

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC

DISTRICT COURT  
SIXTH DIVISION

STATE OF RHODE ISLAND

VS.

LOUIS L. VINAGRO

A.A. NO. 02-71

JUDGMENT

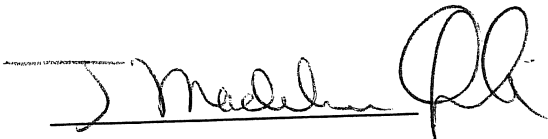
This cause came on before Quirk, J. on an appeal from the Rhode Island Traffic Tribunal Appeals Panel, and upon review of the record, and a decision having been rendered, it is

ORDERED AND ADJUDGED

The appeal is denied and dismissed and the decision of the Appeals Panel of the Rhode Island Traffic Tribunal is affirmed.

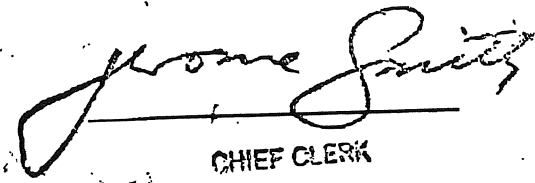
Dated at Providence, Rhode Island, this 2nd day of February, 2004.

ENTER:



A handwritten signature in cursive script, appearing to read 'J. Madeline Pl', written over a horizontal line.

BY ORDER:



CHIEF CLERK

A handwritten signature in cursive script, appearing to read 'Jerome Smith', written over a horizontal line. Below the signature, the words 'CHIEF CLERK' are printed in a bold, sans-serif font.

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**  
**PROVIDENCE, SC** **DISTRICT COURT**  
**SIXTH DIVISION**

**STATE OF RHODE ISLAND** :  
:  
**V.** : **A.A. 02-71**  
:  
**LOUIS L. VINAGRO** :

**DECISION**

**QUIRK, J.** This matter is before the Court on the State of Rhode Island’s (State) appeal from the decision of the Appeals Panel sustaining the ruling of a trial judge of the Rhode Island Traffic Tribunal dismissing the charge of refusing to submit to a chemical test in accordance with R.I.G.L. § 31-27-2.1. For the reasons which follow, the Court sustains the decision of the Appeals Panel and denies and dismisses the appeal with prejudice.

**FACTS AND TRAVEL**

A three day trial was held before a single judge of the Rhode Island Traffic Tribunal. At the conclusion of the trial, the charge of refusal to submit to a chemical test was dismissed on the ground “that the arresting officer had

information that the first breath sample given by the defendant was inadequate and he failed to convey that information to the defendant before requesting additional samples.” (State’s brief, p.1) A timely appeal to the Appeals Panel was filed by the State asserting it was error of law for the judge to mandate an officer to advise a suspect of the inadequate sample to sustain a refusal charge. The State noted at the time the appeal was filed that it would supplement its reasons for appeal with a memorandum of law after review of the court transcripts.

The appeal was scheduled to be heard on December 19, 2001. This was continued to February 6, 2002 at the State’s request to allow for the transcribing of approximately seventeen (17) double sided tapes by the State. This was not completed for the February 6, 2002 hearing. Instead, the State presented the Appeals Panel with a transcript of the judge’s decision indicating a review of that decision was all that was necessary to show the error of law made by the trial judge and to sustain the State’s appeal. It was the State’s opinion that transcription and review of the entire trial proceedings was unnecessary and burdensome.

The Appeal’s Panel rejected the State’s position and ordered the State to provide defendant Vinagro with a complete copy of the trial transcript. The hearing was continued to May 8, 2002. In response, the State filed a “Motion for Relief of Judgment or Order” with District Court Chief Judge Albert DeRobbio seeking relief from the “complete transcript” order. The State was notified by the

District Court that this “motion” would not be heard by the court until the issue was presented to the District Court by way of administrative appeal.

The hearing was held before the Appeals Panel on May 8, 2002, although one member present on February 6, 2002 was not present and had been replaced with a new member. A transcript of the entire trial was not presented. Instead, the State restated its position that the production of the entire transcript was not necessary to sustain its appeal, that the order requiring a full transcription was onerous and burdensome, and that the second Appeals Panel as newly constituted should enter a written order reflecting the “order” of the first Appeals Panel to allow the State to file an appeal of that order to the District Court.

The Appeals Panel found the State’s failure to provide a complete transcript for the hearing was dispositive of the appeal. Citing Kalooski v. Albertsen-Frankenthal AG, 770 A.2d 831 (R.I. 2001) the Appeals Panel noted “if the appealing party fails to provide us with a sufficient transcript, we cannot perform a meaningful review and have no choice but to uphold the trial justice’s findings.” Id. at 833. The Appeal Panel found the State had “implicitly asserted that a transcript was required for a proper review” (due to prior assertions) “and the prior panel agreed” (Appeal Board decision, p.6). On this basis the Appeals Panel denied the State’s appeal.

Notice of the determination of the Rhode Island Traffic Tribunal Appeals Panel was mailed to the parties on June 21, 2002. The State filed a Complaint in District Court seeking judicial review of that determination on July 2, 2002.

Defendant Vinagro's answer contained an affirmative defense asserting the Complaint should be denied and dismissed on the ground that it was filed more than ten (10) days after the Appeals Panel entered its final judgment.

### **DISCUSSION**

Rhode Island General Laws § 31-41.1-9 states:

No appeal shall be reviewed if it is filed more than ten (10) days after notice of the determination appealed from has been given. Notice shall be complete upon mailing.

Rule 21 of the Rules of Procedure for the Traffic Tribunal also requires that "notice of appeal shall be filed within ten (10) days after the entry of the appellate judgment."

Accordingly, in the present case, the ten (10) day period proscribed would begin on June 22, 2002 and end on July 1, 2002. The Complaint filed by the State seeking judicial review in District Court was filed on July 2, 2002 and, therefore, after the expiration of the appeal period.

The State alleges in its brief that:

". . . the appeals office sent out the written decision of the second panel on a Friday. As such, the mail was not processed by the Attorney General's Office until the following Monday. The Special Assistant did not receive a copy of the decision until late on Tuesday. Therefore, four of the ten days allotted for appeal were gone before the plaintiff had an opportunity to review the decision. The plaintiff then drafted a detailed reply and submitted it to the court without further delay. Additionally, the State sought relief originally through a motion and put the defendant on notice of its intent to appeal the complete transcript order. Lastly, the defendant cites no prejudice suffered by it because of the delay. (State's Brief 8-9.)

The State acknowledges receipt and review of the decision within the appeal period. No motion seeking an extension of the appeal period was filed

and the late filing was not addressed until the State's brief was filed approximately two months later.

The ten day appeal period set by § 31-41.1-9 is jurisdictional and the "District Court does not possess any statutory authority to entertain appeals that are filed out of time." Considine v. Rhode Island Dept. of Transportation, 564 A.2d 1343 (R.I. 1989). This Court is not authorized to enlarge the time period here.

Since the State's complaint was filed after the expiration of the appeal period, and this court is not authorized to enlarge the appeal period, this court does not have jurisdiction to hear the State's appeal. Therefore, the appeal is denied and dismissed and the decision of the Appeals Panel of the Rhode Island Traffic Tribunal is affirmed.