STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT **RHODE ISLAND TRAFFIC TRIBUNAL**

CITY OF PROVIDENCE	**:**	
	:	
v.	**:**	**C.A. No. T17-0003**
	:	**16409148403**
JOSE RODRIGUEZ	**:**	**16409148404**

DECISION

PER CURIAM: Before this Panel on March 8, 2017—Magistrate Kruse Weller (Chair), Magistrate DiSandro, III, and Magistrate Goulart, sitting—is Jose Rodriguez's (Appellant) appeal from the decision of Associate Judge Lillian M. Almeida (Trial Judge) of the Rhode Island Traffic Tribunal, accepting Appellant's plea to the charged violation G.L. 1956 § 31-16-5, "Turn signal required." The Appellant appeared before this Panel pro se. Jurisdiction is pursuant to § 31-41.1-8.

I

Facts and Travel

On October 12, 2016, Officer Christopher Ziroli (Officer Ziroli) of the Providence Police Department issued Appellant a citation for the above mentioned violation.[1] On January 31, 2017, at trial, Appellant pled guilty to the violation of § 31-16-5, "Turn signal required." (Tr. at 1.) In consideration of his plea to the violation, the remaining four charges were dismissed. *Id.*

On that day, the City of Providence provided that the matter would not go to trial since Appellant was willing to accept a plea: "[The City of Providence] had the opportunity to speak

[1] On that day, Officer Ziroli charged Appellant with committing four other violations: § 31-47-9, "Operating Motor Vehicle Without Insurance – First Offense"; § 31-8-2, "Operation of Vehicle When Registration Canceled, Suspended, or Revoked"; § 31-15-11, "Laned Roadway Violation"; and § 31-16-2, "Manner of Turning at Intersection."

with [Officer Ziroli] and [Appellant] in consideration of a plead [sic] to [the violation of § 31-16-5] the City of Providence was willing to dismiss all remaining counts." *Id.* The Trial Judge then conferred with Appellant regarding the City's assertion:

> "[Trial Judge]: Mr. Rodriguez will only plead guilty to the turn signal[.]
>
> [City of Providence]: That's correct your Honor[.]
>
> [Trial Judge]: Is that agreeable with you? That you're going to plead guilty to the turn signal?
>
> [Appellant]:That's agreeable your Honor[.]
>
> [Trial Judge]: Okay, with no questions? Alright so it will be $85 on the turn signal plus the court cost[,] and all the other violations . . . that you have will be dismissed, you won't pay anything on those violations[.]
>
> [Appellant]: If I may[,] I believe it's [in] the court['s] discretion to waive the court cost[.] I am indigent your Honor[.]
>
> [Trial Judge]: You're going to pay the fine and the court cost[.] [I]f I waive for one I waive for everyone. . . ." *Id.*

Thereafter, Appellant filed a 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 to accept Appellant's plea and apply court costs was made "[i]n violation of constitutional or statutory provisions" and is "[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record." Sec. 31-41.1-8(f). Specifically, Appellant argues that the Trial Judge should not have

accepted his guilty plea because he was entitled to relief under the "Good Driving Record" exemption. *See* § 31-41.1-7.

The exemption created by § 31-41.1-7, provides that "[a]ny person who has had a motor vehicle operator's license for more than three (3) years" and is issued a traffic violation citation for the first time within three years "may request a hearing seeking a dismissal of the violations based upon the operator's good driving record." Sec. 31-41.1-7.

However, a review of the record uncovers no mention of Appellant's intent to seek a dismissal based on his good driving record. (Tr. at 1.) Without raising this issue at trial, this Panel is unable to review Appellant's argument on appeal. *Union Station Associates v. Rossi*, 862 A.2d 185, 192 (R.I. 2004) ("It is an established rule in Rhode Island that this Court will not review issues that are raised for the first time on appeal."). Rhode Island "has long adhered to an important jurisprudential principle commonly referred to as 'the raise or waive rule.'" *In re Shy C.*, 126 A.3d 433, 434 (R.I. 2015) (citing *State v. Gomez*, 848 A.2d 221, 237 (R.I.2004)). This rule provides that "an issue that has not been raised and articulated previously at trial is not properly preserved for appellate review." *Gomez*, A.2d at 237; *see State v. Ciresi*, 45 A.3d 1201, 1212 (R.I.2012) (noting that it is "well established" that the raise or waive rule "precludes a litigant from arguing an issue on appeal that has not been articulated at trial") (internal quotation marks omitted)).

As this Panel is confined to a review of the record, it is unable to make a determination regarding the Trial Judge's decision on an issue that was not presented at trial. *Link*, 633 A.2d at 1348. The record in this matter contains no evidence that would indicate Appellant wanted to use the "Good Driving Record" exemption—nor did he offer any evidence of his good driving record. *See* Tr. at 1. Therefore, this Panel will not address Appellant's argument that the Trial

Judge erred by failing to dismiss Appellant's violation pursuant to § 31-41.1-7. *See Union Station Associates,* 862 A.2d at 192.

This Panel is then left to determine only whether Appellant "voluntarily and intelligently" entered into the guilty plea. *See* Traffic Trib. R. P. 7(a). Rule 7(a) of the Traffic Tribunal Rules of Procedure states, in pertinent part: "The court may refuse to accept a plea of guilty and shall not accept such plea without first addressing the defendant personally and determining that the plea has been made voluntarily and with understanding of the nature of the charge and the judgment to be imposed." Under Rule 11 of the Superior Court Rules of Criminal Procedure, which mirrors Traffic Tribunal Rule of Procedure 7(a), the Supreme Court has held that guilty pleas are valid only if the record affirmatively discloses that a defendant voluntarily and intelligently entered into it. *See State v. Figueroa,* 639 A.2d 495, 498 (R.I. 1994); *see also State v. Feng*, 421 A.2d 1258, 1266 (R.I. 1980) ("Guilty pleas are valid only if voluntarily and intelligently entered, and the record must so affirmatively disclose."). A plea "will be vacated when it is shown to have been obtained from a defendant unaware and uninformed as to its nature and its effect as a waiver of his fundamental rights." *Id.* (citing *Cole v. Langlois*, 99 R.I. 138, 141, 206 A.2d 216, 218 (1965)).

After reviewing the record, it is this Panel's opinion that Appellant entered into the guilty plea both voluntarily and intelligently. The record reflects that Appellant intended to plead guilty to the charged violation. (Tr. at 1.) The Trial Judge addressed Appellant directly—asking whether Appellant agreed with the City's assertion that the described agreement had been reached—ensuring that the guilty plea was voluntary and that Appellant understood the nature of the charge. *See* Traffic Trib. R. P. 7(a). Appellant explicitly stated that the plea agreement was "agreeable" to him. *Id.* Furthermore, the record shows that Appellant entered into the plea

agreement intelligently. *See id.*; *see also Figueroa*, 639 A.2d at 498. The record indicates that Appellant understood the consequences of entering a guilty plea—namely, the fine to be imposed, that the other charges would be dismissed, and that Appellant would not have to pay anything for the dismissed violations—and evidenced his understanding of such by his request to waive that penalty. (Tr. at 1.) Therefore, this Panel finds that Appellant entered into a valid guilty plea and that the Trial Judge did not err in accepting Appellant's plea since Appellant did so both voluntarily and intelligently. *See Feng*, 421 A.2d at 1266.

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 was not clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, nor was it made "[i]n violation of constitutional or statutory provisions." In addition, Appellant's substantial rights have not been prejudiced. Accordingly, Appellant's appeal is denied based on Appellant's valid guilty plea.

ENTERED:

_____
Magistrate Erika Kruse Weller (Chair)

_____
Magistrate Domenic A. DiSandro III

_____
Magistrate Alan R. Goulart

DATE: _____