

# CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE  
SUITE 900 – 1340 POYDRAS ST.  
NEW ORLEANS LA 70112  
(504) 658-3500 FAX NO. (504) 658-3598

CITY CIVIL SERVICE COMMISSION

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Monday, August 17, 2015

Mr. Donovan A. Livaccari  
101 W. Robert E. Lee, Suite 402  
New Orleans, LA 70124

Re: **Jeremy Wilcox VS.  
Department of Police  
Docket Number: 8185**

Dear Mr Livaccari:

Attached is the decision of the City Civil Service Commission in the matter of your appeal.

This is to notify you that, in accordance with the rules of the Court of Appeal, Fourth Circuit, State of Louisiana, the decision for the above captioned matter is this date - 8/17/2015 - filed in the Office of the Civil Service Commission at 1340 Poydras St. Suite 900, Amoco Building, New Orleans, Louisiana.

If you choose to appeal this decision, such appeal shall be taken in accordance with Article 2121 et. seq. of the Louisiana Code of Civil Procedure.

For the Commission,



Doddie K. Smith  
Chief, Management Services Division

cc: Michael S. Harrison  
Elizabeth S. Robins  
Jim Mullaly  
Jeremy Wilcox

file

JEREMY WILCOX

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

NO. 8185

Appellant was a Police Officer I with permanent status. He was first hired by the Appointing Authority on March 4, 2007 and was promoted to the class of Police Officer I on October 28, 2007. The Appellant received a four day suspension and was terminated for two sustained violations of NOPD Rule 2, moral conduct, adherence to law. As set forth in the disciplinary letter, the first violation arose out of Appellant's stop by a law enforcement officer in St. John Parish. Appellant received a citation for improperly displaying his license plate. During that traffic stop it was discovered that the Appellant had an outstanding warrant for his arrest out of St. Charles Parish for issuing a worthless check in an amount over \$500.00. For this, Appellant was arrested. This was the basis of Appellant's second sustained violation, for which he was terminated from the NOPD. The Appellant filed a timely appeal.

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 May 22, 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.

The Appellant does not dispute most if not all of the material facts supporting his sustained violations. He admits that he was not properly displaying his license plate when the St. John Parish Deputy stopped him for the infraction. He admits further that he was aware of the warrant out of St. Charles Parish. Appellant submits that the discipline

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issued by the Appointing Authority is an absolute nullity, however, for violation of La. R.S. 40:2531, which requires that an administrative investigation of an officer be completed "within sixty days" of its initiation. After a complete examination of the record evidence, we agree.

The testimony and other evidence presented at the hearing was as follows:

JEREMY WILCOX:

Ofc. Wilcox testified that on July 17, 2012, he was pulled over for an improperly displayed license plate in St. John Parish. He testified that when the Deputy ran Ofc. Wilcox's name in the computer he discovered that Ofc. Wilcox had an outstanding warrant from St. Charles Parish for issuing a worthless check. Ofc. Wilcox was arrested for the outstanding warrant and transported to St. Charles Parish where he was booked with a violation of La. R.S. 14:71, issuing worthless checks.

Ofc. Wilcox admits that at the time of the traffic stop his license plate was not secured to the rear of the vehicle and was thus not clearly visible to the Deputy.

Ofc. Wilcox admits that he became aware in 2011 that he had written a check in the amount of \$2505.87 in 2004 and that the check had been returned for insufficient funds. Wilcox testified that he thought it was a case of mistaken identity that his identity had gotten mixed up with someone who had the same name. Ofc. Wilcox testified that he then called an attorney. The attorney advised him that it was for an NSF check for approximately \$3000.00 and that Ofc. Wilcox just needed to pay the amount of the check and that would be the end of it.

Ofc. Wilcox testified that although his attorney advised him to pay the check in 2011, he failed to do so for lack of means. Ofc. Wilcox began working extra details and

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had about \$2200.00 saved up on the day of his arrest.

Ofc. Wilcox testified that the day after his arrest he borrowed the rest of the money from another officer to pay the full amount due. As a result, the charges were refused for prosecution on the following day.

SERGEANT ARLEN S. BARNES

Sgt. Barnes testified that Ofc. Wilcox was placed under administrative investigation for and accused of two violations of NOPD Rule 2, moral conduct, adherence to law, to wit: (1) issuing worthless checks, a violation of La. Rev. Stat 14:71; and (2) failure to properly display his license plate, a violation of La. R.S. 32:51.

During the investigation, Sgt. Barnes discovered that the day after Ofc. Wilcox was arrested, July 18, 2012, he had paid all monies owed and the charges were refused for prosecution. Sgt. Barnes also discovered that the traffic ticket Ofc. Wilcox had received was *nolle prosequied*.

DEPUTY SUPERINTENDENT DARRYL ALBERT

Chief Albert testified that during Ofc. Wilcox's disciplinary hearing he admitted that he had removed his license plate from his vehicle so that he could secure parking around the 2nd District Station during Mardi Gras and that he had forgotten to affix the plate back onto his vehicle. Chief Albert testified that "...whether it was for Mardi Gras or not, it was wrong, it was illegal and it wasn't something that the Department was going to just let go." He recommended a four day suspension because Ofc. Wilcox removed the plate knowingly, it remained off the car for several months and the plate was actually in the trunk of his car when he was stopped. Chief Albert sustained the violation and issued a four, out of five, day suspension because officers must adhere to the laws they enforce.

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Chief Albert sustained the violation because although he wrote the check before becoming a police officer, he knew in 2011 that he had written a worthless check, that he had an attachment out for his arrest, and did nothing to correct his situation.

Chief Albert testified that it was incumbent on Ofc. Wilcox to notify the Department that he had an attachment as soon as he became aware of such and take care of the warrant. Chief Albert sustained the violation because police officers are no different than citizens and must be held to the same standards.

Chief Albert testified that an investigation into a possible violation of NOPD Rule 2, moral conduct, adherence to law, if the only possible outcome is a disciplinary action, is an administrative investigation. He testified that in this case, there was no eye towards any criminal prosecution of Ofc. Wilcox.

Chief Albert testified that at some point Ofc. Wilcox worked for him in the task force and that Ofc. Wilcox was an outstanding employee; punctual, worked hard, did his job.

#### THE SIXTY-DAY RULE

The Appellant was arrested in St. John Parish on July 17, 2012, for issuing a worthless check in excess of \$500 in 2004 in St. Charles Parish. He was also issued a traffic citation for failure to properly display his license plate. The PIB was notified the same day, July 17, 2012, and an investigation was begun. Ofc. Wilcox was immediately placed on emergency suspension on July 17, 2012.

The following day, July 18, 2012, Ofc. Wilcox paid the entirety of the money owed and the charges were refused for prosecution by the St. Charles Parish District Attorney's Office. The traffic citation for improper display of a license plate in St. John

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Parish was also subsequently *nolle prosequied*. Sgt. Barnes, according to his Investigative Report, City Exhibit 3, became aware that the traffic citation was *nolle prosequied* on September 20, 2012.

On July 19, 2012, Ofc. Wilcox's suspension was lifted and he was permitted to return to full duty.

Sgt. Barnes testified that he began his administrative investigation on July 30, 2012. On that date, July 30, 2012, Sgt. Barnes received the information relative to the charges out of St. Charles Parish. Sgt. Barnes testified that he knew on July 30, 2012, that on July 18, 2012, the day after Ofc. Wilcox was arrested for issuing a worthless check, the charges were refused for prosecution.

Sgt. Barnes testified that he did not conduct a criminal investigation. Sgt. Barnes further testified that he lacked jurisdiction to conduct a criminal investigation into acts allegedly committed in St. Charles Parish and St. John Parish. These are the only two acts that were ever under investigation according to the record.

Sgt. Barnes concluded his administrative investigation and submitted it up his chain of command on November 5, 2012.

The record demonstrates that Ofc. Wilcox received a Disciplinary Hearing Notification form dated April 29, 2013.

There is no evidence in the record that the Appointing Authority applied for or was given an extension of the sixty days to complete its administrative investigation.

#### LEGAL PRECEPTS

An employee who has gained permanent status in the classified city civil service cannot be subjected to disciplinary action by his employer except for cause expressed in

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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 of proof 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 from 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.

This case turns on the application of La. R.S. 40:2531, referred to as The Police Officer's Bill of Rights. The Police Officer's Bill of Rights specifies that certain "minimum standards shall apply" to an internal departmental investigation of an officer who is the subject of such investigation. La. R.S. 40:2531(B); Young v. Department of Police, 2013- 1596 (La. App. 4<sup>th</sup> Cir. 6/25/2014), --So.3d--, 2014 WL 2885470. As in Young, the particular minimum standard at issue in this appeal is whether the

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investigation of the officer was completed "within sixty days" of its initiation. La. R.S. 40:2531(B)(7); Id., at \*2.

In Young, the Fourth Circuit overturned the decision of a three member panel of the Commission and declared that all "discipline imposed... by Superintendent Ronal Serpas, the appointing authority, an absolute nullity." Young, --So.3d--, 2014 WL 2885470, at \* 3. The court reasoned and held:

"The investigation shall be considered complete upon notice to [the police officer] under investigation of a pre-disciplinary hearing or a determination of an unfounded or unsustainable complaint." La. R.S. 40:2531(B)(7).

"There shall be no discipline, demotion, or adverse action of any sort taken against [a police officer] unless the investigation is conducted in accordance with the minimum standards provided for" in §2531. La. R.S. 40:2531(C). And, most importantly for the purposes of Mr. Young's appeal, "[a]ny discipline, demotion, or adverse action of any sort whatsoever taken against [a police officer] without complete compliance with the foregoing minimum standards is *an absolute nullity*." Id. (emphasis added).

There are, however, three exceptions to the sixty-day time limitation under §2531 B(7). The first is that the appointing authority may petition the Commission for an extension of up to an additional sixty days, and the Commission may grant such an extension if the appointing authority "has shown good cause" for additional time to complete its investigation. La. R.S. 40:2531 B(7). The second exception is that the police officer under investigation and the appointing authority may enter "into a written agreement extending the investigation for up to an additional sixty days." Id. The third exception is that the sixty-day limitation "does not apply" when the investigation is one of alleged criminal activity. McMasters v. Department of Police, 13-2634, p. 2 (La. 2/28/14), 134 So. 3d 1163, 1164; La. R.S. 40:2531 B(7) ("Further, nothing in this Paragraph shall limit any investigation of alleged criminal activity.").

Here, none of these exceptions apply. Thus, the appointing authority was required to complete its investigation within sixty days of its investigation.

Young, 2014 WL 2885470 at \*2.



ANALYSIS

In this case, the relevant facts are largely not disputed and the Appointing Authority met its burden of proof in establishing that the complained of activity occurred and impaired the efficiency of the public service. However, the record is clear that the Appointing Authority did not completely comply with the minimum standard for the time-limitation for the completion of the administrative investigation into the Appellant's conduct.

Indeed, Sgt. Barnes testified and Chief Albert confirmed that this investigation was administrative from the moment Sgt. Barnes undertook it, July 30, 2012. Further, even assuming that the administrative investigation began after Sgt. Barnes obtained the final disposition of the traffic citation on September 20, 2012, of which there is no record evidence, the record is clear that Ofc. Wilcox did not receive a Disciplinary Hearing Notification until April 29, 2013.

Thus, the administrative investigation, even assuming that it had begun in late September, 2012, would have exceeded the sixty, or even one-hundred-and-twenty day time period (assuming an extension had been given, which the record indicates that it had not) mandated for completion. *See O'Hern v. New Orleans Police Dep't*, 13-1416 (La. 11/8/13), 131 So.3d 29, 33.

As in Young, none of the three exceptions to the sixty-day time limitation under §2531 B(7) apply. There is no record that any extension was requested or given and the investigation was administrative, not criminal. "In *O'Hern, supra*, the Supreme Court construed the phrase in the last sentence of Section 2531(B)(7) which states, 'nothing in this Paragraph shall limit any investigation of alleged criminal activity,' to mean that

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*'nothing must interfere with a criminal investigation.'*" *Bell v. Department of Police*, 2013-1529 (La.App. 4 Cir. 5/21/14), 141 So.3d 871, 876; *citing O'Hern*, 131 So.3d at 31 (Emphasis in original). Thus, because the administrative investigation was not completed until April 29, 2013, "the appointing authority unquestionably exceeded the maximum time-limitation and thereby violated one of the minimum standards of the Police Officer's Bill of Rights." *Young*, 2014 WL 2885470 at \* 2.

Considering the foregoing, the Appellant's appeal is GRANTED, and the discipline imposed is vacated, restoring the Appellant to his former position with all back pay and emoluments.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 17<sup>th</sup> DAY OF August, 2015.

CITY OF NEW ORLEANS  
CIVIL SERVICE COMMISSION

  
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RONALD P. MCCLAIN,  
COMMISSIONER

CONCUR:

  
\_\_\_\_\_  
JOSEPH S. CLARK, COMMISSIONER

  
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CORDELIA TULLOUS, COMMISSIONER