

11-1206

IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA

MAX JEREMY MOUNTS OF THE SHERIFF'S  
DEPARTMENT OF MINGO COUNTY,  
WEST VIRGINIA,

Petitioner below, appellant herein

VS.

CIVIL ACTION NO. 11-AAA-

SHERIFF LONNIE HANNAH, SHERIFF OF MINGO  
COUNTY, WEST VIRGINIA, MINGO COUNTY  
CIVIL SERVICE COMMISSION FOR DEPUTY SHERIFF'S  
AND NELSON HALL, DON BUSH AND CHARLES JUSTICE,  
as the Members of the MINGO COUNTY CIVIL SERVICE  
COMMISSION FOR DEPUTY SHERIFF'S

Respondent below, appellees herein

FILED  
CIRCUIT COURT  
MINGO COUNTY, WV  
2011 JUL 20 A 11:33  
SPRANK PHELPS  
MINGO CIRCUIT CLERK

**FINAL ORDER DIRECTING REINSTATEMENT**

On the 24th day of June, 2011, came the parties before the Honorable Senior Status Judge Robert G. Chafin for a hearing on the appeal of the December 6, 2010 order of the Mingo County Civil Service Commission for Deputy Sheriffs in the above styled matter. Present was the petitioner, in person, and through counsel, C. Christopher Younger, Sheriff Lonnie Hannah, in person, and through counsel, John Teares, and the Mingo County Civil Service Commission for Deputy Sheriffs, in person through its members, Charles Justice, Don Bush and Nelson Hall Jr.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. That the Court has reviewed the entire transcript of the proceedings held before the Mingo County Civil Service Commission for Deputy Sheriffs (hereinafter Civil Service Commission) on Thursday, December 2, 2010.
2. That former Deputy, Max Mounts, is a Deputy fully trained at taxpayer expense.
3. That the Civil Service Commission found that Deputy Mounts had served without problems.
4. That Deputy Mounts tendered a resignation letter to the Sheriff, but the record is unclear as to whether or not said resignation was accepted prior to Deputy Mounts withdrawing and rescinding the same.
5. That it is clear from the Court's review of the record that the Civil Service Commission was mistaken as to the law at issue in this case regarding the reinstatement of Deputies pursuant to West Virginia Code §7-14-8.
6. That the statement of Commissioner Justice at page 66, lines 16-20 of the transcript of the

- County, he has applied for reinstatement within two years of his resignation, is a resident of Mingo County, there were no charges of misconduct or other misfeasance pending against him at the time he left office. Former Deputy Mounts has not reached sixty five years of age. Former Deputy Mounts has not undergone a medical examination, but the Civil Service Commission believes that the medical examination can and should be done at a future time.
12. That the Civil Service Commission found at paragraph number twelve of said Order that the Sheriff presented no evidence to suggest that former Deputy Mounts' prior service would make him otherwise ineligible for reinstatement.
  13. That the Court finds that there was no basis for the finding at paragraph number eighteen of said Order that the Civil Service Commission declines to immediately reinstate Deputy Mounts to his former employment, in that the record does not support said finding and the Order was prepared by Sheriff Hannah's counsel and was not approved by counsel for Deputy Mounts.
  14. That the Civil Service Commission through their mistaken understanding of the above statute, they had entered an Order they had no authority to make in the proceeding below, that is reinstating Deputy Mounts to the top of the existing list of eligibles without competitive examination, for consideration in the event Sheriff Hannah declares a vacancy that he desires to fill by appointment.

WHEREUPON, the Court does hereby **ORDER, ADJUDGE** and **DECREE** as follows:

1. That the Court hereby **ORDERS** this matter remanded to the Civil Service Commission for action pursuant to statute and the Court hereby **DIRECTS** the Civil Service Commission to enter an order immediately reinstating Deputy Mounts to his position as a Mingo County Deputy if a vacancy exists, and if none should exist, at the next available vacancy.
2. That Deputy Mounts **SHALL** be reinstated by appointment to the lowest rank in the Sheriff's office next above the probationers of the office.
3. The Court further **ORDERS** this matter remanded to the Civil Service Commission to take testimony and evidence and make findings and rulings on the sole issue of whether the resignation of Deputy Mounts was accepted, and if so, when it was accepted, as the record from the proceeding below is unclear as to rulings by the Civil Service Commission on said issue.
4. That should the Civil Service Commission find that there was no acceptance of said resignation prior to its withdrawal by Deputy Mounts, this Court specifically finds that Deputy Mounts had a right to withdrawal his resignation prior to its acceptance and Deputy Mounts should be returned to his former position as a Deputy Sheriff, in terms of seniority, held prior to said resignation.
5. That the objections and exceptions of Sheriff Lonnie Hannah to the Court's rulings and order are hereby noted.

6. That the Clerk of this Court is hereby directed to mail a certified copy of this Order to all parties herein or their counsel of record.
7. That this is a Final Order which any party may appeal. An appeal of this Order must be filed in the Circuit Clerk's office of this County. A party to this Order may appeal to the Circuit Court if an appeal is filed within 30 days of the date of entry of this Final Order. If both parties file a notice of waiver and appeal to the Supreme Court within 14 days of the date of entry of this Order, the parties may appeal directly to the Supreme Court. If only one party timely files a notice of waiver and appeal to the Supreme Court that appeal will be treated as a petition for appeal to the Circuit Court.

This the 20<sup>th</sup> day of July, 2011.

ORDER:

ENTER:

  
HONORABLE ROBERT G. CHAFIN  
SENIOR STATUS JUDGE

Civil Action No. 07C-298

Prepared by:



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WV BAR NO 4317

~~Inspected by:~~  
Approved by:

  
John Teare

WV BAR 5547  
Counsel for Appellee, Sheriff Lonnie Hannah