

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

**DISTRICT COURT
SIXTH DIVISION**

State of Rhode Island ex. rel.	:	
Town of Portsmouth	:	
	:	A.A. No. 2016 – 128
v.	:	(C.A. No. T15-0030)
	:	(16-304-502318)
Robert Faulkner	:	
(RITT Appeals Panel)	:	

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, the Court finds that the Findings and 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 instant petition for review is DISMISSED for MOOTNESS.

Entered as an Order of this Court at Providence on this 16th day of March, 2017.

By Order:

_____/s/_____
Stephen C. Waluk
Chief Clerk

Enter:

_____/s/_____
Jeanne E. LaFazia
Chief Judge

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FINDINGS AND RECOMMENDATIONS

Ippolito, M. On October 13, 2016, Mr. Robert Faulkner, the Appellant, was cited by an officer of the Portsmouth Police Department with two civil traffic violations: speeding and refusal to submit to a chemical test.¹ He was summoned to be present in the Rhode Island Traffic Tribunal to be arraigned on these charges on October 21, 2016.² At Appellant’s arraignment, a magistrate of the Traffic Tribunal, after reviewing a report submitted by the

¹ See Summons No. 16-304-502318, in the electronic record of this case.

² Id.

citing officer, ordered a preliminary suspension of Mr. Faulkner's operator's license, Appellant's argument that the report was defective notwithstanding.³ Nevertheless, after Mr. Faulkner stated his desire to file an immediate appeal of the suspension order, his request for a stay of the suspension order was granted by the Court.⁴

I TRAVEL OF THE CASE

Mr. Faulkner's appeal of the suspension order was heard by an RITT appeals panel on November 16, 2016.⁵ However, the appeals panel never reached the merits of Mr. Faulkner's arguments regarding the inadequacy of the report. Instead, in an order dated November 18, 2016 entered by the Chair, the panel found that the preliminary order of suspension was interlocutory in nature and not subject to immediate appeal, under Rule 21(a) of the Rhode Island Traffic Tribunal Rules of Procedure.⁶ Accordingly, Mr.

³ Arrestment Transcript, October 21, 2016, at 3-4. Preliminary suspensions of operator's licenses are authorized in refusal cases by Gen. Laws 1956 § 31-27-2.1(b).

⁴ Arrestment Transcript, October 21, 2016, at 4.

⁵ State v. Robert Faulkner, C.A. No. T15 - 30, (Traffic Trib. 11/18/16), at 1.

⁶ Id., at 1-2.

Faulkner's appeal was denied, the stay previously ordered was vacated, and the suspension was ordered to take effect.⁷

On November 29, 2016, Mr. Faulkner filed the instant petition for review, urging that the appeals panel erred when it held that the magistrate's order of preliminary suspension was not immediately reviewable.⁸

Following this Court's regular process, a conference regarding this matter was conducted by the undersigned on January 24, 2017. At that time, Mr. Faulkner presented his memorandum of law to the Court; the State was given leave to file a responding memorandum, which it did on February 13, 2017. At this juncture, this Court was prepared to address the question of whether preliminary orders of suspension are immediately appealable.

However, on February 28, 2017, the instant citation was resolved at the

⁷ ORDER, Faulkner, C.A. No. T15-0030, ante, at 2.

⁸ See Notice of Appeal, November 29, 2016, in the electronic record.

In addition to the petition filed with this Court, Mr. Faulkner filed a Petition for Writ of Certiorari with the Rhode Island Supreme Court, challenging the appeals panel's ruling that the preliminary suspension was non-reviewable; this was accompanied by a Motion for Stay of the suspension order, which was denied. Order, State of Rhode Island ex. rel. Town of Portsmouth v. Robert Faulkner, M.P. No. 2016 - 0338, (R.I. 11/23/16), at 1-2. The Petition for Writ of Certiorari was denied by the Court in an order dated December 27, 2016. ORDER, State of Rhode Island ex. rel. Town of Portsmouth v. Robert Faulkner, M.P. No. 2016 - 0338, (R.I. 12/27/16).

Traffic Tribunal, by plea to the refusal charge; appropriate penalties were imposed, including a six-month suspension of his operator's license.⁹

II JUSTICIABILITY

It appears that the instant case no longer satisfies the requirement of justiciability, in that it has become moot. In Foster-Glocester Regional School Committee v. Board of Review, our Supreme Court defined mootness thusly:

It is well established that a case is moot “if the original complaint raised a justiciable controversy, but events occurring after the filing have deprived the litigant of a continuing stake in the controversy.” In re New England Gas Co., 842 A.2d 545, 553 (R.I. 2004)(quoting Cicilline v. Almond, 809 A.2d 1101, 1105 (R.I. 2002)(per curiam)).¹⁰

Clearly, the case before us became moot on February 28, 2017; for, any ruling this Court might now make on the question of the appealability of the preliminary order of suspension will have no effect on Appellant — since Mr. Faulkner's license has now been suspended as part of the sentence which was imposed by the magistrate of the RITF. Accordingly, the instant case must be

⁹ See “Refusal Order,” in electronic record of State v. Faulkner, No. 16-304-502318.

¹⁰ Foster-Glocester Regional School Committee v. Board of Review, 854 A.2d 1008, 1013 (R.I. 2004).

regarded as moot.

III
CONCLUSION

Accordingly, I hereby recommend that the instant petition for review of the decision of the appeals panel be **DISMISSED** for **MOOTNESS**.

_____/s/_____
Joseph P. Ippolito
Magistrate

March 16, 2017