

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. T12-0084
12001545845**

XIANGMIN OU

DECISION

PER CURIAM: Before this Panel on February 27, 2013—Judge Almeida (Chair, presiding), Chief Magistrate Guglietta, and Magistrate Goulart sitting—is Xiangmin Ou’s (Appellant) appeal from a decision of Magistrate Noonan (hearing judge), sustaining the charged violation of G.L. 1956 § 31-14-2, “Prima facie limits.” Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On November 2, 2012, a Trooper of the Rhode Island State Police cited Appellant for the aforementioned violation of the motor vehicle code. At his arraignment, Appellant pled guilty to the violation. (Arraignment at 1.) Before accepting the Appellant’s guilty plea, the trial judge asked Appellant, “[d]o you understand English?” and Appellant said, “Yes.” Id. The hearing judge then sentenced the Appellant according to section 31-27-24 of the Rhode Island General Laws, also known as the Colin Foote Act (Foote Act). Id. The Foote Act provides for increased penalties for habitual offenders of the motor vehicle code. After imposing the sentence, the hearing judge asked Appellant, “[d]o you understand?” and once again, Appellant said, “Yes.” Id. Aggrieved by the hearing judge’s decision, the Appellant timely filed this appeal.

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 Mutual Insurance 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." Link, 633 A.2d at 1348 (citing Environmental Scientific 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.” Link, 633 A.2d at 1348. Otherwise, it must affirm the hearing judge’s [or magistrate’s] conclusions on appeal. See Janes, 586 A.2d at 537.

Analysis

On appeal, Appellant contends that the hearing judge’s decision was in violation of constitutional provisions. Specifically, Appellant argues that his guilty plea to the charged violation was not made knowingly, intelligently, and voluntarily. Appellant’s argument is premised on the fact that Appellant is unfamiliar with the English language.

A motorist’s bare assertion that he or she does not understand cannot warrant a violation to be dismissed. If the Appellant’s contention were adopted by this Court, our entire traffic code would be completely undermined by motorists who use English as a second language. See State v. Leuthavone, 640 A.2d 515 (R.I. 1994) (court rejected defendant’s argument that waiver of his Miranda rights was not done voluntarily, knowingly, and intelligently due to his lack of familiarity with English); State v. Garcia, 643 A.2d 180 (R.I. 1994) (court stated that the State’s interest in prosecuting defendants would be circumvented if the court permitted defendant in this case and others similarly situated to hide behind their native languages despite being sufficiently fluent in the English language[]”). The appropriate standard to determine a valid plea is the totality-of-the-circumstances approach. Garcia, 643 A.2d at 189.

Here, the Appellant was asked twice, by the hearing judge, whether he understood and Appellant said, “Yes[,]” both times. (Arraignment at 1.) Additionally, Appellant has numerous speeding tickets on his driving record and thus had some previous experience with the Traffic Tribunal.¹ State v. Thornton, 800 A.2d 1016, 1028 (R.I. 2002) (court noted that that the defendant was well-acquainted with the criminal justice system due to his criminal background

¹ In just the year 2012, Appellant obtained four speeding tickets on four separate occasions. “Driving Record Abstract,” Division of Motor Vehicles, Feb. 20, 2013 at 1.

in order to determine that the defendant make a knowing and intelligent waiver of his right to have counsel's assistance during trial). Based on the evidence presented at arraignment and the defendant's frequency with the Traffic court system, we find no evidence to support the defendant's argument that the guilty plea was not made knowingly, intelligently, and voluntarily.² Therefore, this Panel finds that Appellant's guilty plea was made voluntarily, knowingly, intelligently, and not in violation of any constitutional provisions.

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 in violation of constitutional provisions. Substantial rights of the Appellant have been not prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.

ENTERED:

Judge Lillian M. Almeida (Chair)

Chief Magistrate William R. Guglietta

Magistrate Alan R. Goulart

DATE: _____

² We must also note Appellant appeared with his attorney before the Tribunal on an unrelated matter a day before this proceeding, where the judge at the proceeding asked Appellant's attorney why there was no interpreter at that proceeding. The attorney said he had explained it, and Appellant had a rudimentary understanding of English.