

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

:
:
:
:
:

v.

**C.A. No. T20-0008
18103501515**

JOSHUA RIBEIRO

DECISION

PER CURIAM: Before this Panel on September 16, 2020—Magistrate Kruse Weller (Chair), Magistrate Goulart, and Magistrate DiChiro, sitting—is Joshua Ribeiro’s (Appellant) appeal from a decision of Chief Magistrate Domenic A. DiSandro, III (Trial Magistrate) of the Rhode Island Traffic Tribunal, denying the Appellant’s motion to vacate the charged violation of G.L. 1956 § 31-27-2.1, “Refusal to Submit to Chemical Test.” The Appellant appeared before this Panel represented by counsel. Jurisdiction is pursuant to § 31-41.1-8. For the reason stated herein, this Panel sustains the Trial Magistrate’s decision.

I

Facts and Travel

On September 29, 2018, Sergeant Jason P. Canario (Sergeant Canario) of the Warren Police Department issued Summons 18103501515 to the Appellant for Refusal to Submit to a Chemical Test. *See* Summons 18103501515.

On November 14, 2018, in a pre-trial conference, Appellant pled guilty to the charged violation and was sentenced to a thirty day loss of license followed by six months with an ignition interlock, alcohol education, ten hours of community service and a \$200 fine and mandatory fees. An order issued pursuant to the plea granted Appellant a conditional hardship license that allowed

him to drive to and from work during the thirty day suspension period. In his request for a hardship license, the Appellant indicated he was an assistant paint manager at Sherwin Williams and asked for leave to workout at Maxx Fitness based on his medical condition. *See* Hr’g Recording November 14, 2018. The order granting the conditional hardship reflected the Appellant’s current employment at the time.

On June 29, 2020, over eighteen months later, Appellant filed a motion for post-conviction relief and a hearing on the motion was held on June 30, 2020.¹ The Appellant asked the court to vacate the prior pleading because Appellant now seeks to obtain a CDL license and the conviction would prevent him from obtaining one. (Tr. 3). Additionally, the Appellant argued he received ineffective assistance of counsel as he was not properly advised that his plea would affect his ability to obtain a CDL license. *Id.* at 6.

The Trial Magistrate denied the motion as the motion was filed more than one year after the initial plea and not within the statutory authority of the court to grant relief. *Id.* at 8. Moreover, the Trial Justice found that “it was not up to him to decide if counsel was adequate at the time of the pleading.” *Id.* at 8. Appellant subsequently filed this timely 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 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

¹ Because this court does not have jurisdiction to hear a motion for post-conviction relief, the Trial Judge treated the motion as a motion to vacate pursuant to Rule 20.

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 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 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 Mut. Ins. 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 *Envtl. Sci. 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.” *Id.* Otherwise, it must affirm the hearing judge's (or magistrate's) conclusions on appeal. *See Janes*, 586 A.2d at 537.

III

Application for Post Conviction Relief

On Appeal, Appellant asserts that his motion for post conviction relief was not out of time as the discovery rule tolls the statute of limitations. Pursuant to Rhode Island Traffic Tribunal Rules of Procedure, Rule 20 “Relief from Judgment” provides in pertinent part:

“The court may, upon motion or on its own initiative, relieve a party of a party’s legal representative from a judgment or order for the following reasons: (a) mistake, inadvertence, surprise, or excusable neglect; (b) newly discovered evidence; (c) fraud, misrepresentation, or misconduct of an adverse party; (d) the judgment or order is void; (e) the judgment or order has been satisfied, released, or discharged, or the judgment or order is no longer equitable that the judgment or order should have prospective application; or (f) any other reason justifying from the operation of the judgment, or order, including that relief is warranted in the interests of justice. *The motion shall be made within a reasonable time, and for reasons (a), (b), and (c) not more than one (1) year after the judgment or order was entered.*” (Emphasis added).

The Appellant’s guilty plea was entered on November 14, 2018. The Appellant would have one year until November 14, 2019 to move for relief from judgment. However, Appellant did not file the motion, and the motion was not heard until June 30, 2020 over eighteen months later. Therefore, the motion to vacate was filed outside of the one year limit and thus the Appellant is not entitled to relief.

Moreover, Appellant pled guilty to the charged violation. It is well settled in this state that “[g]uilty pleas are valid only if voluntarily and intelligently entered” . . . and made with knowledge and understanding of the charges against him. *Rodrigues v. State*, 985 A.2d 311, 314 (R.I. 2009). The record is devoid of any evidence that Appellant did not knowingly and voluntarily enter a guilty plea. *See id.* Appellant was represented by counsel at the disposition and was advised of the consequences of the plea. “A court should not vacate a plea unless the record viewed in its totality discloses no facts that could have existed for a defendant’s plea.” *See Rodrigues*, 985 A.2d at 315. Thus, after review of the record, there is no evidence to indicate that Appellant did not knowing and voluntarily enter a guilty plea. *See id.*

Ineffective Assistance of Counsel

The Appellant further claims that his claim of ineffective assistance of counsel should be considered as he was never advised of his inability to obtain a CDL license for a period of five years upon his guilty plea.

At hearing on June 30, 2020, Appellant's counsel indicated that ". . . the issue is that the job he had during the time of this, he's then advanced in this job and requires a CDL." (Tr. 3). At oral argument, Appellant's counsel again argued "at the time the Appellant entered the plea, he was working for the Town of Bristol and he knew at that time when he proceeded with the town of Bristol they require him to get a CDL." (Hr'g Tr. September 16, 2020). Appellant's counsel added "at the time he entered the plea, he knew that the likelihood of him requiring a CDL in that job was very likely as his father and other family members worked there and they knew that the progression in that job was a CDL." *Id.*

Notwithstanding, the Appellant did not present any evidence in an affidavit or otherwise to indicate that he explained his future career path to counsel or that he was misinformed about the circumstances and consequences of pleading guilty. In fact, the underlying documents in support of his request for a hardship license contradict counsel's assertion that the Appellant was working for the Town of Bristol at the time of the plea and had planned on advancing his career there; instead the court's order reflects that the Appellant was employed by Sherwin-Williams. *See Order* dated November 14, 2018. As the Trial Judge noted, and this Panel agrees, an

attorney cannot be required to predict or advise of every conceivable consequence especially when they are remote in existence.

IV

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the Trial Magistrate's decision was not clearly erroneous in view of the reliable, probative and substantial evidence of the whole record. *See* § 31-41.1-8(f)(5). The substantial rights of the Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation is sustained.

ENTERED:

Magistrate Erika Kruse Weller (Chair)

Magistrate Alan Goulart

Magistrate Michael DiChiro, Jr.

DATE: _____