

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

CITY OF PROVIDENCE

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:
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:
:

v.

**C.A. No. T18-0001
17001530963**

ANNA KYRIAKIDES

DECISION

PER CURIAM: Before this Panel on March 14, 2018—Magistrate DiSandro (Chair), Judge Parker, and Magistrate Abbate, sitting—is Anna Kyriakides’ (Appellant) appeal from a decision of Judge Lillian M. Almeida (Trial Judge) of the Rhode Island Traffic Tribunal, sustaining the charged violation of G.L. 1956 § 31-14-2, “Prima facie limits.” The Appellant appeared before this Panel represented by counsel. Jurisdiction is pursuant to § 31-41.1-8.

I

Facts and Travel

On November 7, 2017, Rhode Island State Trooper Jean Tondre (Trooper Tondre) issued Appellant a citation for the aforementioned violation. *See* Summons No. 17001530963. At arraignment, Appellant pled not guilty, and the matter proceeded to trial on January 25, 2018. (Tr. at 2.)

On that day, Appellant, through counsel, indicated that the parties had reached an agreement; whereby, Appellant would plead guilty to the charge of driving ten miles per hour over the speed limit. *Id.* At that time, the Trial Judge questioned whether Appellant would be subject to the enhanced penalties established by the Colin B. Foote Act. *Id.* at 2-3. In doing so, the Trial Judge indicated that Appellant’s driving record had three violations listed since May 18, 2016. *Id.* at 3. The Trial Judge then stated that if Appellant pled guilty that day, the conviction

would be subject to the enhanced penalties because the conviction would be within ten days of the expiration of the eighteen month statutory period. *Id.*

In response, Appellant explained that the statutory period is calculated based on the date of Appellant's first conviction, not the date that Appellant received the first citation. *Id.* at 5.

The Appellant argued:

“[A] reading of the case State of Rhode Island vs. Jacob Botella[,] indicates that the calculation of Colin Foote begins with a conviction, not the date of the issuance [of] [a] ticket. And if [Appellant] were to take today's date as the date of conviction [for] this offense and go back eighteen months, that would [be] . . . June 25, 2016.” *Id.* at 7.

After the Trial Judge allowed counsel the opportunity to present an argument, the Trial Judge determined that the court has “held that the statute calls for the date of the violation because if [the court] did it by the date of conviction, those who pled guilty at the arraignment and those who go to trial would be treated differently” *Id.* The Trial Judge found that the statutory period begins with the “the date of the violation itself and the violation before [the Trial Judge] that [the] trooper issued to [Appellant], which was November 7 [, 2017] . . . does fall under the Colin Foote penalties.” *Id.* at 9.

Thereafter, the Trial Judge and Appellant agreed that Appellant would file an appeal of the Trial Judge's decision, limited to only the issue regarding the calculation of the eighteen month period that a motorist is subject to enhanced penalties under the Colin B. Foote Act and not the issue of speeding. *Id.* at 9-10. The Appellant subsequently filed this timely appeal. Forthwith is this Panel's Decision.

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 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 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

Analysis

On appeal, Appellant contends that the Trial Judge’s decision is “in violation of constitutional or statutory provisions,” “in excess of the statutory authority of the judge or magistrate,” and “affected by other error of law.” Sec. 31-41.1-8(f)(1), (2), (5). Specifically, Appellant asserts that the Trial Judge erred by calculating the eighteen month statutory period using the date that Appellant received the citations. The Appellant maintains that she is not subject to enhanced penalties under the Colin B. Foote Act as she was not convicted of four violations within an eighteen-month period.

Pursuant to § 31-27-24, which establishes the penalties for multiple moving violations under the Colin B. Foote Act:

“Every person convicted of moving violations on four (4) separate and distinct occasions within an eighteen (18) month period may be fined up to one thousand dollars (\$1,000), and shall be ordered to attend sixty (60) hours of driver retraining, shall be ordered to perform sixty (60) hours of public community service, and the person's operator license in this state may be suspended up to one year or revoked by the court for a period of up to two (2) years. Prior to the suspension or revocation of a person's license to operate within the state, the court shall make specific findings of fact and determine if the person's continued operation of a motor vehicle would pose a substantial traffic safety hazard.” Sec. 31-27-24(a).

In *State of Rhode Island v. Jacob Botella*, A.A. No. 2012-0046, the Sixth Division District Court held that “the opening date—for purposes of calculating the [] Colin Foote Law

window—[is] in fact the date of [the] first conviction and not the date of the first citation, i.e. the date of offense.” The district court noted that “with regard to enhanced penalties in the criminal arena, the operative date applied for the new offense (for which the defendant is being sentenced) is the date of offense, not the date of conviction.” *Id.* at n.7. However, the facts of that case did not require the court to further address the issue.

The record before this Panel reveals that Appellant received her first citation on May 18, 2016 and was convicted of that violation on June 14, 2016. (Tr. at 3.) Having considered *Botella*, this Panel finds that the eighteen month period began on the date of Appellant’s first conviction, June 14, 2016. *See* § 31-27-24; *Jacob Botella*, A.A. No. 2012-0046. Accordingly, Appellant was subject to the enhanced penalties between June 14, 2016 and December 14, 2017.

Moreover, this Panel finds that the plain and unambiguous language of § 31-27-24 is clear that a motorist must receive four convictions within an eighteen month period. *See* § 31-27-24(a). However, it can be inferred from the district court’s footnote in *Botella* that a motorist is subject to enhanced penalties when the date of a fourth offense is issued within eighteen months of the motorist’s first conviction. This Panel agrees with the Trial Judge’s reasoning that using the date of the fourth conviction would afford any motorist facing enhanced penalties the opportunity to extend the adjudication of the violation beyond the expiration of the eighteen month period. Here, Appellant’s fourth violation occurred on November 7, 2018, which was prior to the expiration of the eighteen month period, December 14, 2017.

In light of this Panel’s findings, Appellant is subject to the enhanced penalties established in § 31-27-24. As such, the Trial Judge’s decision is not “in violation of constitutional or statutory provisions,” “in excess of the statutory authority of the judge or magistrate” and “affected by other error of law.” Sec. 31-41.1-8(f)(1), (2), (5).

IV

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the Trial Judge's decision is not "in violation of constitutional or statutory provisions," "in excess of the statutory authority of the judge or magistrate" and "affected by other error of law." Sec. 31-41.1-8(f)(1), (2), (5). The substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the Trial Judge's decision is affirmed.

ENTERED:

Magistrate Domenic A. DiSandro, III (Chair)

Judge Edward C. Parker

Magistrate Joseph A. Abbate

DATE: _____