

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**Michael T. Dodson,
Petitioner Below, Petitioner**

vs.) No. 35699 (Jefferson County 09-AA-7)

FILED

September 23, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

**Robert Shirley, Sheriff of Jefferson County, West Virginia;
Everett Boober, former Sheriff of Jefferson County, West Virginia; and
Jefferson County Deputy Sheriff's Civil Service Commission
Respondents Below, Respondents**

MEMORANDUM DECISION

This appeal arises from the Circuit Court of Jefferson County's affirmation of the decision of the Jefferson County Deputy Sheriff's Civil Service Commission which found that the Sheriff had just cause to terminate Sergeant Dodson, the petitioner, from employment. The instant appeal was timely perfected by counsel with the entire record being designated on appeal. The Sheriff of Jefferson County filed a timely response.

This Court has considered the parties' briefs and the record on appeal. Pursuant to Revised Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that this matter is appropriate for consideration under the Revised Rules. Having considered the petition and the relevant decision of the lower tribunal, the Court is of the opinion that the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds that a memorandum decision is appropriate under Rule 21 of the Revised Rules.

On appeal, Petitioner Dodson argues that, as a deputy sheriff facing discipline, he is entitled to a predisciplinary hearing pursuant to West Virginia Code § 7-14C-3(a) prior to the termination of his employment. The record shows that Sergeant Dodson filed a timely written request for a predisciplinary hearing after being notified by Sheriff Boober of his right to such a hearing.

After receiving notice, Sheriff Boober attempted to provide Sergeant Dodson with a predisciplinary hearing. However, on October 1, 2008, Sheriff Boober moved to have one of the members of the Hearing Board, Corporal K. Boyce, disqualified from hearing the matter because the officer participated in the investigation of the allegations against Sergeant Dodson. On the day of the hearing, the Hearing Board granted Sheriff Boober's motion and

refused to hear the issue until a substitute member could be appointed. The Jefferson County Sheriff's Association, the authority responsible for appointing a new member, failed to appoint another member or reconvene another board.

The investigation carried over into the term of a new sheriff. On January 6, 2009, Sheriff Shirley discharged Sergeant Dodson from employment pursuant to West Virginia Code § 7-14-17, without conducting a predisciplinary hearing. In its decision affirming the ruling of the Jefferson County Deputy Sheriff's Civil Service Commission, the circuit court found that Sheriff Shirley had just cause to support his decision to terminate Sergeant Dodson.

West Virginia Code § 7-14C-3(a) requires that a civil service police officer be afforded a predisciplinary hearing prior to his/her discharge from employment. In the case *sub judice*, we find that Sergeant Dodson did not receive such a predisciplinary hearing.

For the foregoing reasons, we find that the circuit court erred in affirming the decision of the Jefferson County Sheriff's Civil Service Commission because there was no predisciplinary hearing held as required by *Burgess v. Moore*, 224 W. Va. 291, 685 S.E.2d 685 (2009). The January 6, 2010 Order of the Circuit Court of Jefferson County is hereby reversed, and this case is remanded for further proceedings consistent with this memorandum decision.

Reversed and Remanded.

ISSUED: September 23, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Menis E. Ketchum
Justice Thomas E. McHugh