

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

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:
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v.

**C.A. No. M19-0016
07409055477**

JULIAN HANCOX

DECISION

PER CURIAM: Before this Panel on November 27, 2019—Magistrate Kruse Weller (Chair), Associate Judge Almeida, and Associate Judge Parker, sitting—is Julian Hancox’s (Appellant) appeal from a decision of Chief Judge Frank Caprio (Trial Judge) of the Providence Municipal Court, defaulting Appellant on a Motion to Vacate a Default Judgment. Appellant appeared before this Panel represented by counsel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

I

Facts and Travel

The following facts and travel are derived from Appellant’s Notice of Appeal and a memorandum submitted by Appellant’s counsel, as the circumstances in the Providence Municipal Court did not result in a transcript being generated. On October 11, 2009, the Providence Police Department charged Appellant with two felonies and issued Appellant three traffic violations. Appellant’s Mem. ¶ 1, Nov. 25, 2019. Appellant was subsequently acquitted of both felony charges after a jury trial, but the traffic violations remained outstanding in the Providence Municipal Court. *Id.* Neither Appellant nor his counsel was aware of the outstanding traffic violations. *Id.* Consequently, Appellant failed to appear before the Providence Municipal Court and was defaulted in 2009. *Id.* Appellant remained unaware of the

default judgment from 2009 to 2019. Appellant’s Notice of Appeal at 1.

In 2019, Appellant, who holds a Connecticut driver’s license, discovered that his privileges to drive in Rhode Island were suspended because of the default judgment from ten years ago. *Id.* It was at this time that Appellant became aware of the three traffic violations and the resulting default due to his failure to appear from ten years prior. *Id.* Appellant subsequently filed a Motion to Vacate in the Providence Municipal Court, which was scheduled for August 20, 2019 at 8:00 a.m. *Id.*

On August 20, 2019, Appellant arrived at 9:00 a.m. at the Providence Municipal Court to argue his Motion to Vacate *pro se*. Appellant’s Mem. ¶ 2, Nov. 25, 2019. Appellant mistakenly believed that court hearings began at that time because that is when court begins in his home state of Connecticut. Appellant’s Notice of Appeal at 1. However, upon arriving, Appellant found the courtroom doors were locked. *Id.* A court clerk informed Appellant that he would not be able to enter the courtroom because court began at 8:00 a.m. *Id.* The Trial Judge then defaulted Appellant on his Motion to Vacate for failing to appear. *Id.*

Thereafter, Appellant filed this timely appeal and appeared before this Panel, now represented by counsel. 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 Mutual Insurance Company 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 *Environmental Science Corporation 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 avers that the Trial Judge erred in sustaining the charged violation. Specifically, Appellant asserts that the Trial Judge's decision was “[a]rbitrary or capricious or

characterized by abuse of discretion or clearly unwarranted exercise of discretion” because Appellant was prejudiced by being denied access to the court to argue his Motion to Vacate. *See* § 31-41.1-8(f)(6).

It is well-settled that “[a] defendant is in default if he omits to answer an action commenced against him[,] . . . [or] if, having answered, he neglects to appear at the time fixed for trial[.]” *Gregson v. Superior Court*, 46 R.I. 362, 365, 128 A. 221, 222 (1925). Here, Appellant failed to appear at the time fixed for his motion. Furthermore, although Appellant conveyed that he was unaware of the time the Providence Municipal Court started because he never received the tickets associated with his 2009 traffic violations, Appellant’s counsel conceded that the hearing date and time of 8:00 a.m. was listed on the form that Appellant completed when he filed his Motion to Vacate. Consequently, Appellant was placed on notice as to the time of day his August 20, 2019 hearing was scheduled in the Providence Municipal Court.

For the aforementioned reasons, the Trial Judge did not abuse his discretion in defaulting Appellant for failing to appear.

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 "[a]rbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." *See* § 31-41.1-8(f)(6). 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)

Associate Judge Lillian M. Almeida

Associate Judge Edward C. Parker

DATE: _____