

JAMAL KENDRICK

CIVIL SERVICE COMMISSION

VS.

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

NO. 8198

The Department of Police (“Appointing Authority”) employed Jamal Kendrick (“Appellant”) as a police officer with permanent status. The Appointing Authority terminated the Appellant for violating NOPD Rule 2, Moral Conduct, Paragraph 1, Adherence to Law, relative to Louisiana Revised Statute, Title 14, Article 134, Malfeasance in Office, and further, issued a three day suspension for violating NOPD Rule 4, Neglect of Duty, Paragraph 4c11, Failing to take appropriate action as to illegal activity, including vice and gambling violations, and/or to make a written report of the same to his/her commanding officer. The basis for the discipline was the Appellant’s admission that he found marijuana on an arrested subject and failed to report it.

The matter was assigned by the Civil Service Commission to a Hearing Examiner pursuant to Article X, Section 12 of the Constitution of the State of Louisiana, 1974. The hearing was held on June 4, 2014. The testimony presented at the hearing was transcribed by a court reporter. The three undersigned members of the Civil Service Commission have reviewed a copy of the transcript and all documentary evidence.

FACTS

On August 6, 2012, Appellant arrested a subject who had an outstanding Warrant of Arrest. During the arrest, the subject was found to be in possession of what the Appellant believed to be marijuana. Appellant failed to secure the substance, did not test it for illegality, or note it in his police report. Appellant stated that: *“It was a nickel bag,*

dirt weed, and it really didn't look like enough to really test and I was gonna give him a break on it".¹ The subject went to jail and was overheard stating that the arresting officer found marijuana on him and did not charge him. An internal investigation resulted and the Appellant was found to have violated the department's internal rules. The Appellant was disciplined and this appeal resulted.

ANALYSIS

Two distinct issues are presented in this appeal. The first is the application of LSA-R.S. 40:2531, the Police Officer Bill of Rights, and whether the underlying investigation violated those rights because it exceeded the statutory time limit of sixty days for an administrative matter. There is no question that the underlying investigation exceeded the sixty day period. The question is whether the investigation was administrative or criminal in nature.

From the onset of the investigation, an allegation of malfeasance was at the core of the alleged action or lack of action by the Appellant. The Appellant was notified of the underlying rule violations that were being investigated, and was also notified of the investigator's findings and of the fact that a Commander's Hearing would be held. All of these notifications included the allegation that the Appellant had committed malfeasance. We find that the underlying investigation was criminal in nature, and that the sixty day time period did not apply.²

The second issue is whether the Appellant's actions in overlooking what he believed to be marijuana found on the arrestee amounted to malfeasance. Malfeasance is

¹ NOPD Exhibit 11, Administrative Statement of Jamal Kendrick, PIB investigation 2012-0788, page 3.

² LSA-R.S. 40:2531(B)(7) specifically provides: *Nothing in this Paragraph shall limit any investigation of alleged criminal activity.*

state criminal violation set forth in LSA-R.S. 14:134. This statute provides, in pertinent part, as follows:

§134 Malfeasance in office

A. Malfeasance in office is committed when any public officer or public employee shall:

- (1) Intentionally refuse or fail to perform any duty lawfully required of him, as such officer or employee; or
- (2) Intentionally perform any such duty in an unlawful manner; or
- (3) Knowingly permit any other public officer or public employee, under his authority, to intentionally refuse or fail to perform any duty lawfully required of him, or to perform any such duty in an unlawful manner.

B. Any duty lawfully required of a public officer or public employee when delegated by him to a public officer or public employee shall be deemed to be a lawful duty of such public officer or employee. The delegation of such lawful duty shall not relieve the public officer or employee of his lawful duty.

The Louisiana Supreme Court has interpreted malfeasance. In *State v. Perez*, 464 So.2d 737, 741 (La.1985), the Louisiana Supreme Court stated:

The phrase in the statute upon which this opinion hinges is "any duty lawfully required of him". Before a public official can be charged with malfeasance in office, there must be a statute or provision of the law which delineates an affirmative duty upon the official. State v. Passman, 391 So.2d 1140 (La.1980). The duty must be expressly imposed by law upon the official because the official is entitled to know exactly what conduct is expected of him in his official capacity and what conduct will subject him to criminal charges.

The Court also stated:

The district attorney and the trial judge swore in their oath of office to "support the constitution and laws of this state" and to "faithfully and impartially discharge and perform all the duties incumbent [upon them as public officials]". La. Const. art. 10, Sec. 30. Both public officials have a mandatory duty to conform to the standard of conduct required by that oath. State v. Melerine, 236 La. 881, 109 So.2d 454 (1954). When the defendants swore to uphold the laws of Louisiana, this oath imposed a specific duty upon them not to obstruct or interfere with the execution of those laws. To intentionally interfere with the execution of any law would be a failure to perform a duty lawfully required of them under their oath and would constitute malfeasance. Id. at 742.

As a police officer, the Appellant is sworn to uphold the Constitution and laws of the State of Louisiana. It is his duty to enforce the laws equally to all citizens. This he failed to do. We find that the Appellant's failure did amount to malfeasance.

Testimony from NOPD Deputy Superintendent Darryl Albert was that the Appellant's actions could erode the belief by the public in the department's integrity and lawful pursuit of justice. This impaired the efficiency of the public service. Further testimony by Albert was that the discipline imposed was consistent with the internal disciplinary matrix and was not excessive.

LEGAL PRECEPTS

An employer cannot discipline an employee who has gained permanent status in the classified city civil service except for cause expressed in writing. LSA Const. Art. X, sect. 8(A); *Walters v. Department of Police of New Orleans*, 454 So. 2d 106 (La. 1984). The employee may appeal from such a disciplinary action to the city Civil Service Commission. The burden on appeal, as to the factual basis for the disciplinary action, is on the appointing authority. *Id.*; *Goins v. Department of Police*, 570 So. 2d 93 (La. App. 4th Cir. 1990).

The Civil Service Commission has a duty to decide independently, based on the facts presented, whether the appointing authority has good or lawful cause for taking disciplinary action and, if so, whether the punishment imposed is commensurate with the dereliction. *Walters v. Department of Police of New Orleans, supra*. Legal cause exists whenever the employee's conduct impairs the efficiency of the public service in which the employee is engaged. *Cittadino v. Department of Police*, 558 So. 2d 1311 (La. App.

4th Cir. 1990). The appointing authority has the burden of proving by a preponderance of the evidence the occurrence of the complained of activity and that the conduct complained of impaired the efficiency of the public service. *Id.* The appointing authority must also prove the actions complained of bear a real and substantial relationship to the efficient operation of the public service. *Id.* While these facts must be clearly established, they need not be established beyond a reasonable doubt. *Id.*

CONCLUSION

The Appointing Authority has established by a preponderance of evidence that it disciplined the Appellant for cause. The Appellant admitted that he found the arrested subject in possession of what he believed to be marijuana. The Appellant's subsequent failure to take action, which he was legally and departmentally required to do, is the legal cause for his discipline.

Based upon the foregoing, the Appellant's appeal is DENIED.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 20th DAY OF October, 2015.



JOSEPH S. CLARK, COMMISSIONER

CONCUR:



TANIA TETLOW, COMMISSIONER



CORDELIA D. TULLOUS, COMMISSIONER