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COURT OF APPEALS
STATE OF NEW YORK

MATTER OF HONORABLE GLEN R. GEORGE,

Petitioner,

-against-

No. 249

STATE COMMISSION ON JUDICIAL CONDUCT,

Respondent.

20 Eagle Street
Albany, New York 12207
November 14, 2013

Before:

CHIEF JUDGE JONATHAN LIPPMAN
ASSOCIATE JUDGE VICTORIA A. GRAFFEO
ASSOCIATE JUDGE SUSAN PHILLIPS READ
ASSOCIATE JUDGE ROBERT S. SMITH
ASSOCIATE JUDGE EUGENE F. PIGOTT, JR.
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE SHEILA ABDUS-SALAAM

Appearances:

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David Rutt
Official Court Transcriber

1 CHIEF JUDGE LIPPMAN: The Matter of Honorable
2 Glen R. George.

3 Counselor.

4 MR. PETRO: May it please the Court, my name is
5 Thomas K. Petro, Esquire, on behalf of the Honorable Glen
6 R. George. May I reserve three to four - - - three
7 minutes for rebuttal, Your Honor.

8 CHIEF JUDGE LIPPMAN: Three minutes. Go ahead,
9 counsel. You're on.

10 MR. PETRO: Judge, the petitioner seeks to
11 reform and reduce the sanction imposed by the New York
12 State Judicial Commission for alleged misconduct committed
13 by the judge. It's the position of the petitioner that
14 his conduct amounted to poor or very poor judgment but not
15 that of being egregious.

16 CHIEF JUDGE LIPPMAN: Counsel, what about on the
17 first charge with the letter of caution that he received
18 previously? How does that fit into this - - - the charge,
19 given that he was kind of on notice?

20 MR. PETRO: I think he was on notice to a
21 certain degree. I think it's how you may interpret that
22 particular warning. It is somewhat ambiguous. It doesn't
23 say don't handle any Johnson family matters or don't - - -
24 it says be careful as you do it, make an informed decision
25 before you even attempt to do it. He obviously didn't

1 heed that advice. It was his thinking - - -

2 JUDGE SMITH: But it wasn't just that he handled
3 the matter; it's that he handled it in what looks like an
4 irregular way.

5 MR. PETRO: I'm not so sure that it was an
6 irregular way, but it certainly wasn't the normal course
7 of conduct. There appears in the record, particularly
8 from Mr. Hubbard who's the prosecutor, that there are
9 occasions that there are a number of charges that are
10 dismissed albeit not a majority, in fact - - -

11 CHIEF JUDGE LIPPMAN: Yeah, but again, I think
12 the real issue is the letter of caution that should have
13 put him on notice to be very, very careful.

14 MR. PETRO: I don't - - - I don't dispute that
15 he made a poor decision or even a very poor decision. The
16 question was, did he have that malice of heart. Was he -
17 - -

18 JUDGE SMITH: Doesn't it look like he was trying
19 to help out his old - - - his old friend who's really more
20 than a friend. He was the guy who had been responsible
21 for his livelihood for a long time?

22 MR. PETRO: No, I don't think it does. This is
23 a no-seat-belt ticket, Your Honor. It is the most de
24 minimis of matters that could be before - - -

25 JUDGE ABDUS-SALAAM: Well, does he dismiss other

1 charges without the prosecutor being there or putting them
2 on notice?

3 MR. PETRO: Yes, the record supports that, that
4 that's happened in the past. And in fact, Mr. Hubbard
5 would have said that there are occasions where tickets
6 should be dismissed sua sponte and that the person who's
7 put on notice as they come before the court says, this
8 ticket will be handled on this date and that there may be
9 a default judgment placed in front of you.

10 So I think that at some point that's almost an
11 invitation to someone who appears before the court to have
12 ready some sort of argument to the court on the nature of
13 the charges. Doesn't excuse the judge from not taking an
14 extra moment, and in the abundance of caution, he should
15 not have handled this matter, but he did. He has - - -
16 it's, I think, fairly well established that he has a long
17 history of being very difficult and very hard on uniform
18 traffic tickets. He was a retired - - -

19 CHIEF JUDGE LIPPMAN: So your argument is this
20 is in the normal course and that he looked at the ticket
21 and may - - - while maybe he shouldn't have heard the
22 case, he did what he normally does? Is that your
23 thinking?

24 MR. PETRO: Yes, it is; it is my argument.

25 JUDGE GRAFFEO: Well, how do the facts of this

1 case line up with our precedent on ticket-fixing cases?

2 MR. PETRO: Well, I think that there's only one
3 incident that we're talking without. And in this
4 instance, there isn't as - - - when I said malice of
5 heart, in those cases that the judges have been removed,
6 the judges normally made some surreptitious movement to
7 gain jurisdiction over the charge. They've often been
8 less than forthcoming about the result of the charge.
9 They have at times perhaps even fibbed or lied about their
10 role within - - - you know, what they did with that charge
11 or decided not to testify, where Judge George did anything
12 but that. There is a fully - - -

13 JUDGE PIGOTT: Mr. Petro, you've appeared in
14 this court - - -

15 MR. PETRO: Yes, I have.

16 JUDGE PIGOTT: - - - representing clients?

17 MR. PETRO: Yes.

18 JUDGE PIGOTT: What normally happens if you get
19 a - - - if you have a seat belt charge?

20 MR. PETRO: To be honest with you, I think it
21 would have been ACD'd or even dismissed. This is - - -
22 the trooper who was there states that he only enforces the
23 law when there's a buckle-up buddy week.

24 JUDGE PIGOTT: That's what they were doing this
25 time, right? There was a buckle - - -

1 MR. PETRO: That was what they were doing this
2 time. That's the only time he writes those type of
3 tickets. I'm sure that Mr. Hubbard had - - - if he had
4 been confronted by Mr. Johnson, I think the worst outcome
5 would have been an ACD if not an outright dismissal. I
6 don't know that there would have been anything different.
7 It's certainly not anything of merit, and it's not
8 something he would spend a lot of time on. And if you
9 were advised of the particular defect of the ticket, he
10 may even looked at it more favorably than just an ACD and
11 perhaps have dismissed the charge.

12 CHIEF JUDGE LIPPMAN: What about the second
13 charge, counsel, the propriety of his conversations with
14 one of the parties?

15 MR. PETRO: He answered the phone. Once again,
16 I don't know that that is a prudent matter for the judge
17 to have done, but he did. That happens sometimes in more
18 rural courts - - -

19 CHIEF JUDGE LIPPMAN: Yeah.

20 MR. PETRO: - - - and that he engaged him in
21 conversation. It was the judge's intent he's not going to
22 handle anything. He wanted to see what the nature of the
23 claim was. I don't know that this man was discouraged.
24 He had already filed the complaint against the judge which
25 was not - - - did not lead to any - - -

1 JUDGE GRAFFEO: Well, he asked for another
2 judge, so he must have been rather upset, wasn't he?

3 MR. PETRO: No. I think the judge said, I will
4 not handle this matter, come on in and see me. The other
5 judge recused himself as well. I don't know for what
6 reason; that's not part of the record.

7 JUDGE GRAFFEO: Why would Judge George even
8 offer an opinion on whether the claim was valid or
9 invalid?

10 MR. PETRO: I don't know that the judge offered
11 an opinion on whether it was a valid or invalid claim. I
12 think he discussed some of the facts of the case with Mr.
13 Guidice. I think he did that. And that he indicated he
14 can come in on any day, come on in on - - - Judge Rosa is
15 the other sitting judge in that court.

16 JUDGE GRAFFEO: Even be discussing the facts of
17 the case with him - - -

18 MR. PETRO: No, he should not be discussing the
19 facts of the case. And that was an opening that he never
20 should have given anyone in regard to that. He should
21 have just said, could you hold until the clerk could get
22 back on the phone or could you call back - - -

23 CHIEF JUDGE LIPPMAN: Not until the - - - is
24 part of the issue here that this is a small community and
25 - - - does that excuse these kinds of - - - whatever you

1 want to call them - - - indiscretions because you know
2 people and you do pick up the phone or everyone knows
3 everybody? Is that - - -

4 MR. PETRO: I don't know if that - - -

5 CHIEF JUDGE LIPPMAN: - - - an excuse or a
6 mitigating factor? Or how do you view it?

7 MR. PETRO: I think it's a mitigating factor. I
8 don't think it's an excuse. I think you're held to - - -
9 every judge - - - and I think everyone makes that
10 abundantly clear. How could you have rules for rural
11 courts versus metropolitan court. The rules are the rules
12 for everybody who's involved here. Does it mitigate some
13 of that? Yes. I think that there is a - - - there's less
14 formality, less anonymity in Margaretville, New York, than
15 there is in New York City by far. I think that there is
16 some knowledge of most of the people within the community.
17 They might graduate seventy-five people from their high
18 school class every year.

19 JUDGE RIVERA: Doesn't that then require that
20 you exercise even greater caution?

21 MR. PETRO: One would think it would, yes. That
22 doesn't necessarily - - -

23 JUDGE RIVERA: Hopefully - - -

24 MR. PETRO: - - - lead to that. I think that
25 everybody with familiarity breeds a certain amount of bad

1 habits or laziness in that regard. I don't think
2 necessarily that it does. I think it has just the
3 opposite effect by - - - common experience is that people
4 tend to be - - - they let their guard down a little bit
5 more, they're more conversational, they're more - - -

6 JUDGE ABDUS-SALAAM: Counsel, is that why - - -
7 you only mentioned the phone conversation with Mr.
8 Guidice, but wasn't there an allegation that Mr. Guidice
9 actually came to the courthouse and was speaking with the
10 clerk and that Judge George, sitting in the back, decided
11 to interject himself into the conversation when he
12 overheard what Mr. Guidice was there for?

13 MR. PETRO: Actually, the court clerk's desk is
14 right next to the bench, and he was on the bench at the
15 time of the conversation, I believe. The judge says it
16 didn't happen. The judge says, I did answer the phone,
17 did discuss part of the facts of the case. But that
18 didn't happen otherwise.

19 JUDGE ABDUS-SALAAM: Well, if it did happen
20 though, would that make it a little more serious that he
21 actually interjected himself when this potential claimant
22 was speaking to the clerk?

23 MR. PETRO: I don't know that it makes it more
24 serious. It doesn't make it any less excusable, if that's
25 the question. I don't know that that would be the fact.

1 But it's certainly - - - in that proximity, how many times
2 do you get that close to a bench to have your conver - -
3 - you couldn't miss hearing what was being said if you
4 were the judge, and that's something that you don't want
5 to act upon obviously as a judge, but perhaps it is a
6 little bit as far as mitigation that you're going to
7 overhear this, you're going to address it.

8 JUDGE SMITH: Let me take a - - - well, your red
9 light's on, but I'll ask the question anyway, if I can get
10 away with it.

11 CHIEF JUDGE LIPPMAN: Oh, you can.

12 JUDGE SMITH: Going back to the first - - - the
13 first item and let's - - - I can certainly understand that
14 it's not the biggest deal in the world; in fact, it's
15 almost the littlest deal in the world, but if it does
16 smack of favoritism, isn't that the sort of thing that the
17 commission can legitimately say, look, we're going to have
18 zero tolerance for, it just undermines confidence in the
19 judiciary, you don't do favors for your friends?

20 MR. PETRO: I don't know that - - - the question
21 about the commission is one thing. I don't know that
22 we've looked at it previously here in that regard. I
23 don't know that we looked at it in that light. But
24 favoritism isn't tolerated at all by the bench or anybody
25 that's involved in being a judge and never has been. The

1 question is whether it amounts to favoritism or not. I
2 think one of the arguments before the Court is that it is
3 not favoritism. This is something - - -

4 JUDGE SMITH: But if we were to find that it
5 were, would you agree that removal would be appropriate,
6 even though it's a tiny little matter and probably an
7 understandable situation?

8 MR. PETRO: No, I don't. I think that under - -
9 - after a long, distinguished, judicial career that this
10 isn't probably the - - - he may have gotten less formal
11 and less zealous in watching what he should be doing. I
12 think it was a quick decision that was a very poor
13 decision or poor decision on his part and that he
14 shouldn't have acted upon it; he should have had some more
15 forethought.

16 CHIEF JUDGE LIPPMAN: Okay. Thanks. Thanks,
17 counsel. You'll have your rebuttal.

18 Counselor.

19 MR. LINDNER: Good afternoon, Your Honors. May
20 it please the Court.

21 I think Judge Lippman and Judge Graffeo's
22 question focuses on why this is a removal case. If you
23 look at this Court's framework of the decisions that you
24 had in the 1980s, it comes down to the mitigating and the
25 aggravating factors. And in this case, you have no

1 mitigating factors and two serious aggravating factors.

2 JUDGE SMITH: Well, isn't the very pettiness of
3 the violations - - - maybe it's not a mitigating factor,
4 but it's a seat belt violation that probably would have
5 ended in dismissal?

6 MR. LINDNER: Right. And so why not send it
7 through the normal case.

8 JUDGE PIGOTT: Because of the way these things
9 happen, and this became a big issue. You may know in the
10 town of Clarence where all of these tickets are returnable
11 on a date when no one else is there. And motorists from
12 all over the state, if they get stopped for one of these,
13 then have to drive back, in this case, to Middletown, to
14 appear when nobody else is going to be there. And then
15 the judge says, well, now you gotta come back on whatever
16 date the officer or the prosecutor says. So you drive
17 home, then you drive back, and then you say, well, I got
18 this seat belt - - -

19 MR. LINDNER: Well, perhaps. I understand - - -

20 JUDGE PIGOTT: I'm almost done, Mr. Lindner - -
21 - and then they say, okay, we'll dismiss it. And in the
22 town of Clarence, they refused to - - - they refused to do
23 it. They started dismissing them all because they said,
24 you can't tell people to come to our court and then not
25 have a prosecutor available. Now - - -

1 MR. LINDNER: Let's get - - - if that's what
2 happened here, we'd have a different case.

3 JUDGE PIGOTT: I understand, but when you look
4 at that, and as Judge Smith characterizes, as a de minimis
5 thing, and compare it to the dismissal you gave, when the
6 same judge apparently handled a DWI not to your
7 satisfaction, I don't think you used the word "interfered"
8 but then had three separate encounters with the - - - with
9 the defendant in that case and said, you shouldn't have
10 done all of that, but we're dismissing it. Now, it would
11 seem to me if you dismiss a DWI that was handled in the
12 fashion that it was and then ten years later, you say, oh,
13 well you handled a seat belt case that was, at least to
14 your mind, facially defective by throwing it out, and that
15 is somehow the same as or worse than the first one. It
16 raises the question of where the seriousness is.

17 MR. LINDNER: A lot of issues in that question.

18 JUDGE PIGOTT: Yes. I'm sorry. A long - - -

19 MR. LINDNER: So let me see if I can walk down
20 them really quickly. First, it's important to understand
21 the practice in upstate courts which I know you know,
22 Judge, and these little town courts don't have a
23 prosecutor there every week. This court meets once a
24 week. The prosecutor testified, the judge confirmed that
25 there's an ADA there on the second and the fourth

1 Thursday.

2 JUDGE PIGOTT: So now they make their tickets
3 returnable when the prosecutor or the trooper's going to
4 be there so you're not sending people to a court where - -
5 -

6 MR. LINDNER: Again, that's - - - there's an
7 issue.

8 JUDGE PIGOTT: - - - they're seeking relief and
9 the prosecutor says, I'm not coming.

10 MR. LINDNER: I think the commission would
11 probably agree with you that it's problematic that persons
12 who drive a long way are asked to come back another time.
13 But again, it's not what happened here. This judge - - -
14 this is a local guy. He could have come the next week.
15 He - - -

16 JUDGE PIGOTT: No, but it's a defective ticket.
17 It's a defective ticket.

18 MR. LINDNER: Well, it wasn't a defective
19 ticket. If you look - - - the ticket's in the record.
20 Take a look at it and tell me why it's defective.

21 JUDGE PIGOTT: I did, and if it was not
22 defective, then the prosecutor would have sent a letter
23 saying, Judge, this was improperly dismissed, I would like
24 it put back on the calendar and - - -

25 MR. LINDNER: The prosecutor says he never heard

1 about this until we contacted him years later.

2 JUDGE PIGOTT: And he said, I don't know what I
3 would have done, if I had a conversation or not.

4 MR. LINDNER: But why should that matter? This
5 is really about the judge's conduct and more importantly
6 about public perception.

7 JUDGE PIGOTT: I think it's de minimis.

8 MR. LINDNER: Let me go back, if I can for a
9 minute. Is it de minimis?

10 JUDGE PIGOTT: Yes.

11 MR. LINDNER: Because the same night that - - -
12 oh, I'm sorry, it was a morning - - - that Lynn Johnson
13 was there, there's testimony from Trooper Burkert that he
14 ticketed six to eight other people, the same time in the
15 same location. So it's quite probable there were other
16 people sitting in that courtroom that day.

17 JUDGE PIGOTT: I don't think so. I think they
18 pled guilty and mailed it in.

19 MR. LINDNER: Well, maybe they did, but there
20 are people - - -

21 JUDGE PIGOTT: Well, then don't make the
22 assumption that he did - - - that he made a - - - that he
23 - - -

24 MR. LINDNER: I think it's a fair assumption.

25 JUDGE PIGOTT: - - - singled somebody out of

1 eight people and said, I'm going to treat this person
2 differently.

3 MR. LINDNER: I think it's a fair assumption
4 that there were other people there with seat belt tickets,
5 and certainly, there were other people in the courtroom
6 who had matters returnable.

7 JUDGE PIGOTT: Did you show the tape because - -
8 - the other point Mr. Petro makes is that there was no - -
9 - there was no attempt to hide this. They had the
10 transcript of Mr. Johnson coming in and saying it's a bad
11 ticket and he said I think you're right throwing it out.
12 I mean, if he wanted to go off the record - - -

13 MR. LINDNER: Well, he hid it from the one
14 person who really needed to be there which was the ADA.
15 He didn't tell him about it.

16 JUDGE PIGOTT: But if he wanted to - - - if he
17 wanted to fix a ticket and go off the record, that would
18 have been an easy thing to do.

19 MR. LINDNER: Or maybe you come in with the
20 flimsiest of pretext and have your friend waive a
21 certificate of title which is absolutely useless as a bit
22 of evidence and - - -

23 JUDGE PIGOTT: You're making a political - - -
24 or excuse me - - - a legal judgment on that because he
25 says, I didn't own a car that's on this ticket and - - -

1 MR. LINDNER: Oh, okay. That's testimony.

2 JUDGE PIGOTT: Right.

3 MR. LINDNER: Let's talk about the certificate
4 of title, because there's no question about this. That
5 certificate of title, which is a Florida certificate of
6 title, proves one thing, that in 2002 Lynn Johnson bought
7 a 1976 Mercedes in the state of Florida. He's driving
8 with a transporter plate. The transporter plate is not
9 related to any particular car. It's related to Mr.
10 Johnson, so he could show up with the certificate of - - -

11 JUDGE SMITH: But do we really expect every
12 village justice to analyze this question with a kind of
13 close precision that you're now doing it?

14 MR. LINDNER: Two responses. Yes is the answer.
15 If someone comes in and says, the trooper was wrong, an
16 experienced New York State Trooper can't tell the
17 difference between a 2000 model car and a car twenty-four
18 years older, I expect every judge and justice of this
19 state to say, that's a factual dispute, let's see what the
20 trooper has to say. But in this case - - -

21 JUDGE SMITH: But we don't remove judges for
22 making a mistake. He's not the first judge who ever erred
23 by failing to proceed - - -

24 MR. LINDNER: If it's a mistake, isn't the first
25 thing that has to happen is that the judge has to

1 acknowledge, you know, now that I look at it, I was wrong?

2 CHIEF JUDGE LIPPMAN: Counselor, what's the nub
3 of the misconduct here? Is it because of the letter of
4 caution - - -

5 MR. LINDNER: Well, those are the exacerbating
6 factors.

7 CHIEF JUDGE LIPPMAN: - - - that takes on any
8 significance, the kind of dialogue now about what exactly
9 happened absent the letter of caution - - -

10 MR. LINDNER: Well, there are two excellent - -
11 -

12 CHIEF JUDGE LIPPMAN: - - - would it have made a
13 difference?

14 MR. LINDNER: If I may, let me answer Judge
15 Graffeo's question from earlier about the state of the
16 case law, and I think that will answer your question - - -

17 CHIEF JUDGE LIPPMAN: Go ahead.

18 MR. LINDNER: - - - as to where this goes. You
19 have four cases on ticket fixing. You started in 1985
20 with the Matter of Reedy in which you said ticket fixing
21 is so serious that even a single instance - - - it's of
22 such gravity, a single instance could lead to removal.
23 The following year in Matter of Edwards, you qualified
24 that. You repeated that generally if a judge interferes
25 in the disposition of a ticket he or she should be removed

1 but that the Court could and should look at mitigating
2 factors, and there were mitigating factors in Edwards.
3 The judge, for instance, acknowledged that it was wrong.
4 He had a twenty-one-year clean record, and the court found
5 that his judgment was clouded because it was family. Once
6 - - -

7 CHIEF JUDGE LIPPMAN: Are you saying that the
8 letter of caution doesn't matter?

9 MR. LINDNER: No. I'm saying that the letter of
10 caution is an exacerbating factor. You found that in
11 Matter of Roberts, you found that in Assini. You found in
12 several of our cases that ignoring an applicable letter of
13 caution exacerbates the misconduct. You said in Jung and
14 you said in Bauer that a judge's failure to acknowledge
15 wrongdoing where wrongdoing is plain, because there's no
16 way even, whatever you think about this ticket, you can't
17 dismiss a ticket without the prosecutor, without giving
18 them notice.

19 JUDGE ABDUS-SALAAM: Counsel, would it have made
20 a difference if Judge George had put on the record that he
21 was a good friend of Mr. Johnson's and whatever else,
22 because that was part of the problem too. Wasn't that
23 part of the charge, that he didn't - - -

24 MR. LINDNER: He needed to disclose, and he
25 needed to disclose to the party to whom it mattered which

1 was the district attorney's office.

2 JUDGE ABDUS-SALAAM: So even if he had put on
3 the record in that ex parte proceeding because the DA
4 wasn't there?

5 MR. LINDNER: Again, the judge knows the DA's
6 not there, if a DA's not supposed to be there, he's never
7 there on that date. So I don't think that absolves the
8 judge. I think if the judge had some reason to - - - I'm
9 sorry.

10 JUDGE SMITH: Would you agree that if - - - in
11 order to remove him, we would have to find that he was
12 motivated by favoritism? This wasn't just a blunder?

13 MR. LINDNER: Absolutely. A mistake. But
14 again, he won't say it's a mistake, so how can it be?

15 CHIEF JUDGE LIPPMAN: Well, what about the - - -

16 MR. LINDNER: The fact that he won't say that
17 it's a mistake at this point, I think tells you a lot.
18 He's afraid - - -

19 CHIEF JUDGE LIPPMAN: Address the second charge.

20 MR. LINDNER: With the second charge - - - in
21 some ways, the second charge is more shocking than the
22 first. I mean, the commission found - - - the referee
23 found that Mr. Guidice's testimony was credible, and it
24 certainly makes more sense than the petitioner's
25 testimony. This guy comes in, he wants to file a small

1 claims case. He's not from around here. He's a guy from
2 Long Island. He's already been in the judge's court four
3 times, and the judge has held against him three times, and
4 he says - - -

5 JUDGE PIGOTT: Well, maybe that was true though.
6 I mean, I know you made that point before, but maybe he
7 should have been ruled against. I mean, there were - - -

8 MR. LINDNER: I'm not disputing that - - -
9 whether those rulings were correct.

10 JUDGE PIGOTT: Okay.

11 MR. LINDNER: I'm simply saying, there was a
12 history - - -

13 JUDGE PIGOTT: Okay.

14 MR. LINDNER: - - - between this judge and this
15 litigant. And the litigant comes in and says, I want to
16 file this claim. The judge admits that at least the
17 January 3rd telephone call occurred. And he says to him,
18 well, who has the senior parcel, who bought the property
19 first. He says in his testimony that he knew at that time
20 that he wasn't going to hear the case, so why is he asking
21 this litigant about this esoteric - - -

22 JUDGE SMITH: Maybe - - - is a possible
23 interpretation that he was just foolish enough to chat
24 idly about something he wasn't supposed to be talking
25 about?

1 MR. LINDNER: With a guy he already knew that he
2 had an issue with and he wasn't going to hear the case?

3 JUDGE PIGOTT: But he didn't know he had an
4 issue with him. The guy had an issue with the judge. I
5 mean - - -

6 MR. LINDNER: The judge testified that at that
7 time he had that conversation - - -

8 JUDGE PIGOTT: I don't think everybody that I've
9 ruled against has an issue with me or I have an issue with
10 them. I mean, even you, Mr. Lindner.

11 MR. LINDNER: Of course not. I have no issue
12 with your rulings in my prior cases, Judge Pigott.

13 CHIEF JUDGE LIPPMAN: Well, what about this idea
14 of small towns, small town conversation, you pick up the
15 phone, whatever it is?

16 MR. LINDNER: This Court and the commission has
17 addressed that issue a number of times. You talked about
18 it as far back as VonderHeide and Fabrizio. We don't have
19 two systems of judicial competence or judicial
20 impartiality.

21 CHIEF JUDGE LIPPMAN: Are there mitigating
22 factors though that - - -

23 MR. LINDNER: I don't think you can say that it
24 is. We have 2,500 town and village justices. The people
25 in those rural communities deserve to have competent and

1 impartial judges. The people from - - -

2 JUDGE SMITH: Well, but on the second incident,
3 how do you pronounce it, Guidice?

4 MR. LINDNER: I'm sorry. I missed that.

5 JUDGE SMITH: Well, what's the second guy's
6 name?

7 MR. LINDNER: Guidice.

8 JUDGE SMITH: Guidice. On that incident, you're
9 saying this was not just a competence issue; this was an
10 impartiality issue?

11 MR. LINDNER: Absolutely.

12 JUDGE SMITH: What did the commission find was
13 the judge's purpose?

14 MR. LINDNER: That - - - his purpose? I don't
15 think the commission made a finding as to purpose. I
16 think they - - -

17 JUDGE SMITH: What did they find as to his
18 partiality or impartiality?

19 MR. LINDNER: What they found was he created the
20 appearance that he was not impartial, that he had
21 prejudged the case, and that Mr. Guidice was actually
22 discouraged. And if you look at the time line - - -

23 JUDGE SMITH: For appearance in a case like - -
24 - you would remove the judge?

25 MR. LINDNER: That's what the commission found.

1 Well, that's the second charge. Reedy says a single
2 instance of ticket fixing could be removal, let's look at
3 the exacerbating factors and the mitigating factors.
4 There are no mitigating factors.

5 JUDGE PIGOTT: Well, how about the fact that he
6 was a twenty-year trooper and a twenty-five-year judge?

7 MR. LINDNER: Yeah, he should know better.

8 JUDGE PIGOTT: Well, that's mitigating; that's
9 not exacerbating.

10 MR. LINDNER: No. I think it means - - -

11 JUDGE PIGOTT: That's twenty-five years of good
12 - - -

13 MR. LINDNER: - - - that he knew exactly what
14 he's doing.

15 JUDGE PIGOTT: Twenty-five years of good
16 judging, I mean - - -

17 MR. LINDNER: Well, not good judging. He's had
18 two prior letters of caution. So it's not the same as the
19 - - -

20 JUDGE PIGOTT: Well, he only got one.

21 MR. LINDNER: No, he had two.

22 JUDGE PIGOTT: There's only one in here.

23 MR. LINDNER: There's one in there, and there's
24 a reference in the record and in our briefs to this.
25 Under Commission Rules 7000.4(b) of our operating

1 procedure, the commission counsel may introduce an earlier
2 letter of caution to the commission at the time of
3 sanction. And that was done here. So the actual letter
4 of caution is not in the record, but the references to it
5 are. It was a 1991 - - -

6 JUDGE PIGOTT: Well, how are we supposed to read
7 it?

8 MR. LINDNER: It's in the briefs, Your Honor.

9 JUDGE PIGOTT: It's in the brief?

10 MR. LINDNER: The reference to it is in the
11 brief, and the substance of it is in the brief, and it was
12 discussed in front of the commission and Mr. Petro doesn't
13 dispute that it happened.

14 CHIEF JUDGE LIPPMAN: Okay, counsel. Thanks,
15 counsel.

16 MR. LINDNER: Thank you.

17 CHIEF JUDGE LIPPMAN: Counselor, rebuttal?

18 MR. PETRO: Thank you.

19 I just wanted to make clear in regard to the
20 title that was attached to the Court's record. It does
21 have some bearing, and there was testimony that Trooper
22 Burkert who was doing this either had to call into his
23 barracks or - - - and he wasn't sure whether he had his
24 computer. Some of the cars are equipped with computers.
25 What they have to do to make sure they're not dealing with

1 a stolen car is that they'll run the VIN number on a
2 transporter plate. And the VIN number specifically
3 identifies the vehicle that he's dealing with. He
4 certainly didn't arrest Mr. Johnson for driving a stolen
5 car. In addition to that, whether he can tell the
6 difference between a 1976 Mercedes, when he testifies
7 before the commission three years later, or he could then.
8 I don't know what - - -

9 JUDGE PIGOTT: No, but you're saying that night.
10 I mean, he didn't make a mistake. He got the right car.
11 And Mr. Johnson then came in with a title that was
12 unrelated to the car he was driving.

13 MR. PETRO: He had the wrong car, but he ran the
14 VIN number on the transporter plate. He admits in his
15 testimony he ran the VIN number. Once he runs the VIN
16 number, he gets the make and model no matter where it's
17 from, and it comes back up and plays through him, he knows
18 he's not dealing with a stolen car then. So when he
19 writes the ticket - - -

20 JUDGE PIGOTT: Well, then the year shouldn't be
21 - - - should be the - - -

22 MR. PETRO: It is different because what he did
23 is misread the information that he received. The car was
24 last transferred in the year 2000.

25 JUDGE PIGOTT: He didn't testify to that.

1 MR. PETRO: That's where he got the 2000 from.
2 It's documented within the title itself that that was the
3 last time it was documented.

4 JUDGE SMITH: Maybe this is irrelevant. I'm
5 sort of - - - I'm not quite understanding why that's a
6 defense to not having your seat belt buckled.

7 MR. PETRO: No. I just was rebutting the point
8 that, in fact, that there - - - this was - - - this had a
9 defect, this particular ticket had a defect in it. The
10 defect was real. It wasn't imagined. It wasn't some
11 flimsy excuse to - - -

12 JUDGE PIGOTT: Well, it's amendable though,
13 right?

14 MR. PETRO: Yes, yes, it was, Judge.

15 JUDGE PIGOTT: I think that was brought out.

16 MR. PETRO: There was - - - it could have been -
17 - - I guess, at the conclusion of the case, if you picked
18 up on the error the first time, I don't know that it ever
19 would have gotten to that point, but it's certainly
20 something that was out there that needed to be addressed.
21 But it wasn't a case where they didn't know that it was a
22 real mistake. It was a real mistake. This judge is known
23 for dismissing tickets sua sponte or otherwise for
24 mistakes - - - material mistakes within the traffic ticket
25 itself.

1 CHIEF JUDGE LIPPMAN: Counselor, your basic
2 argument is these transgressions were not sufficient to
3 warrant removal?

4 MR. PETRO: Yes, that is my basic argument.

5 CHIEF JUDGE LIPPMAN: On the basis, essentially,
6 that they're de minimis and not that important?

7 MR. PETRO: No. I think they are - - - I don't
8 think I can make the argument that the - - -

9 CHIEF JUDGE LIPPMAN: Well, what is the essence
10 of your argument?

11 MR. PETRO: The essence of the argument is he
12 made an error in judgment. It wasn't a case of
13 favoritism. He went in and performed as he would with - -
14 -

15 CHIEF JUDGE LIPPMAN: Both instances, errors of
16 judgment?

17 MR. PETRO: Yes, I think they are both instances
18 of errors of judgment.

19 CHIEF JUDGE LIPPMAN: Are these errors of
20 judgment not worthy of removal, in your - - -

21 MR. PETRO: Yes, Judge, that is my argument in
22 whole and in part.

23 CHIEF JUDGE LIPPMAN: Okay.

24 MR. PETRO: But there were some bases in fact
25 that enforce that position. Thank you.

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CHIEF JUDGE LIPPMAN: Okay. Thank you, both.
Appreciate it.

(Court is adjourned)

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C E R T I F I C A T I O N

I, David Rutt, certify that the foregoing transcript of proceedings in the Court of Appeals of Glen R. George v. State Commission on Judicial Conduct, No. 249, was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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