

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

TOWN OF COVENTRY

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:
:

v.

**C.A. No. M15-0001
14201500741**

EMIL CARSETTI

DECISION

PER CURIAM: Before this panel on March 11, 2015—Magistrate Goulart (Chair), Judge Almeida, and Administrative Magistrate DiSandro III, sitting—is Emil Carsetti’s (Appellant) appeal from a decision of Judge Capaldi of Coventry Municipal Court sustaining the charged violation of G.L. 1956 § 31-15-1, “Right half of road.” The Appellant appeared before this panel pro se. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On July 28, 2014, Officer DeLuca (Officer or Officer DeLuca) of the Coventry Police Department charged Appellant with the aforementioned violation of the motor vehicle code. The Appellant contested the charge, and the matter proceeded to trial on November 21, 2014.

At trial, the Town moved to dismiss the charge because the Officer was unable to attend the trial date. (Tr. at 2, November 21, 2014.) The Judge agreed and dismissed the charge. Id. Subsequently, Appellant tried to speak and the Judge told Appellant “don’t say anything else.” Id. The Judge asked Appellant to apologize to the Court and Appellant refused. Id. at 2-3. Thereafter, the Judge continued the matter to January 13, 2015. Id. at 3.

Consequently, a trial was held on January 13, 2015. At trial, the Officer testified that on July 28, 2014, he was leaving the parking lot at Cumberland Farms on Tiogue Avenue. (Tr. at 2, January 13, 2015.) The Officer observed a gray Ford Taurus drive west on Tiogue Avenue at a high rate of speed. Id. Subsequently, the Officer followed the vehicle and observed the vehicle's rear left tire cross the double yellow line. Id. at 3. The Officer conducted a motor vehicle stop and issued the motorist a summons for "Right half of road" violation. Id. The Officer identified Appellant as the motorist. Id.

Thereafter, Appellant testified that the Officer at trial was not Officer DeLuca. Id. The Judge asked the Officer his name, and the Officer responded that he was Officer DeLuca. Id. at 4. Furthermore, Officer DeLuca restated that he was the Officer who conducted Appellant's motor vehicle stop. Id. Subsequently, Appellant testified that he did not cross the center line. Id. at 7.

After hearing the testimony presented at trial on January 13, 2015, the Judge issued a decision sustaining the charged violation. Id. at 10. The Judge found "clear and convincing evidence of the violation." Id. Aggrieved by the Judge's decision to sustain the charge, 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 municipal court. 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 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.” Link, 633 A.2d at 1348 (citing Envtl. 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

The Appellant argues that the Judge's decision was made upon unlawful procedure. Specifically, Appellant contends that the Judge improperly "un-dismissed" the case on November 21, 2014.

The Rhode Island Traffic Tribunal Rules of Procedure provides that "[i]f the prosecution fails to appear for trial and/or arraignment, the matter may be dismissed." Traffic Trib. R. P. 17(c).¹ Here, Officer DeLuca was unable to attend the original trial date on November 21, 2014. (Tr. at 2, November 21, 2014.) Thus, the Town moved to dismiss the charge, pursuant to Rule 17 (c), and the Judge granted the motion. Id. The case was dismissed by the prosecution without prejudice. Id. In order to vacate a dismissal, the moving party needs to make a motion. See 27 C.J.S. Dismissal and Nonsuit § 41 (explaining a party may seek reinstatement of a dismissal by show of "good cause"); see also 24 Am. Jur. 2d Dismissal § 102 (a party's motion to vacate a dismissal is addressed at the court's discretion).

In this case, neither party motioned to vacate the dismissal. See Tr. at 2, November 21, 2014. Rather, at trial, the Judge sua sponte reinstated the charge. Id. at 3. Thus, the trial court's order dismissing the case should not have been vacated.²

¹ The Rhode Island Traffic Tribunal Rules of Procedure were updated on June 8, 2015. The stated rule is now Rule 17(d).

² The Panel acknowledges that Court dismissed the case on November 21, 2014 without prejudice. Thus, the Town is not barred from moving to vacate the Court's dismissal.

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 in violation of statutory provisions and affected by error of law. Substantial rights of Appellant have been prejudiced. Accordingly, Appellant's appeal is granted, and the charged violation dismissed.

ENTERED:

Magistrate Alan R. Goulart (Chair)

Judge Lillian M. Almeida

Administrative Magistrate Domenic A. DiSandro, III

DATE: _____