

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. T14-0054
07409119183**

FREDDY R. MAGO

DECISION

PER CURIAM: Before this Panel on January 21, 2015—Chief Magistrate Guglietta (Chair), Magistrate Noonan, and Magistrate Abbate, sitting—is Freddy R. Mago’s (Appellant) appeal from a decision of Magistrate Goulart, sustaining the charged violations of G.L. 1956 § 31-22-21.1, “Presence of alcoholic beverages while operating or riding in a motor vehicle;” § 31-22-22, “Safety belt use;” § 31-21-1, “Stopping on traveled portion of open highway prohibited.” The Appellant appeared before this Panel pro se. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On May 16, 2014, an officer of the Providence Police Department charged Appellant with the aforementioned violations of the motor vehicle code. The Appellant contested the charge, and the matter was scheduled for trial on September 2, 2014. The Appellant failed to appear for his scheduled court date, and the Court entered a default judgment against him.

Following the entry of the default judgment, Appellant filed a Motion to Vacate pursuant to Rule 20 of the Traffic Tribunal Rules of Procedure (Rule 20).¹² A hearing on Appellant’s motion was set for September 11, 2014. At the hearing, Appellant testified that he actually

¹ Rule 20 of the Traffic Tribunal Rules of Procedure reads, in relevant part: “The court may, upon motion or on its own initiative, relieve a party or a party’s legal representative from a judgment or order for the following reasons. . . excusable neglect.” Traffic Trib. R. P. 20.

appeared at court for his trial, but he was in the wrong courtroom. (Tr. at 1.) The Appellant explained that by the time he realized he was in the wrong courtroom, the trial had already passed. Id. Thereafter, the Magistrate found that Appellant had not provided the court with a legally sufficient reason for missing his original court date. Id. at 2.

Subsequently, the Magistrate denied Appellant's motion. It is from the denial of his motion that Appellant now appeals to this Panel.

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:

- “(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 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.” Link, 633 A.2d at 1348 (citing Envtl. 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.

Analysis

On appeal, Appellant contends that the Court should excuse his absence from his scheduled trial date. Specifically, Appellant maintains that he appeared in court, but he was in the wrong courtroom.

Pursuant to the Rhode Island Traffic Tribunal Rules of Procedure, the court can enter a default judgment against a defendant for his failure to appear at trial. Traffic Trib. R. P. 17(c). However, if the person charged with the violation fails to appear, the magistrate “may enter default, and after hearing any evidence presented, determine whether the charges have been established.” Sec. 31-41.1.

After listening to the proceedings from Appellant’s scheduled trial date, the Panel determines that the default provisions were not properly established on the record. See id. Specifically, the record lacks information to determine whether there is sufficient evidence to establish charges against Appellant. Consequently, this Panel remands the case for a new trial.

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that substantial rights of Appellant have been prejudiced. Accordingly, Appellant's appeal is granted for the sole purpose of remanding the matter to the trial calendar for further proceedings consistent with this opinion.

ENTERED:

Chief Magistrate William R. Guglietta (Chair)

Magistrate William T. Noonan

Magistrate Joseph A. Abbate

DATE: _____