STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT **RHODE ISLAND TRAFFIC TRIBUNAL**

TOWN OF NORTH KINGSTOWN	**:**	
	:	
v.	**:**	**C.A. No. T13-0008**
	:	**12502502256**
PHILIP DEY	**:**	

DECISION

PER CURIAM: Before this Panel on April 24, 2013—Judge Almeida (Chair, presiding), Chief Magistrate Guglietta, and Magistrate DiSandro, sitting—is Philip Dey's (Appellant) appeal from a decision of Magistrate Goulart, 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 June 29, 2012, Officer Brian Kanaczet ("Officer Kanaczet" or "Officer") of the North Kingstown Police Department charged Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial on February 1, 2013.

Shortly before the stop, Officer Kanaczet was at a fixed traffic post in the vicinity of Route 4 southbound. (Tr. at 8.) The handheld radar unit determined that Appellant's motorcycle was traveling fifty-five (55) miles per hour (mph) in a thirty-five (35) mph area. Id. The Officer noted that the handheld radar unit was calibrated before and after his shift on the day of the stop and the Trooper had received training in the use of radar units at the Rhode Island Municipal Police Academy. (Tr. at 6-8.)

Appellant then questioned the Officer on cross examination. (Tr. at 11.) Appellant began his cross examination by questioning Officer Kanaczet regarding whether the officer had issued Appellant a summons at the time of the stop. (Tr. at 11-13.) In response to the question, Officer Kanaczet stated, "I don't recall what - - if I actually presented that to you at the time. There are circumstances that arise when our computers are down. If that is the case, we inform the motorist that it will be mailed to them in a timely manner." (Tr. at 12-13.) Appellant went on to testify that Officer Kanaczet failed to issue him a summons on the day of the stop. (Tr. at 15.) Appellant concluded the trial by stating, "Except I don't believe I was going that fast . . . ." (Tr. at 16.)

After both parties were given an opportunity to present evidence, the trial judge determined that the Officer was a credible witness. The trial judge accepted the Officer's testimony that his radar unit was properly calibrated. (Tr. at 17.) At the close of his bench decision, the trial judge sustained the violation. (Tr. at 18.) Aggrieved by the trial 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, the Appellant argues that the trial judge's decision was affected by error of law and constituted an abuse of discretion. Specifically, the Appellant alleges that the Town failed to successfully identify him at trial as the perpetrator of the charged violation. Additionally, Appellant contends that the sentence imposed by the trial judge was capricious, arbitrary, and in excess of his statutory authority.

With regard to Appellant's assertion that the Town failed to identify him at trial, this Panel concludes that there were enough facts for the Court to infer that the person in the court room was Mr. Dey. Appellant's statements to the trial judge acknowledged Appellant's identity as the motorist who was operating his motor vehicle beyond the speed limit. See United States v. Ayala, 289 F.3d 16, 19-20 (2002) (holding that "in-court identification by a witness is not necessarily required." The Ayala Court explained that "'[i]dentification can be inferred from all the facts and circumstances that are in evidence.' . . . 'In-court identification is not necessary when the defendant's attorney himself identifies his client at trial.'") (internal citations omitted). Accordingly, this Panel notes that during trial, Officer Kanaczet testified that he pulled over the speeding motorist and "[t]he operator was identified as Mr. Philip Dey, and he was informed of the charges . . . ." (Tr. at 8.) At trial, counsel for the Town asked Officer Kanaczet, "Officer, when you stopped the individual, you indicated you identified him as Mr. Philip Dey, am I correct?" (Tr. at 9.) Officer Kanaczet answered in the affirmative. Id. Therefore, this Panel concludes that Officer Kanaczet made an in-court identification of Appellant. Also, it can be inferred that Appellant identified himself as the motorist who was operating his vehicle beyond the speed limit. Ayala, 289 F.3d at 25. Consequently, this Panel concludes that the trial magistrate's ruling with respect to this issue is not affected by error of law and does not constitute an abuse of discretion.

In regard to Appellant's second argument, the Colin B. Foote Act, which is codified as section 31-27-24 of the General Laws, states that "[e]very person convicted of moving violations on four (4) separate and distinct occasions within an eighteen (18) month period may be fined up to one thousand dollars ($1,000) . . . ." (Emphasis added.) The Rhode Island Supreme Court has made clear that when interpreting a statute, if the language of a statute is clear and unambiguous,

the Court must interpret the statute literally and must give the words of the statute their plain and ordinary meaning. State v. Clarke, 974 A.2d 558, 571-72 (R.I. 2009); State v. Santos, 870 A.2d 1029, 1032 (R.I. 2005).

In sentencing the Appellant, the trial judge stated, "[w]hile the conviction of this case took place outside the 18 months, it's my belief that the only logical way of reading the statute is you count from the date of the first conviction through the date of the fourth incident, not the fourth conviction . . . ." (Tr. at 23.) (emphasis added.)

Conversely, a plain and clear reading of the statute leads us to the conclusion that the eighteen month period is measured from the date of the first conviction to the date of the fourth conviction. See Tanner v. Town Council, 880 A.2d 784, 796 (R.I. 2005) (citing Accent Store Design, Inc. v. Marathon House, Inc., 674 A.2d 1223, 1226 (R.I. 1996) (stating that "[i]t is well settled that when the language of a statute is clear and unambiguous, this Court must interpret the statute literally and give the words of the statute their plain and ordinary meanings"). Here, Appellant was convicted for moving violations on June 22, 2011; April 5, 2012; and March 20, 2012. "Driving Record Abstract," Division of Motor Vehicles, Jan. 18, 2013 at 1. In order for the enhanced penalties under § 31-27-24 to apply, the fourth conviction would have had to occur on or before December 22, 2012, which would have been eighteen months from the date of the first conviction on June 22, 2012. The fourth conviction did not occur until February 1, 2013; therefore, the Colin Foote Act is not applicable to this Appellant. Given that the "convictions" occurred outside the parameters for enhanced penalties under § 31-27-24, the trial judge committed error of law by imposing sanctions pursuant to the Colin Foote Act upon Appellant.

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 to sustain the charged violation was not affected by error of law and does not constitute an abuse of discretion. However, the enhanced sentence imposed by the trial judge was in excess of his statutory authority under § 31-27-24. Therefore, this Panel grants the Appellant's appeal for the sole purpose of remanding the case to the trial calendar to render the appropriate sentence consistent with this decision.

ENTERED:

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Judge Lillian M. Almeida (Chair)

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Chief Magistrate William R. Guglietta

_____
Magistrate Domenic A. DiSandro, III

DATE: _____