple traffic offenses committed with that license, he cannot be considered an "applicant" as referred to in the statute. Section 31-10-26(e), Appellant asserts, instead serves as a pre-emptive measure, to deny certain people who have been adjudicated for motor vehicle violations or involved in a motor vehicle accident in the past and who will apply for a license in the future.

Additionally, the Appellant argues that § 31-10-26(e) is facially ambiguous and in the interest of lenity should be construed narrowly. The Appellant points to other sections within the General Laws that impose license suspensions for specific time periods and asserts that it is these types of penalty statutes, unlike the within statute, that put motorists on notice of the specific sanctions they may endure if adjudicated for certain offenses.[3] Because the suspension imposed in this case could exceed the enumerated suspension times for some of the most serious felonies,[4] the Appellant argues that this suspension and use of § 31-10-26(e) to impose a penalty upon a motorist after certain motor vehicle violations, could not have been the intent of the legislature.

When interpreting a statute, courts must first look to the plain meaning of the language employed. The Rhode Island Supreme Court has held that "[w]hen the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings." Fleet National Bank v. Hunt, 944 A.2d 846, 852 (R.I. 2008) (quoting Tinney v. Tinney, 799 A.3d 235, 237 (R.I. 2002)). The Rhode Island Supreme Court has acknowledged that the "ultimate goal" in interpreting a statute "is to give effect to the purpose of the act as intended by the Legislature." Webster v. Perrotta, 774 A.2d

[3] In Appellant's brief, he cites to the recently enacted "Colin Foote Act" and § 31-11-6, "Offenses resulting in mandatory revocation of license."

[4] See § 31-11-6. Section 31-11-6 provides that the license of a chauffeur or operator shall be immediately revoked for specific enumerated time periods (ranging from three (3) months to three (3) years) if the license holder is convicted for certain offenses, such as manslaughter resulting from the operation of motor vehicle and driving under the influence of a narcotic drug.

68, 75 (R.I. 2001). It is further settled that in ascertaining and effectuating that legislative intent, "the plain statutory language" itself serves as "the best indicator." DeMarco v. Travelers Insurance Co., 26 A.3d 585, 616 (R.I. 2011) (quoting State v. Santos, 870 A.2d 1029, 1032 (R.I. 2005)).

An additional fundamental principle of statutory interpretation is that statutory language be read in its proper context, not viewed in isolation. In re Brown, 903 A.2d 147, 149 (R.I. 2006); see, e.g. Koons Buick Pontiac GMC, Inc. v. Nigh, 543 U.S. 50, 60 (2004) ("Statutory construction is a 'holistic endeavor.'") (quoting United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd., 484 U.S. 365, 371 (1988)). Therefore, it is the Court's duty when interpreting a statute, to "consider the entire statute as a whole; individual sections must be considered in the context of the entire statutory scheme, not as if each section were independent of all other sections." Sorenson v. Colibri Corp., 650 A.2d 125, 128 (R.I. 1994).

These established principles of statutory interpretation must be followed when reading § 31-10-26, "Issuance of license." Starting with the term "applicant," the Court looks to its plain and ordinary meaning. "Applicant" is defined as "a person who applies for or requests something; a candidate." The Random House Dictionary of the English Language 102 (2d ed. 1987). The term is used multiple times throughout Title 31, most often referring to those persons applying to obtain an operator's or chauffeur's license. See §§ 31-10-3,[5] 31-10-4,[6] 31-10-5.[7] The

[5] Section 31-10-3, "Persons ineligible for licenses" reads in pertinent part: "(b) The division of motor vehicles shall notify in writing any person whose application for a license has been denied pursuant to subsection (a). of this section. The notice shall contain the factual and legal basis for the denial, the procedure for requesting a hearing, and the rights afforded the individual pursuant to the provisions of § 31-11-7 (d) -- (f). When physical or mental fitness is the basis for the denial, the notice shall reference the specific functional standard promulgated pursuant to § 31-10-44 (b), which was relied upon by the division of motor vehicles. Upon his or her request the division of motor vehicles shall afford the license applicant an opportunity for a hearing as early as practical and no later than twenty (20) days after receipt of the request."

[6] "The division of motor vehicles upon issuing a chauffeur's license shall indicate on it the class of license so issued and shall appropriately examine each applicant according to the class of license applied for and may impose any

term "applicant" is also used for those persons, such as school bus drivers and commercial drivers' school instructors, seeking specialty licenses. See § 31-10-5.1, 31-10-26. By interpreting the term "applicant" in the context of the entire chapter, it is clear that the term refers to multiple classes of people seeking various kinds of licenses. See Bailey v. American Stores, Inc./Star Market, 610 A.2d 117,119 (R.I. 1992) ("In effectuating the Legislature's intent, we review and consider the statutory meaning most consistent with the statute's policies or obvious purposes. Moreover, the court will look to the statutory chapter in its entirety."); One Pacific Towers Homeowners' Ass'n v. HAL Real Estate Investments, Inc., 148 Wash. 2d 319, 330 (holding that when interpreting a statute the court "should not apply a mechanical definition but rather should interpret the meaning of terms in the context of the statute as a whole and consistently with the intent of the Legislature").

Notably, the term "applicant" is used in multiple sections to refer to persons who can already be considered license holders. For example, G.L. 1956 § 31-10-29 uses the term to refer to a license holder whose license was lost or destroyed and who is seeking a duplicate license.[8] Section 31-10-30 refers to an individual seeking renewal of an operator's or chauffeur's license after the expiration of their current licenses.[9]

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rules and regulations for the exercise of that license as it may deem necessary for the safety and welfare of the traveling public." Sec. 31-10-4, "Classification of chauffeurs--Examination of applicants."

[7] Section 31-10-5, "Special restrictions for drivers for compensation" in part reads: "The division of motor vehicles shall not issue a chauffeur's license for either purpose unless the applicant has had at least one year of driving experience prior to the application, and has filed with the division of motor vehicles one or more certificates signed by a total of at least three (3) responsible people to whom he or she is well known certifying to the applicant's good character and habits and the administrator of the division of motor vehicles is fully satisfied as to the applicant's competency and fitness to be so employed."

[8] "In the event that an instruction permit or operator's or chauffeur's license issued under the provisions of this chapter is lost or destroyed, the person to whom the permit or license was issued may apply for the permit or license, and upon payment of the required fee of ten dollars ($10.00) obtain a duplicate certificate. The applicant shall furnish proof satisfactory to the division of motor vehicles that the permit or license has been lost or destroyed." Sec. 31-10-29.

[9] Section 31-10-30 in relevant part reads: "The administrator of the division of motor vehicles, having good cause to believe the applicant for renewal is incompetent or otherwise not qualified, may require an examination of the applicant as upon an original application; provided, however, if the renewal applicant is applying for a commercial

Since the Appellant held only his limited provisional license or "first license" at the time of sentencing, it is especially helpful to look to § 31-10-6, "Graduated licensing for person under the age of eighteen (18)." Section 31-10-6 explains that those under the age of eighteen applying for a full operator's license are granted driving privileges on a limited basis.[10] Before obtaining a full operator's license, the applicant must first hold a limited instruction permit for a minimum of six months, followed by a limited provisional license for twelve months, and must meet enumerated requirements for each level.

Section 31-10-6(b)(1) uses the term "applicant" to describe an individual seeking a limited instruction permit.[11] The term is again used for a person seeking his or her limited provisional license.[12] Finally, after receiving the limited provisional license, the statute explains that an individual "may apply" for a full operator's license after meeting the listed requirements.[13]

By looking at the use of the term "applicant" throughout Chapter of Title 31, it is clear that a person does not cease to be an "applicant" after receiving a license, albeit a limited

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driver's license and is in possession of a valid medical examination certificate issued pursuant to federal motor carrier safety regulations 49 CFR 391.41 -- 391.49 that applicant shall be deemed to be competent and qualified under this chapter."

[10] "(a) Purpose. To ensure that license holders have sufficient training and experience and to promote safe, responsible driving, persons under the age of eighteen (18) shall be granted driving privileges on a limited basis as follows: (1) Level 1 – Limited instruction permit. (2) Level 2 – Limited provisional license. (3) Level 3 – Full operator's license." Sec. 31-10-6.

[11] "(1) Limited instruction permit. Any person who is at least sixteen (16) years of age but less than eighteen (18) years of age may apply to the division of motor vehicles for a limited instruction permit. The division of motor vehicles may, after the applicant has successfully completed a course of driver training prescribed in § 31-10-19 and passed a standardized written examination approved by the administrator of the division of motor vehicles or otherwise complied with the requirements of § 31-10-21, issue to the applicant a limited instruction permit which shall entitle the applicant to drive a motor vehicle only under the following conditions. . . ." Sec. 31-10-6(b)(1).

[12] "(iii) In addition to meeting the requirements of paragraph (i) of this subdivision, a person under the age of eighteen (18) years seeking to obtain a provisional license shall present with his or her application a statement signed by the person's parent or guardian stating that the applicant has obtained a minimum of fifty (50) hours of experience with ten (10) of those at night as a driver while driving with a supervising driver. These fifty (50) hours may include driving lessons with a commercial driving school or any other supervised driving." Sec. 31-10-6(b)(2)(iii).

[13] "(3) Full operator's license. A person who is at least seventeen (17) years old but less than eighteen (18) years old may apply for and obtain a full operator's license if the person meets all of the following requirements. . . ." Sec. 31-10-6(b)(3).

provisional license. In multiple sections of the statute the term is used to refer to an individual who already holds a license and is either seeking renewal or seeking a new license after losing one. See In re Brown, 903 A.2d at 150 ("When we determine the true import of statutory language, it is entirely proper for us to look to 'the sense and meaning fairly deductible from the context.'"). Importantly, the Appellant held only his limited provisional license at the time of the sentencing hearing. According to § 31-10-6(b)(3), he or she "may apply" to obtain a full operator's license after holding a limited provisional license, indicating that the Appellant is still considered an "applicant" under Chapter 10 of Title 31.

In the remaining content of § 31-10-26(e), the Court notes that the language evinces the legislative intent that this provision be applicable to those who hold a limited provisional license, like the within Appellant. See Martone v. Johnston School Committee, 824 A.2d 426, 431 (R.I. 2003) (holding that the best evidence of the General Assembly's intent can be found in the plain language used in the statute). Section 31-10-26(e) specifically lists that an applicant may "be reissued a first license" by the traffic tribunal judge, making it apparent that this provision can apply to individuals who have held or still hold a first license before obtaining a full operator's license. This language supports the conclusion that one who holds a first license is still considered an "applicant" to obtain his or her full operator's license.

The Appellant also contends that in the interest of lenity, § 31-10-26(e) should be construed narrowly. The rule of lenity is a statutory interpretation tool that "applies to the construction of criminal statutes and requires that the Court adopt the less harsh of two possible meanings when faced with an ambiguous criminal statute." Such v. State, 950 A.2d 1150, 1158 (R.I. 2008) (quoting State v. Day, 911 A.2d 1042, 1047-48 n.6 (R.I. 2006)). The Rhode Island Supreme Court has acknowledged that under the rule of lenity, "if two constructions of a penal

statute are possible, then the analysis must resolve in favor of the defendant." State v. Martini, 860 A.2d 689, 694 (R.I. 2004). Appellant's reliance on the rule of lenity, however, is misplaced. Section § 31-10-26 is a civil statute, so the rule is not applicable here, because the rule of lenity "applies only when the meaning of a criminal statute is ambiguous." Such, 950 A.2d at 1158 (emphasis added).

Although the Appellant argues that § 31-10-26(e) does not put motorists on notice of how long their driving privileges will be suspended if adjudicated for certain offenses, the legislature clearly placed this discretion in the traffic tribunal judge reviewing the applicant's record. See State v. Snell 11 A.3d at 101-02; State v. Giorgi, 397 A.2d 898, 899 (R.I. 1979) ("We have emphasized that the inherent power to review sentences should be utilized only in the exceptional case in the context of a strong policy against interference with the discretion exercised by the trial court in passing sentence. Thus the power should be exercised only when the sentence is without justification and grossly disparate from sentences generally imposed for similar offenses."). Though the revocation of a license until further order of the Court may be a longer suspension period than those contemplated for a number of serious felonies, there is no ambiguity in the language of the statute that the denial of a license to operate a motor vehicle is a contemplated penalty "[i]f an applicant has been adjudicated for committing one moving motor vehicle violation, has been involved in one reportable motor vehicle accident, or both." Sec. 31-10-21(e).

After committing the within offenses, the Appellant's record was reviewed at a hearing by a traffic tribunal magistrate. The magistrate determined that given the severity of the charges against the Appellant, the penalty was appropriate for his violations. See State v. Snell, 11 A.3d at 102 (stating that "vast discretion" is afforded to the trial justice's sentencing judgment).

Conclusion[14]

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the hearing magistrate's decision is not in violation of constitutional provisions or statutory provisions, not affected by error of law, and not an abuse of discretion. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violations sustained.

ENTERED:

[14] It must be noted that Appellant appeared before the Rhode Island Traffic Tribunal prior to serving her suspensions ordered on certain violations that were clearly within the statutory authority of the Chief Magistrate. The Panel believes that Appellant should serve the suspension period as ordered, and upon completion, petition the Chief for reinstatement.