

NOT FINAL UNTIL TIME EXPIRES FOR REHEARING  
AND, IF FILED, DETERMINED

**IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA  
APPELLATE DIVISION**

JOSE MANUEL MAS CASTILLO,  
Appellant,

vs.

Appeal No. 19-00024-APANO  
UCN: 522019AP000024000APC

PINELLAS COUNTY SHERIFF  
Appellee.

\_\_\_\_\_/

Opinion filed December \_\_\_\_, 2020.

Appeal on Judgment and Sentence  
Entered by the Pinellas County Court  
County Judge Susan Bedinghaus

Brooke Elvington, Esq.  
Attorney for Appellant

Shannon Lockheart, Esq.  
Attorney for Appellee

**ORDER AND OPINION**

MEYER, Judge.

We AFFIRM.

This case concerns the disposition of certain traffic infractions committed by Appellant/Defendant below, who holds a commercial driver's license (CDL). On March 21, 2019, Appellant/Defendant was driving a fully loaded commercial dump truck southbound on Highway US 19 in Pinellas County, Florida, when he was captured by radar traveling 70 mph in a 55-mph zone. Additionally, Appellant/Defendant failed to yield to a Pinellas County Sheriff vehicle as it approached with lights and siren on. Appellant/Defendant was given two citations, for speeding in violation of § 316.187, Fla. Stat., and for failing to yield to an emergency vehicle in violation of § 316.126(1)(a), Fla. Stat. Neither citation required a court appearance and carried civil penalties of \$256.00 and \$166.00 respectively. Appellant/Defendant's driving record reveals a prior citation for "cut across to avoid traffic ctl device." He also has two entries for failing to pay traffic fines.

On May 8, 2019, Appellant/Defendant's counsel, filed a notice of appearance for the speeding ticket, entered a plea of not guilty, and requested a hearing. The hearing was scheduled and subpoenas were issued to all parties, including the Pinellas County Sheriff's Deputy who issued the subject citations.

On May 22, 2019, a hearing was conducted on Appellant/Defendant's traffic infractions citations in the lower court. Appellant/Defendant, through counsel, requested the trial court hear both infractions at the same time, to which the trial

court agreed. The trial court asked if there was going to be an adjudication, and went on to indicate that she would offer nothing more than a concurrent fine. During the hearing the Deputy advised the court that Appellant/Defendant was driving a fully loaded dump truck when he received both citations. After discussions with the court, Appellant/Defendant through counsel agreed to a no-contest plea to the court's offer but made a final request that the court consider withholding adjudication. The trial judge stated it was her opinion that applicable law prohibited her from withholding adjudication. Furthermore, the trial court indicated that it is not her practice to violate the law through the process referred to as "masking."<sup>1</sup> The hearing concluded with Appellant/Defendant entering a plea of no-contest in exchange for adjudications and a concurrent fine.

On June 03, 2019, Appellant/Defendant, through counsel, filed a timely motion for a new hearing pursuant to Fla. R. Traffic Court 6.540(a), arguing that the trial court misapplied the law by not providing a withhold of adjudication. Appellant/Defendant urged the court to reconsider and explained he would lose his employment if the withhold were not granted. The Court denied Appellant/Defendant's motion. On July 3, 2019, Appellant/Defendant filed a timely notice of appeal, which is now before this Court.

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<sup>1</sup> In a nutshell in this case "masking" is the process of characterizing the outcome of a case in such a manner so as to potentially prevent regulatory authorities responsible for maintaining oversight of certain licenses from identifying driving violations and consequently suspending and/or revoking those licenses as required by law and to promote public safety.

The trial court did not abuse its discretion in denying a withhold of adjudication for a traffic infraction admitted by the Appellant/Defendant because the trial judge had discretion to impose any lawful sentence upon entry of a voluntary plea of no contest under the circumstances presented at the hearing discussed in a preceding section of this opinion. Not awarding a withhold in a case like the one at bar is both lawful and appropriate. Additionally, even if Appellant/Defendant is correct in the assertion that the trial judge was incorrect in her conclusion that awarding a withhold would violate “masking” laws, the decision may still be upheld.

A trial court’s ruling on a discretionary power (here the granting or not granting of a withhold of adjudication) is, on its face, subject to an abuse of discretion standard of review. Under this standard, this Court would only overturn the lower court’s plea bargain/sentence if it was found to be “arbitrary, fanciful, or unreasonable.” *Banks v. State*, 46 So. 3d 989 (Fla. 2010). In this case alternate grounds appear on the record which supports the conclusion by the lower court not to offer the withhold of adjudication. The facts before the court were that the Appellant/Defendant, with a prior traffic violation history was speeding in a fully loaded commercial dump truck on U.S. Highway 19 and failed to respond to the hail of a police vehicle’s lights and siren. These facts provided the court with a sound basis to not offer the withhold. Regardless of the court’s opinion on “masking”, not offering a withhold under these circumstances cannot said to have been arbitrary,

fanciful or unreasonable. The Appellant/Defendant did not have to enter the plea and nothing in the record suggests that it was not made freely and voluntarily and with the assistance of competent legal counsel.

**IT IS THEREFORE ORDERED** that the judgment and sentence are  
AFFIRMED.

**ORDERED** at Clearwater, Florida this \_\_\_\_\_ day of December 2020.

Original Order entered on December 18, 2020, by Circuit Judges Keith Meyer,  
Patrice Moore, and Thane B. Covert.

Copies to:  
Judge Susan Bedinghaus  
Brooke Elvington, Esq., Attorney for Appellant  
State Attorney's Office, Appellee