

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

CASE NO.: 2022 AP 000004 AP
L.T. CASE NO.: 2021 TR 001756

SHEZAD ESMAIL,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

Appeal from the County Traffic Court,
in and for Osceola County, Florida,
Andrea Anderson, Traffic Hearing Officer.

Shezad Esmail, pro se, Appellant.

No appearance for Appellee.

Before SHAFFER, LATIMORE, and NETCHER.

Appellant Shezad S. Esmail (“Esmail”) seeks a review of an order of a Traffic Court Hearing Officer denying his motion to vacate the hearing officer’s earlier order determining him guilty of the civil traffic infraction of unlawful speed on the interstate. This Court has jurisdiction. *See* Florida Statute § 318.33; Rule 6.630(d), Fla. R. Traf. Ct.; Rule 9.030(c)(1)(A), Fla. R. App. P. We reject the claims on appeal.

Esmail contends that the hearing officer in his case abused her discretion in not vacating the judgment below pursuant to Florida Rule of Traffic Court 6.450(g) after neither he nor his counsel below appeared at his scheduled hearing, both claiming to have not received a copy of the notice setting the hearing in the case.¹ Esmail asserts that had he been afforded a new hearing, he would have had a viable defense to the charge since the hearing was held outside of the one hundred eighty (180) day rule requiring dismissal of the matter.

The Notice to Appear in this case included the names and addresses of both Esmail and his prior counsel, and this Court cannot say that the hearing officer abused her discretion in failing to grant a new hearing to Esmail on the basis that he lacked notice of the proceedings. Regardless, even if a new hearing was granted, Esmail's claim of a meritorious defense to the citation below for failure to comply with the 180-day speedy trial rule under Florida Rule of Traffic Court 6.325(a) would fail.

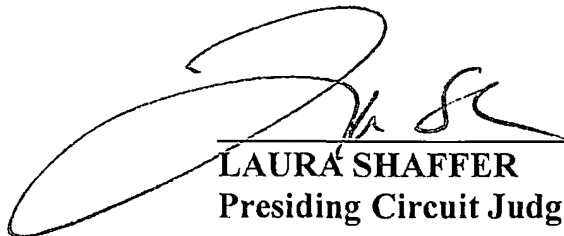
As a result of the COVID-19 Emergency measures promulgated by the Florida Supreme Court, the 180-day speedy trial rule was tolled in non-criminal traffic court from March 13, 2020, through October 4, 2021. *See* Florida Supreme Court

¹ Esmail also contends that such alleged lack of notice also makes his sentence an illegal one which may be corrected at any time under Rule 6.490(a), Fla. R. Traf. Ct., but errors in sentencing procedure do not make a sentence "illegal." *Heare v. State*, 283 So. 3d 390, 392 (Fla. 2d DCA 2019), citing *Wright v. State*, 911 So. 2d 81, 83 (Fla. 2005).

AOSC21-17, IN RE: COVID-19 HEALTH AND SAFETY PROTOCOLS AND EMERGENCY OPERATIONAL MEASURES FOR FLORIDA APPELLATE AND TRIAL COURTS, Amendment 2, issued on November 4, 2021. Since Esmail's citation was issued during the tolled period, his case had to be heard within 180 days after October 4, 2021. Esmail's hearing was held well within the extended time period.

AFFIRMED.

DONE AND ORDERED in Chambers at Kissimmee, Osceola County, Florida, this 14 day of Dec, 2023.



LAURA SHAFFER
Presiding Circuit Judge

LATIMORE and NETCHER, J.J., concur.

CERTIFICATE OF SERVICE

I CERTIFY that the foregoing was filed with the Clerk of the Court this 14 day of Dec., 2023, by using the Florida Courts E-Filing Portal System. Accordingly, a copy of the foregoing is being served on this day to all attorney(s)/interested parties identified on the ePortal Electronic Service List via transmission of Notices of Electronic Filing generated by the ePortal System, including **SHEZAD ESMAIL** at sesmail7861@gmail.com.



Judicial Assistant