

**STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS
PROVIDENCE, Sc.**

**DISTRICT COURT
SIXTH DIVISION**

Mark Broadbent :
:
v. :
:
State of Rhode Island :
(RITT Appeals Panel) :

A.A. No. 2018 - 114

ORDER

This matter is before the Court pursuant to § 8-8-8.1 of the General Laws for review of the Findings and Recommendations of the Magistrate.

After a de novo review of the record and the memoranda of counsel, the Court finds that the Findings & Recommendations of the Magistrate are supported by the record, and are an appropriate disposition of the facts and the law applicable thereto.

It is, therefore, ORDERED, ADJUDGED AND DECREED, that the Findings and Recommendations of the Magistrate are adopted by reference as the Decision of the Court and the decision rendered by the appeals panel is hereby AFFIRMED.

Entered as an Order of this Court on this 27th day of February, 2018.

By Order:

_____/s/_____
Stephen C. Waluk

Enter:

_____/s/_____
Jeanne E. LaFazia
Chief Judge

STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS
PROVIDENCE, Sc. DISTRICT COURT
SIXTH DIVISION

Mark Broadbent :
 :
v. : A.A. No. 2018-114
 : (M18-00001)
State of Rhode Island : (17-402-507007)
(RITT Appeals Panel) :

FINDINGS & RECOMMENDATIONS

Ippolito, M. In this case Mr. Mark Broadbent urges that an appeals panel of the Rhode Island Traffic Tribunal (RITT) erred when it dismissed his appeal from a conviction for a civil traffic violation — “Obedience to traffic control devices” under G.L. 1956 § 13-13-4 — because he failed to present a transcript of his trial, as required by Rule 21 of the Traffic Tribunal Rules of Procedure.

Jurisdiction for the instant appeal is vested in the District Court by G.L. 1956 § 31-41.1-9; the applicable standard of review is found in subsection 31-41.1-9(d). This matter has been referred to me for the

making of findings and recommendations pursuant to G.L. 1956 § 8-8-8.1. For the reasons I will explain in this opinion, I have concluded that the decision of the appeals panel should be AFFIRMED. I so recommend.

I

Facts and Travel of the Case

We may glean from the electronic record in this case, that on November 16, 2017, Mr. Broadbent was cited by a member of the Cranston Police Department for a violation of G.L. 1956 § 31-13-4, “Obedience to traffic control devices,” allegedly committed on Oaklawn Avenue at about 3:38 p.m. *See* Summons No. 17-402-507007 (in *Electronic Record (ER)*, at 32). He entered a plea of not guilty at his Municipal Court arraignment on January 9, 2018 and a trial was conducted on January 25, 2018, at which time Mr. Broadbent was found guilty of the charge. *See* Municipal Court’s “Case Information and Work Sheet,” *ER* at 21.

The same day, he filed an appeal and requested an audio recording of his trial. *See* Notice of Appeal, *ER* at 26-27, and untitled information sheet regarding transcript preparation, *ER* at 20. On May 31, 2018, a clerk of the Traffic Tribunal sent Mr. Broadbent a letter, the body of which read as follows:

An appeal in the above-entitled matter was filed with the Rhode Island Traffic Tribunal on January 25, 2018

and the recording of your hearing was provided to you on March 28, 2018. At that time, you were advised the appeal procedure required you to file a signed transcript of the hearing with this office within forty five days.

As of the above date, we have not received your transcripts, and accordingly, unless just cause can be shown, your appeal will be scheduled for dismissal on June 6, 2018 at 2:00 pm in Courtroom 2B. Consequently, the original sanctions imposed will remain in effect. You will be responsible for payment of fines and any other sanctions that were previously imposed.

Please be sure to let us know if we can be of any assistance to you. You can reach us at (401) 275-2727.

Electronic Record, at 15.

This matter was indeed heard on June 6, 2018 by an appeals panel composed of Magistrate Abbate (Chair), Judge Almeida, and Magistrate Noonan. I have had occasion to listen to the audio of this proceeding personally. It was very brief. To my hearing, the case was called by the Chairman, who stated on the record that the appeal has not been perfected because the Appellant has not provided a transcript of the trial to the appeals panel in a timely manner; Mr. Broadbent's appeal was therefore "administratively dismissed." Since there was no response to the call of his name, I must conclude that Mr. Broadbent was not present.

On the next day, June 7th, the Tribunal received a letter from

Mr. Broadbent in response to its May 31st communication. Dated June 6, 2018, the letter stated that he never received the audio of the trial. He asked that the case be dismissed, because he was “entitled to due process” and the case “has not been handled in a timely manner.” *ER*, at 14.

One week later, Magistrate Abbate entered an Order on behalf of the panel, the second paragraph of which states:

Our rules require that an appellant submit a “transcript necessary for the determination of the appeal.” Traffic Trib. R. P. 21(e). An appellant must submit a transcript within forty-five days “after the filing of the notice of appeal unless the time is extended by an Order.” *Id.* In the instant matter, Appellant did not provide the members of this Panel with a transcript of the proceeding that was before the Trial Magistrate. *Id.* Pursuant to Rule 21(g) of the Traffic Tribunal Rules of Procedure, this appeal has not been perfected by submitting the requested transcript. Therefore, this Panel will issue an “order[] of dismissal of appeal for failure to comply with these rules ... upon the court’s own motion.” Traffic Trib. R. P. 21(e).

Order, June 13, 2018, at 1.

The Order then noted that, according to our Supreme Court, the “dismissal of [an] appeal for failure to submit a transcript ‘is a drastic remedy which should only be employed in extreme situations.’ ” *Order*, at 1 (quoting *Medeiros v. Hilton Homes, Inc.*, 122 R.I. 406, 410, 408 A.2d 598,

600 (1979)). Nevertheless, the appeals panel concluded that it had “no choice but to dispose of this appeal on a procedural deficiency rather than on the merits.” *Order*, at 1-2 (citing *Gosset v. Reid*, 764 A.2d 138, 140 (R.I. 2001)). And so, Mr. Broadbent’s appeal was denied and the charges sustained pursuant to Rule 21(g).

Appellant filed a further appeal to the District Court on June 20, 2018. At that time, he repeated his assertion that he had could not submit a transcript because he never received a copy of the trial audio from the RITT staff. *See ER*, at 6. Subsequently, a briefing schedule was set. Mr. Broadbent’s memorandum was due on August 17, 2018; the City’s on September 17, 2018. To date, neither the Appellant nor the City has filed their memoranda. Accordingly, we shall proceed to decide this case without further delay.

II Standard of Review

The standard of review which must be employed in this case is enumerated in G.L. 1956 § 31-41.1.-9(d), which states as follows:

(d) *Standard of review.* The judge of the district court shall not substitute his or her judgment for that of the appeals panel as to the weight of the evidence on questions of fact. The district court judge may affirm the decision of the appeals panel, or may remand the case for further proceedings or reverse or modify the

decision if the substantial rights of the appellant have been prejudiced because the appeals panel's findings, inferences, conclusions or decisions are:

(1) In violation of constitutional or statutory provisions;

(2) In excess of the statutory authority of the appeals panel;

(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.

This provision is a mirror-image of the standard of review found in G.L. 1956 § 42-35-15(g) — a provision of the Rhode Island Administrative Procedures Act (APA). Accordingly, we are able to rely on cases interpreting the APA standard as guideposts in this process. Under the APA standard, the District Court “... may not substitute its judgment for that of the agency and must affirm the decision of the agency unless its findings are ‘clearly erroneous.’” *Guarino v. Dep’t. of Soc. Welfare*, 122 R.I. 583, 584, 410 A.2d 425 (1980)(citing Gen. Laws 1956 § 42-35-15(g)(5)). See also *Link v. State*, 633 A.2d 1345, 1348 (R.I. 1993).

And our Supreme Court has reminded us that reviewing courts lack “the authority to assess witness credibility or to substitute its

judgment for that of the hearing judge concerning the weight of the evidence on questions of fact.” *Link*, 633 A.2d at 1348 (citing *Liberty Mutual Ins. Co. v. Janes*, 586 A.2d 536, 537 (R.I. 1991)). This Court’s review “... is confined to a reading of the record to determine whether the judge’s decision is supported by legally competent evidence or is affected by an error of law.” *Link*, 633 A.2d at 1348 (citing *Envtl. Sci. Corp. v. Durfee*, 621 A.2d 200, 208 (R.I. 1993)).

III Applicable Law

Rule 21 of the Traffic Tribunal Rules of Procedure states, in pertinent part:

Rule 21. Appeals —

(a) — (c) ...

(d) Record on Appeal. Except as otherwise provided in subsection (e), the original papers and exhibits filed in the court during trial and the transcript of proceedings, if any, shall constitute the record on appeal of all sentences or judgments imposed in the adjudication of civil violations of the motor vehicle code and other applicable statutes. The appellant shall be responsible for obtaining a written transcript of the hearing(s) that formed the basis for the judgment being appealed. Policies and procedures regarding the ordering, payment, and delivery of transcripts shall be promulgated by the Administrative Office of State Courts. The most current version of a Request for

Recording form is located on the Judiciary's website at www.courts.ri.gov under the heading of Public Resources, Forms.

(e) Record on Transmission. The record on appeal, including the transcript necessary for the determination of the appeal, shall be transmitted to the Traffic Tribunal within forty-five (45) days after the filing of the notice of appeal unless the time is extended by an order entered under subdivision (f) of this rule.

(f) Extension of Time for Transmission of the Record. The Traffic Tribunal may extend the time for transmitting the record. The request for extension must be made within the time originally prescribed or within an extension previously granted, and the Traffic Tribunal shall not extend the time to a day more than sixty (60) days from the date of filing of the first notice of appeal.

(g) Orders for Dismissal. From the time of the filing of notice of appeal, the Traffic Tribunal shall have jurisdiction to supervise the course of said appeal and to promulgate orders of dismissal of appeal for failure to comply with these rules, either upon motion of a party or upon the court's own motion.

IV

Analysis

As stated *ante*, we have not dismissed this appeal based on Mr. Broadbent's failure to submit his memorandum within the allotted time period, as we could have. Neither did the appeals panel dismiss his appeal because he did not appear at oral argument to press his appeal, as it could

have. And so, we will address the reason why the appeals panel did dismiss his appeal. Doing so, I have concluded that the panel's dismissal of Mr. Broadbent's appeal should be affirmed.

The Order which the Chair of the Appeals Panel entered on June 13, 2018 dismissing Mr. Broadbent's appeal stated, as its basis, that Appellant had failed to submit a transcript of the proceedings before the trial magistrate. In his notice of appeal, he urges that he could not have a transcript made because he never *received* the recording from the Tribunal. Given this conflict, I looked into the electronic records which are attached to the summons in this case (17-402-507007) and discovered a docket entry dated March 27, 2018, which states —

Municipal Court Records/Documents Received records received from
municipal court (cf) cd received/ motorist informed that cd c

See Electronic Record for case no. 17-402-507007, "Events tab," attached as "Appendix 1." And the next day, March 28th, has the following entry —

Miscellaneous Court Documents motorist picked up recording for appeal
dw

Ibid.

Now, while these clerk's notes were not made under oath, they are nonetheless entitled to credence under the presumption of regularity, which our Supreme Court has often recognized. *See Nocera v. Lembo*, 111

R.I. 17, 20, 298 A.2d 800, 802-03 (1973) (deputy sheriff's return of service entitled to presumption of regularity, as in federal system); *Prudential Investment Corporation v. Porcaro*, 115 R.I. 117, 119 n.2, 341 A.2d 720, 721 n.2 (1975)(recognizing *Nocera*); *State v. Perry*, 112 R.I. 719, 722, 315 A.2d 60, 62 (1974) (in prosecution for failure to appear in answer to a summons, presumption of *judicial* regularity justified trial judge in presuming that the District Court properly convened and that its session was regularly held at the time indicated by its process); *State v. Palmer*, 95 R.I. 6, 182 A.2d 324 (1962).

In weighing the application of the presumption, it is also significant that Mr. Broadbent, in his notice of appeal, did not explain why he did not appear before the appeals panel on June 6, 2018 — when he could have explained why he did not submit a transcript and requested an extension. Given his failure to do so, I see no reason why the clerk's note should not be given credence. Therefore, the appeals panel's dismissal of Mr. Broadbent's appeal was lawful and proper under Rule 21.

V

Conclusion

Upon careful review of the record, I find that the appeals panel's June 13, 2018 order of dismissal was based upon lawful procedure and not

characterized by an abuse of discretion or an unwarranted exercise of discretion. I therefore recommend that the decision of the appeals panel be AFFIRMED.

/s/

Joseph P. Ippolito
MAGISTRATE

February 27, 2019



- Case Manager Home
- myOdyssey
- Searches
 - Find a Case
 - Find a Party
 - Find a Hearing
 - Find a Citation
- Protection Orders
 - Find a Protection Order
- Court Administration
 - View Calendar
 - Find Available sessions
 - Fees & Finances
 - Find an Account
- Bonds
 - Find a Bond
- Warrants
 - Find a Warrant
- Workflow
 - Queues
 - Popular Queue
 - Schedule Queue Job
- Reports
 - User Preferences
 - Customize Navigation Bar
 - Address Type
 - Forms Printer
 - Image Printer
 - Spelling Checker
- Administration

17402507007	State of Rhode Island v. MARK BROADBENT	Type: Wobaton
Events	Date	Type and Comment
	11/17/2017	Citation Filed
	11/17/2017	Municipal Court Ticket
	11/17/2017	E-Citation PDF
	01/12/2018	Notice of Next Court Date notice of trial date (cf)
	01/25/2018	Municipal Court Appeal Filed
	01/25/2018	Municipal Court Case Information Request for records mailed / copy of request and postage entered (cf)
	01/25/2018	Notice Sent Notice of Appeal mailed/ copy of notice and postage entered (cf)
	03/27/2018	Municipal Court Records/Documents Received records received from municipal court (cf) CD received / motorist informed that CD c
	03/27/2018	Judgment Card Municipal court case information and worksheet entered (cf)
	03/28/2018	Miscellaneous Court Documents motorist picked up recording for appeal dw
	05/31/2018	Notice Sent Certification of Adm. Dismissal mailed, copy of letter entered (cf)
	06/06/2018	Judgment Card Adm. Dismissal (cf)
	06/06/2018	Appeal Denied Adm. Dismissal (cf)
	06/07/2018	Miscellaneous Court Documents letter redevd from motorist (cf) copy of letter and postage entered (cf)
	06/14/2018	Miscellaneous Court Documents Order mailed/ copy of letter and postage entered (cf)
	06/20/2018	Appeal to District Court
	06/20/2018	District Court Documents District Court Certification entered (cf)
	06/20/2018	Notice Sent Notice of District Court Appeal entered (cf)
	06/21/2018	Miscellaneous Court Documents Recording of Appeal mailed to District Court, copy of postage entered (cf)

Municipal Court Ticket - This case is not eligible for payment.

Appendix 1