STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT **RHODE ISLAND TRAFFIC TRIBUNAL**

STATE OF RHODE ISLAND	:	
	:	
v.	:	**C.A. No. T12-0051**
	:	
MILISSA GARRITY	:	

PER CURIAM: Before this Panel on August 15, 2012—Chief Magistrate Guglietta (Chair, presiding), Judge Ciullo, and Magistrate DiSandro, sitting—is Milissa Garrity's (Appellant) appeal from a decision of Magistrate Goulart (hearing magistrate), sustaining the charged violation of G.L. 1956 § 31-14-2, "Prima facie limits." Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On July 2, 2012, Appellant appeared before the hearing magistrate for arraignment regarding the aforementioned violation. (Arr. Tr. at 3.) At arraignment, the hearing magistrate informed the Appellant of the sentence he would impose if Appellant pled guilty, which was: a fine of one hundred ninety-five dollars and a three month license suspension. After being so informed, Appellant entered a plea of guilty to the violation. Thereafter, the hearing magistrate imposed the sanctions he had just informed the Appellant.

Three weeks later, Appellant appeared before the hearing magistrate again, this time with counsel, seeking the hearing magistrate to reconsider his earlier sentence or, in the alternative, to vacate the judgment. (Motion Tr. at 4.) In support of her reconsideration argument, Appellant argued that she had strong ties to the community, she was working, that job required her to have a driver's license, and all her previous speeding violations were for the minimum fine. The

Appellant argued that she should be ordered to attend a driver re-training program, instead of a suspension, since she had never been ordered to such a program for her previous violations. Appellant also maintained that she did not understand the consequences of her plea at the arraignment; despite being told by the hearing magistrate what the penalties would be. (Motion Tr. at 5.) Appellant also maintained that if given a trial on the matter, she would present a defense based upon the factual scenario of her violation.

After hearing her arguments, the hearing magistrate then examined the Appellant's entire driving record. The hearing magistrate noted that Appellant had been cited for speeding on fourteen previous occasions. Armed with this knowledge, the hearing magistrate denied Appellant's Motion for Reconsideration. (Motion Tr. at 8.)

In support of her Motion to Vacate the plea, Appellant maintained that the plea should be vacated because she was not represented by counsel at the arraignment. (Motion Tr. at 9.) Appellant also maintained that "there may be some factual issues that would be worth pursuing" regarding the Appellant's violation. Id.

Similarly, the hearing magistrate denied the Appellant's request. The hearing magistrate determined that he was not permitted to vacate a plea after a sentence was imposed. The hearing magistrate also noted that he took great consideration before he imposed the sentence and further found that the sentence in this particular circumstance was appropriate. 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.

Analysis

On appeal, Appellant contends that the hearing magistrate's decision to deny her motions was affected by error law and in violation of statutory provisions. Appellant's arguments will be addressed in seriatim.

A. Assistance of Counsel

First, Appellant contends that because she was not represented by counsel she should have been afforded "greater latitude" regarding her initial appearance when she pled guilty.

It is well-established that there is no right to counsel in a civil proceedings. For example, our Supreme Court has clearly stated that a motorist does not have a right to an attorney for a violation of section 31-27-2.1, the refusal statute. Dunn v. Petit, 120 R.I. 486, 388 A.2d 809 (R.I. 1978). Following Dunn, it is clear to this Panel that Appellant is not guaranteed a right to counsel for a civil traffic violation. Moreover, while our Supreme Court has recognized that pro se litigants should be afforded "some latitude, it would be improper for a hearing justice to set aside [the] rules of evidence and procedure." Bryant v. Wall, 896 A.2d 704, 709 (R.I. 2006).

Here, the hearing magistrate followed our rules of procedure regarding arraignments. See Traffic Trib. R. P. 6(a) ("Arraignment shall be conducted in open court and shall consist of reading the summons to the defendant or stating to the defendant the substance of the charge and calling on the defendant to plead thereto."). After reading the summons to the Appellant, the hearing magistrate asked the Appellant to either plead guilty or not guilty. Notably, the Appellant never asked the hearing magistrate any questions, but rather, stated that she would plead guilty. After informing Appellant of the sentence he was going to impose, the hearing magistrate went so far as to ask the Appellant if she understood the consequences of her plea,

which she stated she did understand. (Arr. Tr. at 3.) The hearing magistrate complied with the rules of procedure and it would have been impermissible of the hearing magistrate to deviate from those rules simply because of Appellant's pro se status. See Bryant, 896 A.2d at 709.

B. Trial on the Merits

Appellant next contends that she should be given her day in court and have a trial on the merits. In support of this contention, Appellant directs this Panel's attention to Silva v. Brule, 9 A.3d 659, 660 (R.I. 2010). In Silva, our Supreme Court stated a trial justice should dismiss a case with caution because "there is the desire to dispose of cases on their merits." Id. (citations omitted). However, this Panel finds Silva to be of little persuasive value.

Silva dealt with a pro se litigant's suit being dismissed for lack of prosecution and for failing to comply with orders by the Superior Court regarding responses to discovery. The Silva Court's reasoning has never been extended to vacating a plea of guilty in favor of a trial. Also, importantly, our Supreme Court upheld the trial justice's decision to dismiss the action against the pro se litigant in Silva. The only similarity between Silva and the case at bar is that adverse action was taken against a pro se litigant.

Instead, this Panel finds our Supreme Court's holdings regarding criminal pleas and motions to vacate in the civil context to be persuasive. Guilty pleas are valid only if voluntarily and intelligently entered, and the record must so affirmatively disclose. Boykin v. Alabama, 395 U.S. 238, 242 (1969). "[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." Cole v. Langlois, 99 R.I. 138, 141, 206 A.2d 216, 218 (1965) (citing Kercheval v. United States, 274 U.S. 220, 223, (1927)). It is the defendant that bears the burden of proving by

a preponderance of the evidence that they did not intelligently and understandingly waive their rights. Id. at 142-43, 206 A.2d at 218-19 (citing Moore v. Michigan, 355 U.S. 155, 161-62 (1957)). 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. Cole, 99 R.I. 138, 141, 206 A.2d 216, 218 (1965). When a plea is voluntary, in that it was not obtained by fraud or coercion and that it resulted from an intelligent decision on the part of a defendant to waive a trial, the defendant is bound by his or her plea. Cole, 99 R.I. 138, 142, 206 A.2d 216, 218 (1965).

Moreover, in the civil context, "[t]he denial of a motion to vacate or modify a judgment is within the sound discretion of the trial justice and will not be reversed on appeal absent a showing of abuse of discretion or other error of law." Flynn v. Al–Amir, 811 A.2d 1146, 1150 (R.I. 2002) (quoting Webster v. Perrotta, 774 A.2d 68, 75 (R.I. 2001)). The abuse of discretion standard is the most deferential to trial court decisions and it is a difficult to standard for an appellant to overcome. See Amanda Peters, The Meaning, Measure, and Misuse of Standards of Review, 13 Lewis & Clark L. Rev. 233, 243 (2009); see also Arneson v. Arneson, 670 N.W.2d 904, 910 (An abuse of discretion is a "fundamental error of judgment, a choice outside the range of permissible choices, a decision, which, on full consideration, is arbitrary or unreasonable.").

This Panel finds our Supreme Court's holdings in these matters to be instructive. Here, the hearing magistrate was only under a duty to inform Appellant of the statutory fine to be imposed. However, the hearing magistrate took the added step of warning the Appellant of a license suspension. See People v. Forbes, 743 N.Y.S.2d 676, 677 (2002) (revocation of defendant's license to operate a motor vehicle was a collateral consequence of his conviction and judge was not required to inform defendant of such a consequence). The Appellant, here, has

failed to carry her all important burden that the plea was not given knowingly and voluntarily. Also, here, it cannot be stated that the hearing magistrate abused his discretion in denying Appellant's Motion to Vacate the judgment entered against her.

C. Compliance with Rule 18

Appellant next contends that the hearing magistrate did not comply with Rule 18 of our rules of procedure when he accepted the Appellant's plea of guilty. Rule 18(b) provides that "[a]fter imposing sentence the court shall advise the defendant of his or her right to appeal to an appellate panel of the traffic tribunal." Traffic Trib. R. P. 18(b). Notably absent from Rule 18(b) is whether a magistrate or judge of this Court must comport with the Rule 18(b) after a plea of guilty. Appellant contends that Rule 18(b) should be read together Rule 18(a), which addresses sentencing for both pleas and verdicts rendered after trial. See Traffic Trib. R. P. 18(a) ("Upon plea or verdict of guilty, sentence shall be imposed without unreasonable delay.").

Here, based upon a careful review of the record, the hearing magistrate did not inform the Appellant regarding her appellate rights after he accepted her plea of guilty. However, this Panel concludes that the hearing magistrate's failure to so instruct the Appellant does not constitute error. The Panel is not persuaded that Rule 18(a) and (b) need to be read in conjunction with one another as the Appellant so contends. Instead, this Panel holds that Rule 18(b) does not require a member of this Court to instruct a motorist regarding their appellate rights after a plea of guilty.

Instructive to this Court's analysis is Superior Court Rule of Criminal Procedure 32(a)(1) and (2). Both subsections of that rule are remarkably similar to our Rule 18(a) and (b), with Rule 32(a)(2) being similar to Rule 18(b). However, there is one notable difference in Rule 32(a)(2), which states that "[a]fter imposing sentence in a case which has gone to trial on a plea of not guilty, the court shall advise the defendant of his or her right to appeal. . . ." Super. Ct. R. 32

(a)(2). In interpreting this rule, our Supreme Court has held that "a plea of guilty or nolo contendere to a charged offense operates as a waiver of the defendant's right to appeal his conviction of that offense." State v. Williams, R.I., 404 A.2d 814 (1979). This principle has been reaffirmed on several other occasions. See State v. Feng, 421 A.2d 1258, 1263 (R.I. 1980); State v. Soares, 633 A.2d 1356, 1356 (R.I. 1993). In the instant case, we hold that a plea of guilty acts as a waiver of a motorist's right to appeal that plea. Consequently, the hearing magistrate was not required to inform the Appellant of any appellate remedies after the Appellant plead guilty to the charge.

D. Interests of Justice

Finally, Appellant contends that the judgment should be vacated in the interests of justice. Specifically, Appellant asserts that suspension of her driver's license will deprive her of the ability to continue earning a living as a traveling salesperson.

This Panel is not persuaded by Appellant's argument. This Court is empowered to suspend motorist's license. See G.L. 1956 § 31-41.1-6 ("A judge or magistrate may include in the order the imposition of any penalty authorized by any provisions of this title for the violation, including, but not limited to, license suspension."). Moreover, the sentence imposed was within the statutory framework for this violation. Accordingly, the Court finds that it would not be in the interests of justice to contravene this legislative intent by vacating the sentence imposed by the hearing magistrate simply because it creates a hardship for the Appellant. Clearly, in an equity setting, the Appellant does not come to this Court with "clean hands."[1]

[1] It is important to note that the hearing magistrate determined that this was the fifteenth speeding violation the Appellant had.

Conclusion

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 was not affected by error of law and not in violation of statutory provisions. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.