STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT **RHODE ISLAND TRAFFIC TRIBUNAL**

STATE OF RHODE ISLAND	**:**	
	:	
v.	**:**	**C.A. No. T16-0027**
	:	**87-409-X68509; 90-409-Q07778;**
REYNALDO RODRIGUEZ	**:**	**91-002-020234; 91-409-Q08751;**
	:	**91-409-016636; 91-409-017276;**
	:	**91-409-017775; 92-409-O97291**

DECISION

PER CURIAM: Before this Panel on January 18, 2017—Magistrate Abbate (Chair), Magistrate Kruse Weller, and Judge Almeida, sitting—is Reynaldo Rodriguez's (Appellant) appeal from a decision of Chief Magistrate Guglietta (Trial Magistrate), denying the Appellant's Motion for an Ability to Pay Hearing. The Appellant appeared before this Panel represented by Professor Andrew Horwitz (Counsel) of the Roger Williams University Law Clinic. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On October 17, 2016, Counsel filed a Motion for an Ability to Pay Hearing on behalf of three motorists regarding past adjudicated violations years ago.[1] Tr. at 1; 3:11-14. At hearing, Counsel argued that all three individuals, whose licenses were suspended for failure to pay traffic fines, should be granted an Ability to Pay Hearing before the court. Id. at 3:19-4:2. Counsel based his argument on a recent Rhode Island Supreme Court amendment to the Rhode Island Traffic Tribunal Rules of Procedure Rule 5(b). Id. at 3:19-4:2. The amended Rule 5(b) provides:

[1] Ms. Benton and Mr. Dalomba, whose cases were heard at the same time and were represented by Counsel, did not join Appellant in his appeal. See Tr. at 10:13; 32:23.

> "Payment is due immediately following the disposition of the case. If payment is not made in full, the court shall set a date for a court hearing for a determination of the defendant's ability to pay." Traffic Trib. R. P. 5(b).

The Supreme Court issued the order changing Rule 5(b) on July 17, 2016. Id. at 23:5-8. Counsel explained that the amendment to the Traffic Tribunal Rules of Procedure was meant "to create a process in this court where somebody is not suspended purely on the basis of their inability to pay." Id. at 4:14-22. Instead of suspending those who do not have the ability to pay for fines imposed by the Traffic Tribunal, Counsel argued that the Supreme Court intended the rule to "create a scenario where somebody can come before the Court . . . [and] have a hearing" before their license is suspended for failure to pay. Id.

Although the original appeal consolidated several cases, only one of the original Appellants, Reynaldo Rodriguez, appealed the Trial Magistrate's decision to this Panel. Appellant's Motion for an Ability to Pay hearing and current appeal were based on nonpayment of eight traffic violations. Id. at 31:8-11. The most recent of those tickets was issued in 1996. Id. at 31:15-16.

Counsel informed the Court that the appellant is indigent and could potentially benefit from an Ability to Pay Hearing. Id. at 32:9-10. Counsel explained that Appellant "has no ability to pay his outstanding fines which are in excess of 3,000 dollars. Id. It was pointed out that Appellant only receives income from social security disability payments and food stamps and currently resides in a subsidized apartment with his mother. Id. at 31:11-14.

During the hearing, Counsel informed the Court that he was not aware of any partial payments made by Appellant . Id. at 31:23-24. However, Counsel did state that the Appellant

went to Court several times and made "some requests about how to get out from under this substantial debt." Id. at 31:20-24.

After hearing Appellant's argument, the Trial Magistrate denied the motion. Id. at 23:8-24:2. He found that the amendments to Rule 5(b) are intended to have prospective application and applies only to cases heard after the Supreme Court issued the rule change to Rule 5(b). Id. at 19:1-3. The Trial Magistrate stated, "I don't believe it's appropriate that . . . pre-July 18th of 2016 [adjudications] be on the ability to pay hearing" calendar. Id. at 19:5-7. The Trial Magistrate further stated "[t]hat doesn't mean [he's] closed out. That doesn't mean we can't work something out. It doesn't mean [he] won't be heard." Id. at 19:7-10.

The Trial Magistrate also rejected Appellant's due process argument. Id. at 23:17-19. The Trial Magistrate noted that there is a show cause calendar at the Traffic Tribunal, at which Appellant has the ability to be heard regarding his inability to pay under a separate procedural rule. Id. at 23:17-24:2. The Trial Magistrate also discussed his practice of accommodating those who do not have the ability to pay their traffic fines. Id. at 25:4-14. Stating:

> "I will also say, for the record, so it's quite clear; I have extended numerous, numerous motorists, trying to work out an arrangement with them, so that they get their license reinstated. We've entered into settlement agreements, which I think is consistent with due process, in the spirit of what the Supreme Court has told us they want to do, and that calendar is still up and running and is still available to this Defendant and all the other Defendants that are here today." Id.

The Trial Magistrate then denied the Appellant's motion based on the fact that Rule 5(b) is not applicable to the relief sought and found that the motorist could seek relief under Traffic Tribunal Rule of Procedure 20. Id. at 23:8-24:2. Appellant filed a timely appeal of the Trial Magistrate's decision.

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:
>
> "(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 Mut. Ins. 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." Id. (citing Envtl. Sci. 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." Id. Otherwise, it must affirm the hearing judge's (or magistrate's) conclusions on appeal. See Janes, 586 A.2d at 537.

Analysis

Appellant urges this Appeals Panel to overturn the Trial Magistrate's decision on several grounds. He first argues that the Trial Magistrate's decision was based "upon unlawful procedure," as Rhode Island Traffic Tribunal Rule of Procedure 5(b) provides for an ability to pay hearing for all defendants who have not paid their fine. He further alleges that the Trial Magistrate's decision violated "constitutional provisions" by violating the Fourteenth Amendment's guarantee of equal protection and due process. Finally, the Appellant argues that the Trial Magistrate's decision was "clearly erroneous in view of the reliable, probative and substantial evidence on the whole record" and "[a]rbitrary or capricious." Section 31-41.1-8(f)(5)-(6).

In his decision, the Trial Magistrate found that there is an appropriate procedural rule that may provide an avenue for relief which the Appellant may pursue to seek relief from the prior judgment of his license suspension. Rule 20 of the Rhode Island Traffic Tribunal Rules of Procedure provides six reasons that any trial judge or magistrate may use to grant a party relief. Traffic Trib. R. P. 20. The rule, in its entirety, states:

> "The court may, upon motion or on its own initiative, relieve a party or a party's legal representative from a judgment or order for the following reasons:
>
> > "(a) Mistake, inadvertence, surprise, or excusable neglect;
> > "(b) Newly discovered evidence;
> > "(c) Fraud, misrepresentation, or misconduct of an adverse party;

> "(d) The judgment or order is void;
> "(e) The judgment or order has been satisfied, released, or discharged, or the judgment or order is no longer equitable that the judgment or order should have prospective application; or
> "(f) Any other reason justifying relief from the operation of the judgment, or order, including that relief is warranted in the interests of justice.
>
> "The motion shall be made within a reasonable time, and for reasons (a), (b), and (c) not more than one (1) year after the judgment or order was entered. The filing of a motion under this rule does not, in the absence of further action by the court, affect the finality of a judgment or order or suspend its operation." Id.

Sections (a), (b), and (c) may be argued only within a year of the final judgment or order, and therefore are inapplicable to the Appellant. Traffic Trib. R. P. 20(a)-(c). However, sections (d), (e), and (f) may be argued within "a reasonable time." Traffic Trib. R. P. 20(d)-(f). The Trial Magistrate found that Rule 20 provided an ample avenue for the Appellant to challenge his suspension for his inability to pay. Tr. at 23:8-24:2.

Plain Meaning and Application of Traffic Trib. R. P. 5(b)

Appellant argues that Traffic Trib. R. P. 5(b) shall afford him a hearing to determine if his license should be restored based on his financial inability to pay his outstanding fines. In pertinent part Rule 5(b) provides:

> "Payment is due immediately following the disposition of the case. If payment is not made in full, the court shall set a date for a court hearing for a determination of the defendant's ability to pay." Traffic Trib. R. P. 5(b).

In accordance with Rule 5(b), it is the practice of the Rhode Island Traffic Tribunal to schedule a court date for a "hearing for determining the defendant's ability to pay," prior to suspending the motorist's license if the defendant does not pay his or her fine in full immediately after adjudication. Traffic Trib. R. P. 5(b). Appellant argues that the recent amendment to Rule

5(b) should apply to all individuals whose licenses were suspended for failure to pay a fine imposed prior to the amendment of Rule 5(b). Appellant argues that the plain meaning of Rule 5(b) requires that an ability to pay hearing be afforded to all individuals whose licenses were suspended for failure to pay prior to the rule change. He alleges that the plain language of Rule 5(b), as amended, requires the Court to set an ability to pay hearing merely upon request, based on the operative language "shall" set a hearing." This Panel disagrees.

In this regard, our Supreme Court has stated, "[w]e have repeatedly applied our long-standing rules of statutory construction to construing court rules." Cashman Equip. Corp. v. Cardi Corp., 139 A.3d 379, 382 (R.I. 2016) (quoting State v. Brown, 88 A.3d 1101, 1110 (R.I. 2014)) (citations omitted). When the wording of the rule is clear and unambiguous, the Trial Magistrate is required to apply the rule's "plain and ordinary meaning." Whittemore v. Thompson, 139 A.3d 530, 540 (R.I. 2016) (quoting Cummings v. Shorey, 761 A.2d 680, 684 (R.I. 2000)) ("'[I]t is well settled that when the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meaning'").

Here, Rule 5(b)'s "plain and ordinary meaning" requires that a motorist pay his or her violation immediately after adjudication, and if he or she cannot pay it immediately after adjudication, then the court shall provide an ability to pay hearing prior to suspending a motorist's license based on their failure to pay the imposed fine. Traffic Trib. R. P. 5(b). Read in full, Rule 5(b) requires payment immediately after the case is completed. Id. The rule also requires the court to schedule an ability to pay hearing "immediately after" the adjudication, if the fine is not paid in full. It is important to note that in the case before this Panel, the Appellant's last adjudication requiring him to pay a fine was in 1996. Tr. at 31:15-16. Since the

Appellant failed to pay the associated fine, his license was suspended and has remained suspended since 1996; 20 years prior to the amendment of Rule 5(b).

Reading Rule 5(b) in its entirety, it is this Panel's opinion that the Rule requires that an ability to pay hearing must now be scheduled immediately after an adjudication only if the motorist does not pay an imposed fine in full after adjudication of the matter and shall not suspend a motorist's license merely based on the fact that that the motorist does not have the financial ability to pay the fine in full.

Therefore, this Panel finds that the plain meaning and intent of Rule 5(b), as amended, leads to the conclusion that redress under this rule is not applicable to the case at hand since the Appellant's matter was adjudicated over 20 years ago and his is license was suspended over 20 years ago and remains suspended. The clear intent of Rule 5(b), as amended, is to afford a motorist an "ability to pay hearing" ***prior*** to a license suspension, it is not intended as a procedural mechanism to rescind a license suspension imposed prior to the amendment to Rule 5(b), and most certainly not to rescind a license suspension imposed 20 years ago.

Furthermore, in order for this Rule to be applicable to the Appellant, this Panel must find that the amendment to Rule 5(b) has a retroactive application to cases adjudicated prior to the amendment. In this regard, our Supreme Court has held that it "is a general rule of construction that a statute is presumed to operate prospectively and will not be construed to be retroactive in its operation unless that intent clearly appears from the express language or by necessary implication" Capobianco v. United Wire & Supply Corp., 78 R.I. 309, 312, 82 A.2d 170, 172 (1951), citing Erie R. Co. v. Callwway 91 N.J. L. 32, 102 A.6 (Sup. Ct. 1971.) In the past, the Rhode Island Supreme Court has given lower courts guidance on when rules are to apply. See Super. Rule Civ. P. 86. Here, the Supreme Court stated that in an amendment to the Rule, the

new rules would apply to cases that proceeded after the effective date or that were in proceedings when the rule took effect. Id. Since no such guidance has been provided, this Panel must read the rule prospectively. Capobianco, 78 R.I. at 312, 82 A.2d at 172. Without direct order of the Supreme Court, the Rhode Island Traffic Tribunal cannot and should not hold an ability to pay hearing for every motorist whose license was suspended prior to the enactment of the amendment to Rule 5(b).

Given the facts of the case at hand, it is the opinion of this Panel that Rule 5(b), as amended, cannot be applied retroactively to rescind a license suspension that was suspended 20 years ago. Clearly to interpret this rule to have retroactive application would effectuate an absurd result and be tantamount to an enlargement of the Rule without justification.

Constitutional Issues

Appellant also urges this Panel to overturn the Trial Magistrate's decision on the grounds that the Trial Magistrate's ruling violated the Appellant's constitutional right to both due process and equal protection. Appellant primarily relies on Bearden v. Georgia, a United States Supreme Court case, which Appellant contends that the holding of Bearden supports his argument that it would be unconstitutional to find that Rule 5(b) is not applicable to those who had their licenses suspended before July 18, 2016 for failure to pay their traffic fines.

The Bearden case involved the revocation of an indigent person's probation "for failure to pay a fine and restitution." Bearden v. Georgia, 461 U.S. 660, 661 (1983). Bearden pled guilty to felony charges of burglary and theft, but instead of entering the plea, was given three

years of probation. Id. at 662. "As a condition of probation, the trial court ordered petitioner to pay a $500 fine and $250 in restitution." Id. Bearden made his first payment, but soon lost his job and notified the state that he was unable to make payments. Id. Three months later, Bearden appeared before the court, and his probation was suspended for failure to pay the required fine and restitution. Id. at 663.

Justice O'Connor wrote that "[d]ue process and equal protection principles converge in the Court's analysis in these cases." Id. at 665 (1983) (citing Griffin v. Illinois, 351 U.S. 12, 17 (1956)). Justice O'Connor further wrote:

> "the issue cannot be resolved by resort to easy slogans or pigeonhole analysis, but rather requires a careful inquiry into such factors as 'the nature of the individual interest affected, the extent to which it is affected, the rationality of the connection between legislative means and purpose, [and] the existence of alternative means for effectuating the purpose . . ..'" Id. at 666-67 (citing Williams v. Illinois, 399 U.S. 235, 260 (1970) (Harlan, J., concurring)).

The Bearden Court concluded "that in [probation] revocation proceedings for failure to pay a fine or restitution, a sentencing court must inquire into the reasons for the failure to pay." Id. at 672-73. If the probationer willfully did not pay the fines while having the ability to do so, "the court may revoke probation and sentence the defendant to imprisonment within the authorized range of its sentencing authority." Id. However, "[i]f the probationer could not pay despite sufficient bona fide efforts to acquire the resources to do so, the court must consider alternate measures of punishment other than imprisonment." Id.

The Bearden Court made clear that this decision was limited to probation revocation [and incarceration] Id. However, Appellant contends that this Panel should interpret it to apply to his individual situation and provide him with an Ability to Pay Hearing. Bearden does not support

this contention. Appellant has ample ability to appear before the court under Rule 20 and seek redress to rescind his license suspension.

Nonetheless, Appellant argues that his right to procedural due process has been infringed and, without an ability to pay hearing, he has no recourse to regain his license with such burdensome fines. The United States Supreme Court has stated that in cases of license suspensions, "licenses are not to be taken away without that procedural due process required by the Fourteenth Amendment." Bell v. Burson, 402 U.S. 535, 539 (1971). Our Supreme Court has recognized that a license can become a property right and that "the continued possession of a license may become essential in the pursuit of a livelihood." Leone v. Town of New Shoreham, 534 A.2d 871, 874 (R.I. 1987) (citing Bell, 402 U.S. at 539).

Both the United States and Rhode Island Supreme Courts have recognized the right to due process when a driver's license may be suspended. "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." Mathews v. Eldridge, 424 U.S. 319, 333 (1976) (quoting Armstrong v. Manzo, 380 U.S. 545, 552 (1965)). Relying on Bell, the Rhode Island Supreme Court held that license suspensions require both "notice and an opportunity for a hearing be afforded to the licensee prior to the suspension of the license becoming effective." Dana v. Petit, 120 R.I. 168, 172, 386 A.2d 189, 191 (1978) (citing Bell, 402 U.S. at 542). Due process requires, at its most basic, "notice and an opportunity to respond." Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 546 (1985).

Rule 5(b) created the right to an ability to pay hearing for those individuals who were adjudicated to have violated a traffic statute after July 18, 2016. Traffic Trib. R. P. 5. Due process requires that those adjudicated to have violated a traffic statute before July 18, 2016 must

be afforded an opportunity to come before the court at a meaningful time and in a meaningful manner. Mathews, 424 U.S. at 333 (1976).

In the case at hand, Rule 20 provides that opportunity for a hearing for motorists who had their license suspended for nonpayment prior to the rule change. Traffic Trib. R. P. 20. At such a hearing, a motorist may seek relief based on his or her inability to pay an outstanding fine. Simply because the hearing is provided for under a different rule does not mean that an individual's right to a hearing has been denied.

Appellant further claims that the Trial Magistrate's decision violated his equal protection rights. Section one of the Fourteenth Amendment to the United States Constitution provides that "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV. The Rhode Island State Constitution restates the U.S. Constitution nearly identically. R.I. Const. art. I, § 2. An aggrieved party may challenge a rule of procedure on equal protection grounds. See Ruden v. Parker, 462 N.W.2d 674, 675 (Iowa 1990) (holding a claim that a procedural rule failed because it did not pass the rational basis test).

The Fourteenth Amendment's Equal Protection Clause requires states to treat similarly situated persons alike. City of Cleburne v. Cleburne Living Ctr., Inc., 473 U.S. 432, 439 (1985). "The threshold inquiry in evaluating an equal protection claim is, therefore, to determine whether a person is similarly situated to those persons who allegedly received favorable treatment. Women Prisoners of D.C. Dep't of Corr. v. D.C., 93 F.3d 910, 924 (D.C. Cir. 1996) (quoting United States v. Whiton, 48 F.3d 356, 358 (8th Cir.1995)).

It is the opinion of this Panel that the two groups: (1) motorists who had their license suspended prior to Rule 5(b) amendment and, (2) those who have not had their license suspended but had fine imposed after the rule change, are not similarly situated. The first group is seeking

to have their licenses reinstated after a license suspension, and the second group is seeking to preserve their licenses.

But, even if we were to assume the two groups were similarly situated the inquiry would turn to whether the rule treats the groups differently. This Panel believes that both groups, in practice, receive the same treatment. The only difference between their treatment is the rule under which they may seek redress. Rule 20 is available and applicable to those who wish to ask the Court to regain their suspended license due to their inability to pay. Rule 20 provides redress allowing challenges based on whether "the judgment . . . is no longer equitable" and "[a]ny other reason justifying relief" especially if "warranted in the interests of justice." Traffic Trib. R. P. 20 (e), (f); also see, Tr. at 23:5-8. These are all procedural avenues that would serve the same interest as would an "ability to pay hearing".

Moreover, the similarly situated groups are treated similarly, and no one group is granted favorable treatment. Without favorable treatment of one group over another, there is no equal protection clause violation. See Klinger v. Dep't of Corr., 31 F.3d 727, 731 (8th Cir. 1994) (citing Samaad v. City of Dallas, 940 F.2d 925, 940–41 (5th Cir.1991)) ("the first step in an equal protection case is determining whether the plaintiff has demonstrated that she was treated differently than others who were similarly situated to her"). But, as stated earlier, this Panel is of the opinion that the two groups are not similarly situated.

At his hearing before the Trial Magistrate, Appellant argued that the Rule 5(b) was amended to provide indigent drivers an ability to pay hearing. Appellant noted:

> "The clear import of the Supreme Court's amendments to Rule 5(b) are to create a process in this court where somebody is not suspended purely on the basis of their inability to pay, but instead creates a scenario where somebody can come before the Court,

> have a dialogue, have a hearing; at which the question is posed whether they had a present ability to pay." Tr. at 4:14-22.

This Panel recognizes the Supreme Court's amendment was meant to prevent an individual from being suspended as a result of an inability to pay the adjudicated fine. Id. Nevertheless, for those who were suspended long before the new rule's promulgation, they too have an opportunity to "come before the Court to seek relief. In those cases, the appropriate avenue for relief is Rule 20 — not through Rule 5(b).

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the Trial Magistrate's decision was not affected by error of law and was supported by the reliable, probative, and substantial evidence of record. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied.

ENTERED:

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Magistrate Joseph A. Abbate (Chair)

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Magistrate Erika Kruse Weller

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Associate Judge Lillian M. Almeida

DATE: _____