

No. 33655

*Sergeant Glen Messer of the Sheriff's Department of Mingo County v.
Sheriff Lonnie Hannah Sheriff of Mingo County, West Virginia*

FILED

July 17, 2008

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**RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA**

Starcher, J., dissenting:

I dissent because there was not enough evidence of serious misconduct by the sergeant to warrant severe disciplinary action. He apparently spent his own money to stay the night in a motel, and made up the cost by adding four hours of overtime – which would have been his travel time for commuting back and forth to his home. This was not correct procedure, but it also was not theft of funds or services. The Commission did the right thing; the circuit judge did the right thing; and on remand they should adhere to their result. The sergeant deserves a reprimand; but the prosecutor is “making a mountain out of a molehill.” I would simply affirm the actions of the Commission and the circuit court.

I am authorized to say that Justice Albright joins in this dissent.