STATE OF RHODE ISLAND

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND	**:**	
	:	
v.	**:**	**C.A. No. T24-0012**
	:	**23001531633**
DEVON SISOUVONG	**:**	

DECISION

PER CURIAM: Before this Panel on August 28, 2024—Magistrate DiChiro (Chair), Administrative Magistrate Abbate, and Magistrate Noonan—is the appeal of Devon Sisouvong (Appellant) from a decision of Magistrate Landroche (Hearing Magistrate) of the Rhode Island Traffic Tribunal, sustaining the charged violations of G.L. 1956 § 31-3-1 "Operation of Unregistered Vehicle," G.L. 1956 § 31-47-9 "Operating Motor Vehicle without Evidence of Insurance," G.L. 1956 § 31-8-3 "Improper Use or Evidence of Registration or Certificate." Appellant's Counsel, Andrew Horwitz, appeared before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8. For reasons outlined in this Decision, Appellant's appeal is denied.

I

Facts and Travel

On August 27, 2023, Officer Jarrett Clarke (Officer Clarke) of the Cumberland Police Department charged Appellant with violating § 31-3-1 "Operation of Unregistered Vehicle," § 31-47-9 "Operating Motor Vehicle without Evidence of Insurance," and § 31-8-3 "Improper Use or Evidence of Registration or Certificate." (Summons No. 23001531633.).

On October 4, 2023, Appellant failed to appear for their arraignment, and the Hearing Magistrate defaulted Appellant. *See* Appellant's Memorandum of Law. At the time of

Appellant's initial infractions, he held only a permit to drive, not a license. (05/20/2024 Tr. 3: 2-6.) This was Appellant's fifth violation of driving without insurance, and since this incident, Appellant has repeatedly been cited for other various traffic violations. [1] *See generally* Docket. The Trial Magistrate imposed fines on all charges, as well as a 12-month suspension of driving privileges, effective immediately, in addition to the default judgment. *See* Judgement Sheet (Oct. 4, 2023.)

On January 16, 2024, the Rhode Island Department of Motor Vehicles ("DMV") determined that Appellant was a "frequent offender" under G.L. § 31-11-7 and imposed an additional 12-month suspension beginning January 26, 2024. *See* Letter and Order from DMV. Subsequently, Appellant requested a hearing at the DMV on this Order, where the DMV upheld their original decision to impose the additional suspension. *Id.* This decision was appealed to District Court, where Magistrate Joseph P. Ippolito reduced the "frequent offender" suspension from one year to six months. *See* District Court Order. These suspensions from both the RITT and the DMV were independently imposed by the respective authority.

On May 12, 2024, Appellant filed a motion to reconsider and vacate the default pursuant to Rule 20 of the Traffic Tribunal Rules of Procedure. On May 20, 2024, the hearing on that motion was held and Appellant argued that the default judgment was improper and that the DMV's imposition of an additional consecutive sentence of suspension should be ordered by this Court to run concurrently with the suspension imposed as a result of the default. (Tr. at 7:7-8; 8:4-16.)

[1] As of the August 27, 2023 violation, the Appellant had been cited for prior traffic and road violations on the following dates: May 14, 2021; June 5, 2021; June 29, 2021; November 18, 2021; April 3, 2022; April 25, 2022; July 11, 2022; February 16, 2023; April 24, 2023; May 10, 2023; May 26, 2023; and July 5, 2023.

The motion to reconsider was denied by the Hearing Magistrate, and the suspensions were not ordered to run concurrently. Aggrieved by the decision, Appellant, by way of counsel, timely filed this appeal.

II

Standard of Review

Pursuant to § 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. 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." *Id.* (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 '[c]learly 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. *Id.*; *see Janes*, 586 A.2d at 537.

III

Analysis

A

Denial of the Motion to Reconsider

Appellant's motion to reconsider the Hearing Magistrate's decision must be denied. Rule 20 of the Rhode Island Traffic Tribunal's Rules of Procedure requires the moving party to demonstrate certain grounds, the most relevant here is either an error of law or excusable neglect. R.I. Traffic Trib. R. P. 20(a). "It is a well-established principle in Rhode Island that a motion to vacate a default judgment is within the [sound] discretion of the trial justice before whom the motion is brought. Such findings will not be disturbed upon appeal unless there is an error of law or an abuse of that discretion." *Phoenix Construction Co., Inc. v. Hanson*, 491 A.2d 330, 332 (R.I. 1985) (citing *Friendly Homes, Inc. v. Shareholders and Creditors of Royal Homestead Land Co.*, 477 A.2d 934, 937 (R.I. 1984)).

In this case, Appellant has failed to establish any grounds demonstrating an error of law or abuse of discretion by either the Trial Magistrate or the Hearing Magistrate. The Trial Magistrate properly entered a default judgment and suspended Appellant's driving privileges after Appellant failed to appear for his October 4, 2023 court date. "A default judgment" can be

entered, and a suspension may be ordered at "the discretion of the court." *See* RI. R. Traf. Trib. R. 17. This Panel further finds that the Hearing Magistrate correctly denied Appellant's motion to vacate the default, as nothing in the record indicates either an error of law or an abuse of discretion.

Additionally, to prevail on a Rule 20 motion, Appellant would have needed to prove to the satisfaction of the hearing magistrate that his failure to appear on the scheduled trial date was due to "excusable neglect." *See* RI. R. Traf. Trib. R. 20(a). The burden was on Appellant to show that his "failure to take the proper steps at the proper time [was] not in consequence of [his] own carelessness, inattention, or willful disregard of the process of the court, but in consequence of some unexpected or unavoidable hindrance or accident." *Jacksonbay Builders, Inc. v. Azarmi*, 869 A.2d 580, 584 (R.I. 2005).

Appellant did not provide sufficient evidence, argument, or justification to warrant altering the Hearing Magistrate's initial decision. The record shows that Appellant failed to follow the "course of conduct which a reasonably prudent person would take under similar circumstances" when he failed to appear and provided no adequate excuse. *Pari v. Pari*, 558 A.2d 632, 635 (R.I. 1989). Appellant's argument that his lack of "frontal lobe" development is unpersuasive to this Panel, as Appellant held a valid permit to drive a motor vehicle in Rhode Island and was therefore on notice of his obligation to follow the rules of the road. As a driver, Appellant had the right to assume that the rules of the road "for the common safety will be obeyed." *Andrews v. Penna Charcoal Co.*, 179 A. 696, 699 (R.I. 1935). These rules are in place "to promote the orderly and safe flow of traffic" for all drivers. *Berman v. King Union Co.*, 94 A.2d 428, 431 (R.I. 1953). Appellant's actions demonstrate a disrespect for the laws governing this State's roadways, as well as a disregard for the safety of other motorists.

Accordingly, Appellant's motion to reconsider was proper because he failed to demonstrate any error of law, abuse of discretion, or excusable neglect, and the Hearing Magistrate's denial of the motion was proper.

B

The Relief Requested Cannot Be Granted Due to the DMV's Independent Authority to Impose Suspensions

Appellant also seeks relief beyond the authority of this Tribunal. Specifically, Appellant requests that this Tribunal order the Department of Motor Vehicles (DMV) to run its suspension concurrently with a suspension imposed by the Tribunal. However, this Tribunal lacks the authority to direct the DMV how to administer its suspensions. While the Tribunal has discretion to determine whether its sentences run concurrently or consecutively, the DMV operates independently and may impose its own suspensions, particularly when Appellant has already appeared before the DMV and received a separate decision. *See* G.L 1956 § 31-11-7.

The discretion to impose consecutive or concurrent sentences rests with the judge at the time of sentencing. Once that decision is made, it becomes binding on any future proceedings regarding the sentence. As our Supreme Court has clarified, "once the sentencing justice exercises his choice of imposing consecutive or concurrent sentences, that choice is thereafter binding. . ." *State v. Heath*, 742 A.2d 1200, 1201 (R.I. 2000). Notably, the decision made by the original sentencing judge is controlling, regardless of whether a future justice revoking the suspension is aware of prior sentences. The Court further noted in *State v. Studman* that "[w]hether a sentencing justice imposes several sentences at the same time or is aware of prior sentences imposed by another justice, [they are] in the position to exercise the choice of imposing consecutive or concurrent sentences." 468 A.2d 918, 920 (R.I. 1983). Therefore, the

original sentencing judge's decision regarding whether sentences should run concurrently or consecutively is binding on subsequent proceedings, as long as there is no indication in the record that rebuts the presumption. Nothing in the instant case demonstrates such a presumption. The case law highlights that it is entirely within the discretion of the judge to decide, and once that choice is made, it is definitive unless clearly stated otherwise in the record.

Additionally, under § 31-11-7, the DMV has broad authority to suspend driving privileges based on various grounds. The statute grants the DMV independent authority, distinct from the court's power, to impose and manage suspensions. The DMV's ability to suspend driving privileges is not contingent upon judicial determination but is instead based on its findings or records. The DMV retains the authority to impose additional suspensions if deemed necessary for public safety. As such, this Court's role in managing suspensions imposed by the DMV is limited. For example, if the court suspends driving privileges for a traffic violation, the DMV may still act independently to impose its suspension on other grounds.

In the context of Appellant's request for concurrent suspensions, the court must recognize that it lacks the authority to mandate how the DMV handles its suspensions. The DMV has the exclusive power to determine the length and terms of its own suspension based on public safety considerations, independent of the court's decisions. Therefore, while a court may issue concurrent suspensions within its sentencing authority, it cannot compel the DMV to do the same when DMV suspensions are at issue. As such, the relief sought is beyond the scope of this Tribunal's authority, and Appellant's request is denied.

IV

Conclusion

This Panel has reviewed the entire record in this matter. Having done so, the members of this Panel are satisfied that the Trial Magistrate's decision was neither clearly erroneous in view

of the reliable, probative, and substantial evidence on the whole record nor arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. This Panel also lacks the authority to order the DMV to run its suspension concurrently with the Tribunal's suspension, as the DMV has independent authority to impose such a penalty. The substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied.

ENTERED:

_____/S/_____
Magistrate Michael DiChiro (Chair)

_____/S/_____
Administrative Magistrate Joseph A. Abbate

_____/S/_____
Magistrate William T. Noonan

DATE: December 6, 2024