

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY, FLORIDA**

GORDON H. GROLAND,

CASE NO.: 2012-CV-000092-A-O

Appellant,

Lower Case No.: 2012-TR-008295-A-E

v.

STATE OF FLORIDA,

Appellee.

DATE: October 14, 2013

Appeal from the County Court, for
Orange County, Florida
Carroll S. Barco, Traffic Court Hearing Officer

Kevin Quirk, Esquire for Appellant and
Gordon H. Groland, Esquire, Appellant.

Erin L. DeYoung, Esquire, for Appellee.

Before KOMANSKI, LATIMORE, and TURNER, J.J.

PER CURIAM.

FINAL ORDER REVERSING LOWER COURT

Appellant, Gordon H. Groland, Esquire (“Groland”) timely files this appeal of the lower court’s “Order Denying Defendant’s Motion to Correct and/or Set Aside Plea and Sentence” entered on November 14, 2012. This Court has jurisdiction pursuant to section 26.012(1), Florida Statutes, and Florida Rule of Appellate Procedure 9.030(c)(1)(A). We dispense with oral argument. Fla. R. App. P. 9.320.

Summary of Facts and Procedural History

On March 3, 2012, a red light camera documented a vehicle running a red light at the intersection of Orlando Avenue and Horatio Avenue in the City of Maitland, Orange County, Florida. No driver was identified by the camera. Groland was the registered owner of the subject vehicle and he was issued a Uniform Traffic Citation on April 20, 2012. According to Groland, he had signed the title of the vehicle over to his daughter, Lacey Groland (“Lacey”) at least one year prior to the infraction, but she failed to re-title or re-register the vehicle in her name at that time. Groland also claims that he did not receive any timely Notice of Violation nor the Traffic Citation as both were sent to the wrong address.

Thereafter, a Notice of License Suspension was filed May 30, 2012 for failure to pay the traffic citation. Groland then paid the appropriate fees to reinstate his license and filed an Affidavit Denying Responsibility and an Affidavit of Defense on June 18, 2012. Further, he claims that he filed a second and third affidavit denying responsibility, but none of the affidavits were acted on by the Hearing Officer or the by the Clerk’s Office. The case went to hearing on June 27, 2012 and the Hearing Officer found that the Affidavits were not timely filed in compliance with the Florida Statutes.

Thereafter, the case was set for hearing on October 11, 2012. The attorney for the City of Maitland, Kalanit Oded, filed a Notice of Appearance on September 19, 2012. According to Groland, prior to the hearing he communicated numerous times via email and phone with Ms. Oded about the status of the case and was very specific about his steadfast refusal to accept a no contest plea and a withholding of adjudication because he didn’t own the vehicle and was not driving it at the time of the violation, and instead, Lacey was the actual driver when the infraction occurred.

Groland informed Ms. Oded that he would not be appearing at the October 11, 2012 hearing, but instead, Lacey would be appearing to admit that she was the driver and to accept responsibility for the infraction. From review of the transcript from the hearing on October 11, 2012, neither Groland nor an attorney on his behalf appeared at the hearing. Instead, Lacey appeared at the hearing. Also, Ms. Oded appeared and introduced Lacey to the Court and informed the Court that Lacey was Groland's daughter, was the actual operator of the vehicle at the time of the infraction, and that Lacey was appearing at the hearing in order to take responsibility for the infraction and to plead no contest. At that point, the below colloquy ensued:

Hearing Officer: "You want to plead no contest on behalf of your father?"

Ms. Groland: "Yes, Your Honor."

Ms. Oded (identified as "female speaker" in transcript): "Yes, and the state doesn't object."

Male Speaker: "You just have to announce your name for the record."

Ms. Groland: "Okay. Lacy [sic] Groland."

Hearing Officer: "All right. All right. Ma'am, you're entering a plea of no contest on behalf of Mr. Groland?"

Ms. Groland: "Yes, sir."

Hearing Officer: "The fine will be \$158: the court costs, \$33. 60 days and a withhold, ma'am."

Ms. Oded: Thank you.

Hearing Officer: Thank you. Yes, ma'am.

The hearing concluded and the Hearing Officer entered a Determination of Infraction against Groland and not against Lacey. Upon becoming aware of the Hearing Officer's acceptance of the no contest plea and his ruling, on November 6, 2012, Groland filed his "Motion to Correct and/or Set Aside Illegal Acceptance of Plea by the Hearing Officer". On November 14, 2012 the Hearing Officer denied the Motion without opinion.

Arguments on Appeal

Groland argues that the Hearing Officer was without legal authority to accept a plea of no contest on his behalf from Lacey who was not an attorney and did not have express nor implied permission from him to do so. Thus, he argues that the plea and sentence were illegal as there is no provision or authority in the Florida Rules of Traffic Court, the Florida Rules of Criminal Procedure, the Florida Rules of Civil Procedure, the Florida Statutes, or case law for a non-lawyer to tender a plea on someone else's behalf. Therefore, Groland requests that the plea and corresponding sentence be vacated, the case be closed, and that he be awarded attorney's fees and costs per section 57.105, Florida Statutes.

Conversely, the State argues that Groland failed to comply with the Traffic Court Rules in asserting his defense. However, the State concedes that the Hearing Officer made errors in his method of handling the case. Further, as for Groland's claim to attorney's fees, the State argues that there is no authority cited or found which grants Groland the ability to collect attorney fees.

Standard of Review

The standard of review for a trial court's rulings on a motion to correct and/or set aside plea and sentence is abuse of discretion. *See Bacon v. State*, 738 So. 2d 973, 973 (Fla. 4th DCA 1999) (holding that the trial court's decision regarding withdrawal of a plea will generally not be disturbed on appeal, absent a showing of an abuse of discretion; thus, the appropriate standard of review in this case is whether the trial court abused its discretion in denying the defendant's motion to vacate the plea); *See also Cella v. State*, 831 So. 2d 716, 720 (Fla. 5th DCA 2002) (citing *Bacon* in applying the abuse of discretion standard of review); *Perez v. State*, 16 Fla. L. Weekly Supp. 291a (Fla. 9th Cir. Ct. 2009) (applying the abuse of discretion standard of review in addressing the trial court's order on a motion to set aside a license suspension).

Analysis

From review of the record in this case, there was error on the part of both parties, Lacey, and the Hearing Officer as follows: 1) Groland did not timely file his affidavit denying responsibility and affidavit of defense within 30 days after the date of issuance of the traffic citation as required under subsection 316.0083(1)(d)2, Florida Statutes (2012). Groland claims that the affidavits were not timely filed because he did not timely receive the Notice of Violation nor the Traffic Citation as both were sent to the wrong address; however, this claim lacks merit as the address stated in the Uniform Traffic Citation, Notice of Violation, the Affidavits, several other documents in the record, and his Initial and Reply Briefs state the same address; 2) Groland failed to comply with Florida Rule of Traffic Court 6.340 by not appearing himself or via an attorney on his behalf at the June 27, 2012 or October 11, 2012 hearings and instead, only had Lacey appear at the second hearing;¹ 3) Most importantly, the Hearing Officer also failed to comply with Rule 6.340 and other law by allowing Lacey, a lay person, to enter the no contest plea on behalf of Groland; and 4) Lacey and Ms. Oded erred by not clarifying with the Hearing

¹ Florida Rule of Traffic Court 6.340 addresses the affidavit of defense or admission and waiver of appearance and provides:

(a) Appearance in Court. Any defendant charged with an infraction may, in lieu of a personal appearance at trial, file an affidavit of defense or an admission that the infraction was committed as provided in this rule.

(b) Posting of Bond. The trial court may require a bond to be posted before the court will accept an affidavit in lieu of appearance at trial. The defendant shall be given reasonable notice if required to post a bond.

(c) Attorney Representation. If a defendant is represented by an attorney in an infraction case, said attorney may represent the defendant in the absence of the defendant at a hearing or trial without the defendant being required to file an affidavit of defense. The attorney shall file a written notice of appearance. The attorney may enter any plea, proceed to trial, present evidence other than the defendant's statements, and examine and cross examine witnesses without the defendant being required to file an affidavit of defense. Nonetheless, a defendant represented by an attorney may file an affidavit of defense. If a represented defendant files such an affidavit, the affidavit must be signed and properly notarized, subjecting the affiant to perjury prosecution for false statements.

Officer that the plea was not intended to be entered on behalf of Groland and allowing the plea to be entered.

Notwithstanding the errors made by Groland, Ms. Oded, and Lacey, the severity of the Hearing Officer's error by allowing Lacey, a lay person, to enter the no contest plea on behalf of Groland was highly improper; thus, this Court finds that the Hearing Officer abused his discretion in denying Groland's Motion to Correct and/or Set Aside Illegal Acceptance of Plea and in the interest of justice the plea should have been withdrawn. *See* Florida Rules of Traffic Court 6.450(g) that provides in the interests of justice, the court may vacate the judgment upon a showing of good cause by the defendant; Florida Rule of Civil Procedure 1.540(b) that provides a party may be relieved from judgment due to mistake, inadvertence, surprise, or excusable neglect; *Perez v. State*, 16 Fla. L. Weekly Supp. 291a (Fla. 9th Cir. Ct. 2009) (applying Rules 1.540(b) and 6.450(g) in finding that vacating the judgment was warranted based on good cause and in the interest of justice).

Further, the State concedes in its Answer Brief that it does not object to a withdraw of the plea and that the case should be placed back on the trial docket for hearing with the caveat that speedy trial be waived due to Groland's failure to appear at the hearing. The State also correctly points out that if Lacey had intended to admit and accept responsibility for the infraction, the proper avenue to take should have been to issue a new Uniform Traffic Citation against Lacey, allow the no contest plea to be entered against Lacey, and dismiss the Uniform Traffic Citation against Groland. Or in the alternative, as the State also correctly points out, the Hearing Officer could have held the hearing in absentia or continued the case with a waiver of speedy trial due to Groland's failure to appear at the hearing.

Lastly, this Court addresses Groland's request for attorney's fees per section 57.105, Florida Statutes, and finds that from review of the record revealing the circumstances of this case where errors were made by all persons involved in the lower court proceedings including Groland, an award of attorney's fees to Groland is not warranted.

Accordingly, is hereby **ORDERED AND ADJUDGED** that the lower court's "Order Denying Defendant's Motion to Correct and/or Set Aside Plea and Sentence" entered on November 14, 2012 is **REVERSED and REMANDED** for further proceedings consistent with this opinion. Further, Appellant Groland's request for attorney's fees is **DENIED**, but he is entitled to have costs taxed in his favor by filing a proper motion with the lower court pursuant to 9.400(a), Fla. R. App. P.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing order was furnished to: **Gordon H. Groland, Esquire**, 3766 Rosecommon Drive, #193, Ormond Beach, Florida 32174, gordo617@aol.com; **Kevin Quirk, Esquire**, Barbarette & Quirk, 5538-A NW 43rd Street, Gainesville, Florida 32653, lawyerquirk@gmail.com; **Erin L. DeYoung, Esquire**, DeYoung Law Firm, P.A., c/o Maitland Police Department, 1837 Fennell Road, Maitland, Florida 32751, edeyoung@maitlandpd.org; and **Kalanit Oded, Esquire**, Shepard, Smith & Cassidy, P.A., Attorney for City of Maitland, 2300 Maitland Center Parkway, Suite 100, Maitland, Florida 32751, koded@shepardfirm.com, on this 14th day of October, 2013.

/S/ _____
Judicial Assistant