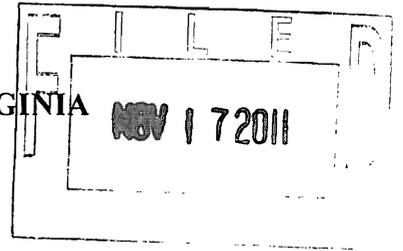


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
APPEAL NO. 11-1206



SHERIFF LONNIE HANNAH,
SHERIFF OF MINGO COUNTY,
WEST VIRGINIA,

Appellant,

v.

On appeal from the Circuit Court of
Mingo County, West Virginia,
Civil Action No.: 11-AAA-1
Judge Robert Chafin

MAX JEREMY MOUNTS,

Appellee,

and

MINGO COUNTY CIVIL SERVICE COMMISSION
FOR DEPUTY SHERIFFS and
NELSON HALL, DON BUSH AND
CHARLES JUSTICE as Members of the
MINGO COUNTY CIVIL SERVICE
COMMISSION FOR DEPUTY SHERIFFS,

Respondents Below.

BRIEF OF PETITIONER

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November 17, 2011

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ASSIGNMENTS OF ERROR

- I. The Circuit Court erred by exercising its authority in place of the Civil Service Commission's authority in issuing a remand order requiring the Deputy Sheriffs' Civil Service Commission to reinstate a Deputy Sheriff who had resigned his position, thereby negating the discretionary authority of the Commission granted by West Virginia Code §7-14-8 and reaffirmed by this Court in *Meadows v. Hopkins*, 211 W. Va. 382, 566 S.E.2d 269 (2002) and *Lester v. Summerfield*, 180 W. Va. 572, 378 S.E.2d 293 (1989).
- II. To the extent that the Deputy Sheriffs' Civil Service has any jurisdiction to hold hearings and make Findings of Fact and Conclusions of Law related to the validity of a resignation tendered by a Deputy Sheriff, the Circuit Court erred by not giving deference to the Findings of Fact *actually* made by the Civil Service Commission and by ordering that new facts be established for the record because the record before the Civil Service Commission supported the Findings of Fact previously made.
- III. The Circuit Court erred when it ordered the Deputy Sheriffs' Civil Service Commission to hold a hearing on remand to make Findings of Fact regarding the validity of the Respondent's resignation, because the Civil Service Commission has no jurisdiction to determine the validity of a resignation absent an allegation of a violation of the civil service provisions of the West Virginia Code.

STATEMENT OF THE CASE

Generally

This case arises under the Civil Service Code applicable to Deputy Sheriffs, West Virginia Code §7-14-1 *et seq.* Mingo County Deputy Sheriff Max Jeremy Mounts resigned his commission as a Deputy Sheriff in writing and the resignation was accepted by the Sheriff. The Deputy changed his mind, asked the Sheriff to permit him to withdraw his resignation and, when the Sheriff refused, the Deputy filed two grievances with the Civil Service Commission; one asking the Civil Service Commission to invalidate his resignation and the second seeking the alternative remedy of reinstatement. The Commission ruled against the former Deputy Sheriff on both grievances.

Procedural Posture

On November 18, 2010, former Deputy Sheriff Max Jeremy Mounts, by his counsel, filed what can best be described as a grievance challenging the Sheriff's decisions to accept Deputy Mounts' resignation, and further challenging the Sheriff's decision not to allow the resignation to be withdrawn. See Rule 7 Appendix ("APP") at page 009. On November 19, 2010, the Sheriff, by his undersigned counsel, responded to the grievance and asserted that the Civil Service Commission had no jurisdiction over the resignation dispute and suggested that the only jurisdiction which the Civil Service Commission had under the circumstances was reinstatement jurisdiction pursuant to West Virginia Code §7-14-8. App 010-11. On November 24, former Deputy Mounts filed his "Motion for Reinstatement." APP 012-13.

The Civil Service Commission held a hearing on the motion and grievance on December 2, 2010. APP 014-87. The Civil Service Commission ruled at the conclusion of the hearing that it would not reinstate the former Deputy but did reinstate him to the list of eligibles without having to take a civil service examination. APP 77-79. The Civil Service Commission asked that the Sheriff's counsel prepare the written Order. APP 079. The former Deputy's counsel attempted to convince the Civil Service Commission that its decision was wrong. APP 079-86. The Civil Service Commission stood by its oral ruling.

On December 3, 2010, counsel for the Sheriff submitted an Order reflecting the Commission's rulings to the County Clerk for circulation. APP 088-93. Counsel for former Deputy Mounts was copied on the transmittal. APP 088. The Civil Service Commission endorsed and entered¹ the Order on December 7, 2010. APP 093.

On or about February 22, 2011, former Deputy Mounts filed his "Appeal" with the Circuit Court. APP 094-102. On May 3, 2011, the undersigned filed a Notice of Appearance and Motion to Dismiss.² See APP 145, 111-19. Former Deputy Mounts filed an "Amended Petition for Appeal . . ." on May 20, 2011. APP 103-110. The Honorable Robert Chafin was appointed by this Court to hear the appeal. The

¹ The entered Order bears the Clerk's date stamp of December 6, 2010.

² The motion to dismiss challenged, *inter alia*, the jurisdiction of the Court to hear both the reinstatement and the resignation issues. The only other issue was corrected by the Amended Petition.

Circuit Court heard oral arguments on June 24, 2011, APP 120-42. On July 20, 2011, the Circuit Court entered its “Final Order Directing Reinstatement.” APP 001-004.

Sheriff Hannah filed a Motion for Stay with the Circuit Court on July 21, 2011. The Circuit Court held a hearing on the motion and granted the motion in part and denied it in part. The Sheriff then filed his Motion for Stay with this Court on July 28, 2011. This Court denied the requested stay on September 9, 2011. See Pre-Petition No. 11-062.

The Sheriff filed his Notice of Appeal on August 19, 2011 and a Scheduling Order was entered August 23, 2011. Circuit Judge Chafin entered an Amended Order dated August 11, 2011, stamped by the Clerk on August 16, 2011. The “Amended Order Directing Reinstatement” had not been received by the undersigned before filing the Notice of Appeal and accordingly was not attached to the Notice of Appeal. The Amended Order is attached as APP 005-8.

Factual Background

Two weeks prior to submitting his resignation on November 4, 2010, Deputy Sheriff Mounts informed the Sheriff's Chief Deputy that he was considering resigning to take employment with the railroad if his application was accepted. The Chief Deputy, granted and the Deputy took, two weeks' vacation which was considered to be the Deputy's two weeks notice for resignation purposes. App 050. Deputy Mounts gave the issue serious thought during that two week period, weighing his desire to be a law enforcement officer against the increase in pay that the railroad job offered. App 051. Despite his serious misgivings, App 050, Deputy Mounts tendered his written resignation on November 4, 2010. App 020-21. Deputy Mounts turned in all of his uniforms and equipment. APP 049. Sheriff Hannah accepted the resignation and endorsed it to show his acceptance of the resignation on November 4, 2011. App 021; APP 042; APP 061; APP 071; Findings of Fact 5 and 6 – APP 090.

The following evening, on November 5, 2010, Mounts verbally informed Sheriff Hannah and the Chief Deputy that he wished to withdraw his resignation. App 044; App 023-24. Former Deputy Mounts met with the Sheriff on Monday, November 8, 2010 and asked to withdraw his resignation and go back to work. The Sheriff told him that he had accepted the Deputy's resignation and that Deputy Mounts was no longer employed by the Sheriff's Department. APP 045.

Respondent Mounts filed a grievance and, on November 17, 2010, appeared before the County Commission, urging them to refuse to accept his resignation. *Id.* Despite its lack of authority to accept or reject the resignation, the County Commission voted not to accept Mounts' resignation and ordered him to report to work at the Sheriff's Office the following day. *See id.* Upon reporting, Mounts was again informed by Sheriff Hannah that he was no longer employed with the Sheriff's Department. *Id.*

SUMMARY OF ARGUMENT

The West Virginia Code does not confer any right of judicial review from an adverse decision rendered by the Deputy Sheriffs' Civil Service Commission relating to reinstatement pursuant to West Virginia Code §7-14-18. To the extent that any right of judicial review exists, either implied by the statutory language or by extraordinary writ, the Legislature and this Court has reserved the reinstatement process exclusively to the Civil Service Commission. The Circuit Court exceeded its jurisdiction in the first instance and deprived the Civil Service Commission of the right to exercise its discretion in the final analysis.

The Deputy Sheriffs' Civil Service Commission has no statutory or other grant of jurisdiction to hold hearings and determine, by Findings of Fact and Conclusions of Law, whether and when a voluntary written resignation is effective and / or binding upon the person

who tenders his resignation. The Civil Service Commission was wrong to consider the issue in the first instance, but the Circuit Court compounded the error by rejecting the Civil Service Commission's Findings of Fact and Ordering the Commission to hold another hearing to make new findings. To the extent that the Commission had any such authority, the record before the Civil Service Commission was sufficient to validate the Commission's Findings of Fact and the Findings of Fact should not have been rejected by the Circuit Court.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

The Sheriff respectfully suggests that this case does not require oral argument, pursuant Rule 18(a) of the Revised Rules of Appellate Procedure; especially considering the provision of Rule 18(a)(3). The Sheriff suggests that the Circuit Court clearly and unambiguously usurped the prerogative of the Civil Service Commission when it compelled the Civil Service Commission to enter an Order reinstating the former Deputy and that the delegation of exclusive authority to make such decision is clearly defined by both the Code and by binding authority of this Court.

The secondary issue, regarding the Findings of Facts made by the Commission presents either a purely legal question for this Court on the authority to make such Findings; or a factual issue whether the Findings *actually* made by the Commission are supported by the Commission's record.

The issues and facts are sufficiently preserved and stated in the record below, however, the Court may be interested in public policy arguments regarding the new standard announced by Judge Chafin below.

ARGUMENT

Standard of Review

The primary issue in this case involves the interpretation of statute regarding the jurisdiction and authority of Deputy Sheriffs' Civil Service Commissions; more specifically, whether West Virginia Code §7-14-8 requires a Civil Service Commission to reinstate a former Deputy Sheriff who meets all minimum requirements for reinstatement or does the statute grant the Civil Service Commission the discretion to reinstate or refuse to reinstate an otherwise qualified former Deputy Sheriff. The secondary issue is also one of statutory construction; whether a Civil Service Commission has the jurisdiction to determine the validity of a voluntary resignation when there is no allegation of a violation of the Civil Service Code surrounding the submission or acceptance of the resignation.

The interpretation of a statute by a Circuit Court is subject to *de novo* review. *Meadows v. Hopkins*, 211 W. Va. 382, 566 S.E.2d 269 (2002); syl. pt. 3, *Alden v. Harpers Ferry Police Civil Service Commission*, 209 W. Va. 83, 543 S.E.2d 364 (2001); syl. pt. 1, *Appalachian Power Co. v. State Tax Dep't of West Virginia*, 195 W. Va. 573, 466 S.E.2d 424 (1995); syl. pt. 1, *Chrystal R. M. v. Charlie A. L.*, 194 W. Va. 138, 459 S.E.2d 415 (1995) (“Where the issue on an appeal from the circuit court is clearly a question of law or involving an interpretation of a statute, we apply a *de novo* standard of review.”).

To the extent that the Court reaches the issue of the correctness of the Civil Service Commission's Findings of Fact related to the resignation issue, the Court affords deference to the Civil Service Commission's Findings of Fact unless they are unsupported by the record. In the syllabus of *Billings v. Civil Service Commission*, 154 W. Va. 688, 178 S.E.2d 801 (1971), this Court stated that “[a] final order of the Civil Service Commission based upon a finding of fact

will not be reversed by this Court upon appeal unless it is clearly wrong.” *Accord*, Syl. pt. 1 of *Appeal of Prezkop*, 154 W. Va. 759, 179 S.E.2d 331 (1971)(“A final order of a police civil service commission based upon a finding of fact will not be reversed by a circuit court upon appeal unless it is clearly wrong or is based upon a mistake of law.”). Syl. pt. 1, *Francis O. Day Co., Inc. v. Director, Div. of Env'tl. Prot.*, 191 W. Va. 134, 443 S.E.2d 602 (1994)(“[e]videntiary findings made at an administrative hearing should not be reversed unless they are clearly wrong.”). *Meadows*, 566 S.E.2d at 269. *See also*, *Johnson v. City of Welch*, 182 W. Va. 410, 388 S.E.2d 284 (1989); *Cline v. Roark*, 179 W. Va. 482, 370 S.E.2d 138 (1988); *City of Beckley v. Price*, 164 W. Va. 423, 264 S.E.2d 468 (1980).

Standing

Petitioner recognizes that the principal entity with standing to bring this appeal is the Mingo County Deputy Sheriff’s Civil Service Commission, since the Circuit Court exercised its discretion in place of the Commission’s in issuing a directive that the Commission order the Sheriff to reinstate former deputy Mounts. However, the Sheriff also has standing to bring this appeal because the Final Order of the Circuit Court directly affects the Sheriff’s Office, requiring that it reinstate a deputy after the Sheriff accepted the deputy’s resignation and because the Sheriff has been deprived of his statutory right to have the dispute resolved by the Commission. In West Virginia, “standing . . . is comprised of three elements: First, the party . . . [] must have suffered an ‘injury-in-fact’— an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent and not conjectural or hypothetical. Second, there must be a causal connection [between] the injury and the conduct forming the basis of the lawsuit. Third, it must be likely that the injury will be redressed through a favorable decision of the court.” *Findley v. State Farm Mut. Auto. Ins. Co.*, 213 W. Va. 80, 94, 576 S.E.2d 807, 821

(2002) (citing *Coleman v. Sopher*, 194 W. Va. 90, 95 n.6, 459 S.E.2d 367, 372 n.6 (1995); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)).

In this case, if the Final Order of the Circuit Court is allowed to stand, the Sheriff is deprived of his statutory right to have the reinstatement issue decided by the Civil Service Commission and has been ordered to reinstate former Deputy Mounts after the Civil Service Commission declined to do so. By overruling the Commission, and dictating to the Commissioners how they should exercise their discretion, the Circuit Court has, in effect, bypassed the decision making authority of the Commission and directly ordered the Sheriff to reinstate the former Deputy.

Furthermore, the Final Order directs that the Civil Service Commission engage in more fact-finding regarding whether the deputy's resignation was valid; as the Civil Service Commission does not have the authority to **tender or accept resignations** to the Sheriff, and the Sheriff alone has the authority to accept resignations of deputies. In addition, the Order requires the Sheriff to devote time, attention and financial resources to additional hearings before a body which does not have jurisdiction over the issue.

The Sheriff's injury is therefore sufficiently concrete, particularized, actual and imminent, and can be addressed effectively by a ruling of this Court.

I. The Circuit Court committed clear legal error by exercising appellate jurisdiction to review the Civil Service Commission's Order and by substituting its judgment for the judgment of the Civil Service Commission's which has the sole discretionary authority over matters of reinstatement.

The Circuit Court was without jurisdiction to grant the relief ordered by the Court because the West Virginia Code does not authorize judicial review of every decision of the Mingo County Civil Service Commission for Deputy Sheriffs ("Civil Service Commission"). *See*, Syl. Pt. 3, *State ex rel. WVSSAC v. Webster*, No. 10-4001, 2011 WL 723113 (W. Va. Feb.

24, 2011)(“Decisions properly within the purview of the legislative grant of authority to the West Virginia Secondary Schools Activities Commission under West Virginia Code § 18-2-25, such as the application of WVSSAC Rules and the review of calls or rulings made by game officials, are not subject to judicial review.”). More specifically, West Virginia Code §7-14-8 which grants the Civil Service discretionary authority to reinstate a former Deputy Sheriff does not provide for judicial review of the Civil Service Commission’s exercise of that discretion.

West Virginia Code §7-14-8 provides, in relevant part:

. . . in the event any applicant formerly served as a deputy sheriff for a period of more than six months in the county to which he makes application, and resigned as a deputy sheriff at a time when there were no charges of misconduct or other misfeasance pending against him, within a period of two years next preceding the date of his application . . . providing his former term of service as a deputy sheriff so justifies, *may be reappointed by reinstatement* without a competitive examination(Emphasis added).

In *Meadow*, this Court held that Deputy Sheriffs’ Civil Service Commissions have “*exclusive discretionary authority* to reinstate an applicant for deputy sheriff, who formerly served as a deputy sheriff, without either a competitive examination or the concurrence of the sheriff or county commission.” Syl. Pt. 2, 566 S.E.2d at 272 (emphasis added).

The Sheriff respectfully suggests that by specifically authorizing judicial review over certain rulings of the Civil Service Commission³ and failing to provide for judicial review of rulings of the Civil Service Commission in matters of reinstatement, the Legislature did not intend for such decisions to be subject to judicial review except, perhaps, by Writ of Certiorari pursuant to West Virginia Code 53-3-1 *et seq.* To the extent that the Circuit Court could have proceeded by way of certiorari, it did not follow any of the procedural requirements for the

³ Specific statutory provisions which confer or deny judicial review of Commission Orders are: W. Va. Code §7-14-3 (removal of Commissioner); W. Va. Code §7-14-10 (refusal to examine or certify – not subject to judicial review but may proceed by writ of mandamus); W. Va. Code §7-14-15 (political activities); and W. Va. Code §7-14-17 (removal, discharge, suspension, etc.).

granting of the writ and, more importantly, exceeded its authority, even under a certiorari standard.⁴ West Virginia Code 7-14-8 permits a former Deputy, under certain circumstances, to *apply for reinstatement*. The Code does not however, create a right to reinstatement nor mandate reinstatement under any circumstance. There is no doubt that the former Deputy was afforded the hearing contemplated by law. For whatever reason, however, the local Civil Service Commissioners decided that former Deputy Mounts was not to be reinstated.

Former Deputy Mounts, and the Circuit Court, take the position that the Civil Service Commission failed to reinstate him because the Commission was operating under a misapprehension of the law. APP 109; APP 140. The Sheriff cannot represent to this Court that the Commissioners understood or did not understand the law, however, the Sheriff can point out in the record below several instances where the Commissioners were informed of the relevant authority.

At APP 010 the Sheriff quoted the relevant statute for the Commissioners. At APP 011 the Sheriff quoted the holding in *Meadows v. Hopkins* in correspondence to the Commissioners. At App 077-78, Commissioner Justice read relevant parts of West Virginia Code 7-14-8 into the record and stated “we’re basing our decision on that.” APP 077. Counsel for former Deputy Mount told the Commissioners that they were misinterpreting the statute. APP 079-086. Counsel also quoted from the *Meadows* case, APP 082, and argued to the Commission his interpretation of the *Meadows* case. APP 083, 085. Commissioner Hall noted on the record that he read the *Meadows* case. App 085.

⁴ “When determining whether to award a writ of certiorari in a particular case, the standard for the issuance of the writ is quite limited. In this regard we have observed and now hold that “the scope of review under the common law writ of certiorari is very narrow. It does not involve an inquiry into the intrinsic correctness of the decision of the tribunal below, but only into the manner in which the decision was reached.” *State ex rel. Prosecuting Attorney of Kanawha Cnty. v. Bayer Corp.*, 223 W. Va. 146, 150, 672 S.E.2d 282, 286 (2008) (quoting *Hall v. McLesky*, 83 S.W.3d 752, 757 (Tenn. Ct. App. 2001)).” *Foster Found. v. Gainer*, No. 35627, 2011 WL 867343 (W. Va. March 10, 2011).

The Commission requested that the undersigned prepare a draft Order for its consideration. APP 079. The correspondence transmitting the draft Order⁵ was mailed to the County Clerk for distribution to the Commissioners with a copy to counsel for former Deputy Mounts. APP 088. The proposed Order was endorsed and entered several days later by the Commission.

The Circuit Court exceeded its jurisdiction by substituting its judgment for the discretionary judgment of the Civil Service Commission by Ordering the Civil Service Commission to enter an Order of reinstatement when the Legislature and controlling West Virginia case law reserves the discretion to reinstate or deny reinstatement solely to the Civil Service Commission. W. Va. Code § 7-14-8 (1972); *Meadows*, 566 S.E.2d at 269; *Lester*, 378 S.E.2d at 293.

The Civil Service Commissioners did not explain their reasoning for deciding that former Deputy Mounts was not to be reinstated, APP 079 (line 6) and APP 080 (line 8), other than their past practice of reinstating a former Deputy to the list instead of direct reinstatement. APP 084. If the Circuit Court believed that the Commission was unaware of the law despite the record indicating awareness, or misapplied the law, the Court should have remanded the issue to the Civil Service Commission with instructions to apply the correct law⁶ and exercise its discretion according to their corrected understanding. Alternatively, the Court could have remanded to the Commission with instructions to the Commission to explain its reasoning. Earlier this year this Court discussed the failure of a lower tribunal to explain the reasons for its decision.

⁵ Please transmit this proposed order to the Commissioners for their consideration. I stand ready to revise the Order as they see fit." APP 088.

⁶ The issue of whether or not a civil service commission may place an applicant for reinstatement on a hiring list instead of direct reinstatement is not necessarily before the Court because the Sheriff believes that issue, if it were to be raised, should have been presented by the Civil Service Commission. The Sheriff does note, however, that the former deputy does obtain an advantage over other applicants by being placed on the list without having to take a test.

[W]e note that the circuit court failed to state any findings of fact or conclusions of law that would assist in appellate review of the orders. In both orders, the circuit court said its cursory decision was based on some variant of the "motion, briefs, record and argument of counsel." Although our standard of review remains *de novo*, a circuit court's order dismissing a case "must set out factual findings sufficient to permit meaningful appellate review. Findings of fact, by necessity, include those facts which the circuit court finds relevant, determinative of the issues and undisputed." Without factual or legal findings, this Court is greatly at sea without a chart or compass in making a determination as to whether the circuit court's decision was right or wrong. In both of its orders, the circuit court failed to offer any substance to permit a meaningful review of the court's decision, and for that reason alone both orders must be reversed.

Brown v. Genesis Healthcare Corp., No. 35494, 2011 WL 2611327 (W. Va. June 29, 2011).

This concept is not new, however. In 1996, this Court noted:

The final order of the Commission was inadequate in that it did not make specific findings of fact relied upon to support its ultimate conclusion. Ordinarily, we would remand for more detailed findings. In *Brown v. Gobble*, --- W. Va. ----, --- -, 474 S.E.2d 489, 499 (1996), we suggested that when the factfinder "decides against the greater amount of the evidence, the ... [Commission] is obligated to give a fuller explanation for ... [its] ruling. Under these circumstances, the findings ... must be sufficiently detailed, reasoned, and logical to enable the reviewing court to trace a persuasive path between the evidence and the judgment." (--- W. Va. at ----, 474 S.E.2d at 499). Here, we find that the Commission's decision is supported by the greater amount of evidence, and we find no necessity to remand for further factfinding. In future cases, however, administrative agencies should make specific and separate findings of fact, opinions, and conclusions of law that will address all material aspects of the case, including credibility issues. Important liberty and property interests, not to mention significant public interests, are at stake in these proceedings and it is the obligation of administrative agencies to give the parties the full benefit of their reasoning by setting forth their findings in suitable detail in their final orders.

In re Queen, 196 W. Va. 442, 473 S.E.2d 483, note 6 (1996).

The Sheriff does not suggest that the Circuit Court below needed to explain its reasoning in this case, however, the Sheriff does suggest that the Circuit Court did not have a sufficient basis to reverse the Civil Service Commission without some understanding of why the Civil Service Commission refused to immediately reinstate the former Deputy.

Civil Service Commissioners are appointed locally, serve locally and often have personal and reputation information which is not spread upon the record. While the Commissioners may have thought that former Deputy Mounts should have been reinstated but felt constrained to place him on a hiring list instead; the individual Commissioners may have also heard reports from constituents within the local community or had individual dealings with the former Deputy which made any one or more of the Commissioners unwilling to reinstate the former Deputy. The Commissioners may not trust the judgment of a sworn officer who spent two full weeks contemplating a career change only to change his mind almost immediately after taking action based upon two weeks of deliberation. The Commissioners may not believe that the former Deputy will not leave again at the first higher paying opportunity. The Circuit Court, and this Court, has no way of knowing, based upon this record, whether the Commissioners would have reinstated the former Deputy if they were faced with a choice to reinstate or not reinstate. The Circuit Court should have explained the options open to the Commission and remanded to the Commission for it to make its decision based upon the exercise of its statutory and common law discretion.

The Commission need not exercise any discretion to make the findings of fact required by *Meadows v. Hopkins* to reinstate a deputy sheriff.⁷ The Circuit Court created a new standard which divests the Commission of all discretion once it makes those non-discretionary findings.

II. The Circuit Court erred by not giving deference to the fact-finding of the Civil Service Commission and by ordering that new facts be established for the record.

In syllabus point 4 of *In re: Queen*, this Court observed: "'Substantial evidence' requires more than a mere scintilla. 473 S.E.2d at 483. It is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. If an administrative agency's factual

⁷ See Finding of Fact No. 11. APP 091.

finding is supported by substantial evidence, it is conclusive." *Maplewood Estates Homeowners Asso. v. Putnam County Planning Commission*, 218 W. Va. 719, 723, 629 S.E.2d 778, 782 (2006).

The record clearly supports the Civil Service Commissions Findings of Fact numbered 2 through 6 in its Final Order. See APP 089-90. Former Deputy Mounts testified that he considered the matter of his resignation for two weeks, that he took leave which he considered his two week notice, that he turned in all County owned equipment and tendered his written resignation on November 4, 2010. APP 020 - 21; APP 049-51. Sheriff Hannah accepted the resignation and endorsed it to show his acceptance of the resignation on November 4, 2011. App 021; APP 042; APP 061. The Circuit Court was clearly wrong when it concluded: "I can't find it⁸ in the record. I have seen the entire record, I can't find any basis for that finding." APP 137. The Commission's Findings of Fact are fully supported in the record and should have been given preclusive effect by the Circuit Court.

III. The Circuit Court erred in remanding to the Civil Service Commission for findings of fact regarding the validity of the Respondent's resignation, because the Civil Service Commission has no authority to hear that issue.

The Civil Service Commission has statutory authority to hold hearings in matters of removal, discharge, suspension or reduction in rank or pay. W. Va. Code §7-14-17. The Civil Service Commission has the statutory authority to make investigations, either sitting as a body or through a single commissioner, concerning all matters touching the enforcement and effect of the provisions of the Deputy Sheriff Civil Service provisions of the Code and of the Commission's rules and regulations. W. Va. Code §7-14-6(3). The Civil Service Commission has statutory authority to hold hearings to review its refusal to examine or certify an applicant for appointment

⁸ Referring to any evidence to support Finding of Fact No. 6. See discussion generally at APP 135-37.

or promotion. W. Va. Code § 7-14-10. The Civil Service Commission has statutory authority to hold hearings in cases of removal for political activity. W. Va. Code § 7-14-15(e).

There is, however, no statutory grant of authority regarding matters of resignations absent an allegation, not present in this case, that the resignation was involuntary and amounted to a constructive discharge. Syl. pt. 4, *Pugh v. Policemen's Civil Service Commission*, 214 W. Va. 498, 590 S.E.2d 691 (2003) (“A police civil service commission created by Article 5A of Chapter 8 of Code, 1931, as amended, has only such jurisdiction and powers as are conferred upon it by statute. It has no inherent jurisdiction or powers.” Syl. Pt. 3, *State ex rel. City of Huntington v. Lombardo*, 149 W. Va. 671, 143 S.E.2d 535 (1965).). Accord, *State ex rel. Cabell County Deputy Sheriff's Ass'n v. Dunfee*, 163 W. Va. 539, 258 S.E.2d 117 (1979) (County Commission not bound to obey Order of Deputy Sheriff's Civil Service Commission where it acted without jurisdiction).

Despite the lack of specific grant of statutory authority to Civil Service Commissions to decide a resignation issue, the Court might read *In re: Queen* as authority for such a right for the Civil Service Commission to intervene and decide the issue. *In re: Queen*, 473 S.E.2d at 487 (“Whether the respondent quit or was fired is a question of fact committed to the discretion of the Civil Service Commission.”). If the Court concludes that the Civil Service Commission has such authority, the Court should also conclude, for the reasons discussed in the prior section, that the Civil Service Commission's findings of Fact regarding that very issue are entitled to great weight, if not conclusive weight, based upon the testimony before the Commission. The Court should also conclude that the Commission's legal conclusion based upon those facts are correct.

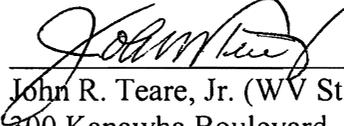
CONCLUSION AND PRAYER FOR RELIEF

The Sheriff of Mingo County respectfully requests this Court to reverse the decision of the Circuit Court compelling the Civil Service Commission to enter an Order reinstating former Deputy Sheriff Max Mounts, and further, the Sheriff asks this Court to reverse the Circuit Court Order compelling the Civil Service Commission to hold further hearings regarding the validity of Deputy Mounts' written resignation.

The Sheriff respectfully suggests, that to the extent that the Circuit Court has jurisdiction to review the discretionary decision of the Civil Service Commission, that the Circuit Court be Ordered to remand the case to the Civil Service Commission with an explanation of the law applicable to the exercise of its discretion, and any limits to that discretion imposed by this Court.

LONNIE HANNAH, SHERIFF OF
MINGO COUNTY

By SPILMAN THOMAS & BATTLE, PLLC



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**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
APPEAL NO. 11-1206**

**SHERIFF LONNIE HANNAH,
SHERIFF OF MINGO COUNTY,
WEST VIRGINIA,**

Appellant,

v.

**On appeal from the Circuit Court of
Mingo County, West Virginia,
Civil Action No.: 11-AAA-1
Judge Robert Chafin**

MAX JEREMY MOUNTS,

Appellee,

and

**MINGO COUNTY CIVIL SERVICE COMMISSION
FOR DEPUTY SHERIFFS and
NELSON HALL, DON BUSH AND
CHARLES JUSTICE as Members of the
MINGO COUNTY CIVIL SERVICE
COMMISSION FOR DEPUTY SHERIFFS,**

Respondents Below.

CERTIFICATE OF SERVICE

I, John R. Teare, Jr., counsel for Lonnie Hannah, Sheriff of Mingo County, do hereby certify that I served the foregoing "Brief of Petitioner" and "Appendix" upon the following counsel of record and unrepresented parties by first class mail on this 17th day of November, 2011, addressed as follows:

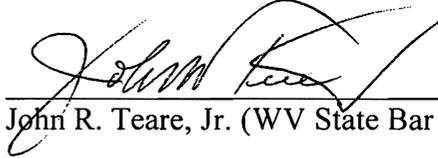
MAX JEREMY MOUNTS
c/o C. Christopher Younger
106 Logan Street
Williamson, WV 25661-3606

NELSON HALL, DON BUSH AND CHARLES JUSTICE
as Members of the MINGO COUNTY CIVIL SERVICE
COMMISSION FOR DEPUTY SHERIFFS

c/o: Clerk of the County Commission

75 East 2nd Avenue

Williamson, WV 25661



John R. Teare, Jr. (WV State Bar # 5547)