

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

GLENN TODD WILSON

APPELLANT

VS.

CAUSE NO. 2011-CC-0028

MISSISSIPPI DEPARTMENT OF CORRECTIONS

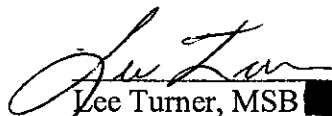
APPELLEE

CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Judges of the Mississippi Supreme Court and Court of Appeals may evaluate possible disqualification or recusal.

1. Glenn Todd Wilson, Appellant
2. Lee Turner, Counsel for Appellant
3. Hon. Robert Helfrich, Circuit Judge
4. Mississippi Department of Corrections, Appellee
5. David Scott, Counsel for Appellee
6. Christopher Epps, Commissioner MDOC
7. Charles Bunnell, Agency Representative at Hearing

Respectfully Submitted,



Lee Turner, MSB [REDACTED]
Attorney for Appellant

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STATEMENT OF THE ISSUES

- 1. The Decision of the EAB Was Arbitrary and Capricious in Light of the Spirit of Substantial Compliance With Department Policies which was Prevalent in Wilson's Assigned Field Office**
- 2. The Decision of the EAB was Not Supported By Substantial Evidence Given the Nature of the Allegations**
- 3. The Ruling of the EAB to Terminate Wilson was Arbitrary and Capricious in That It Was too Severe and Disproportionate to Prior EAB Decisions**

STATEMENT OF THE CASE¹

1. Nature of the Case and Course of Proceedings

This case stems from the termination of FOIII Glenn Todd Wilson from his position as a probation officer with the Mississippi Department of Corrections. More simply, the central issues are whether Wilson committed a Group III Violation under the Mississippi State Personnel Board Policy and Procedures Manual, and whether the imposed punishment, if applicable, was appropriate. On December 10, 2008, the M.D.O.C. served a written notice on Wilson concerning violations, which were discovered on November 11, 2008, concerning the validity of signatures on certain M.D.O.C. offenders' case files. R. Vol. 2 at 010. Following a continuance, a hearing was held on January 7, 2009, at the South Mississippi Correctional Institute in Leakesville. R. Vol. 2 at 006. In conjunction therewith, Wilson lodged a timely written response to the allegations. R. Vol. 2 at 004. Subsequently, on January 22, 2009, the Hearing Officer, Connie Ayers, rendered her decision terminating Wilson effective January 23, 2009. R. Vol. 2 at 006.

Aggrieved by the decision of the Hearing Officer, Wilson timely appealed to the Mississippi Employee Appeals Board. R. Vol. 2 at 001. On April 7, 2009 a hearing was held before the Honorable Falton Mason at the Mississippi State Penitentiary at Parchman. R. Vol. 2 at 024. Shortly thereafter, on April 21, 2009 Judge Mason issued his Order upholding Wilson's termination. R. at 024. Following the denial of his appeal, Wilson timely sought review by the Full Board of the EAB. R. Vol. 2 at

¹For purposes of this appeal citations to the transcript will be noted as "TR at page" and all other citations to the record will be cited as "R at page".

026. Subsequently, on August 19, 2009, the Full Board issued a short one page order denying Wilson's requested relief. R. Vol. 1 at 007. Aggrieved by the decision of the Board Sitting *en banc* Wilson timely appealed to the Circuit Court of Forrest County, which affirmed the decision of the EAB on January 21, 2011. R. Vol. 1 at 44.

STATEMENT OF FACTS

Officer Glenn Todd Wilson is ten-year veteran in both law enforcement and corrections. Tr. at 50,51. He transitioned from police work to the Corrections field due to health concerns. *Id.* Over the years he had worked a variety of positions within the Department from Correctional Officer, CID investigator, and finally as Probation Officer in two different judicial districts. *Id.* Prior to this incident he had never been subject to any formal or informal disciplinary proceedings during his tenure with the Department. Tr. at 16.

At the hearing three witnesses testified as to the allegations of misconduct in not adhering to Department Policy regarding offender sign-ins, and Wilson's job performance and work history. The first witness called was Michael Upshaw. Tr. at 3. Upshaw on direct examination testified that he was Wilson's immediate supervisor at the Hattiesburg Field Office during November 2008, and that he became suspicious that offenders were not being properly signed in when he noticed inconsistencies in the signatures of a probationer that was assigned to Wilson. Tr. at 6-7. Further, he testified that upon confronting Wilson concerning the discrepancy, he found other files with inconsistent signatures and immediately contacted his supervisor, Charles

Bunnell. *Id.* Likewise, he testified that both he and Bunnell questioned Wilson about the signatures. *Id.*

In short, he testified that Wilson wrote a very brief statement concerning the inconsistent signatures, and gave several excuses for signing other files. Tr. 6-9. The excuses ranged from one offender having a cast on his arm, an offender was aged and infirm, and offender was restrained by holding a small child. Tr. at 9. Lastly, over objection, on direct examination he testified that following the initial hearing, he interviewed several offenders concerning duplicate files and the validity of their signature in the original files. Tr. 13-16. Upshaw conceded that he did not routinely check other field officer's files to verify signatures. Tr. at 25.

On cross-examination Upshaw was questioned extensively as to the Hattiesburg Field Office's strict adherence to official departmental policies. R. at 16. As to the Field Office's compliance he testified as follows:

Q. Prior to this alleged incident, had the Hattiesburg Field Office strictly followed all MDOC policies and regulations?

A. No.

Tr. at 16. The policy of substantial compliance with Department policies was echoed in testimony by regional supervisor Charles Bunnell who stated: "They make a good-faith effort, but, you know, to the letter probably not." Tr. at 48.

Further testimony from Upshaw revealed his misgivings about Wilson's professional development aspirations in requesting to attend numerous training courses, as well as his work with sister law enforcement agencies. *See generally*, Tr. at 20-22. Upshaw next testified as to the paper versus electronic file requirements and confusion.

Tr. at 23. According to Upshaw, computer entries or notations are required each time an offender signs in; however, he was unable to speak as to other field offices maintaining files solely in electronic format. Tr. at 23-24. On the other hand, Charles Bunnell acknowledged that at one time the department was informed to quit keeping paper files. Tr. at 47.

Wilson was next called as adverse witness by the State. Tr. at 30. The thrust of his initial testimony centered on the offender files in question. Tr. at 33. In regards to those files he stated:

“like in the case of Adam Atkinson, he had a broke hand...and James Johnson and Marvin Smith that saw Adam with his broke hand, can-can say, hey I'm not telling a story. Shenet Brewer, she would always bring her kids in, and she ran in and was fixing [to] take one of her babies to Forrest General. I mean, I did but I had a good reason...it's done that way in Pear River County.

Tr. at 33-34.

Likewise, he testified that in the 15th Circuit Court District, which contains Pearl River County, it was common practice to sign offenders in, and he continued this practice after his transfer to the Hattiesburg Field Office. *Id.* This is reinforced by his later testimony on redirect, that there were no standard operating procedures in the various probation offices across the State. Tr. at 51-52. He also testified that some of the confusion concerning the contested duplicate files could have been the result of trying to bring his files up to ACA accreditation standards. Tr. at 40. Moreover, he stated that he documented electronically that he advised the probationer of their rights in regards to voting and firearms. Tr. at 43. Regional Supervisor Bunnell later acknowledged that

some of Wilson's files had been audited and that he did not recall any negative results. Tr. at 47.

Additionally, Wilson testified that Upshaw exhibited a bias against him ever since he stumbled upon an internet adoption ad featuring Upshaw and inquired about it. Tr. at 35. Similarly, he testified that after he came to the defense of a former MDOC officer, who was being discussed in a negative light by Upshaw and others, he again experienced bias treatment. *Id.*

Furthermore, Wilson testified as to his work with fellow law enforcement agencies in the area, namely, the Hattiesburg Police Department and the Collins Police Department. *See generally*, Tr. 53-55. In conjunction with his testimony, two letters of appreciation/commendation were introduced into the record. *Id.* (marked exhibits 4 and 5). The letters praised Wilson for going above and beyond in willing to assist their departments by leveraging MDOC resources in conducting raids and round-ups. *Id.* For example, his assistance outside of normal working hours helped in the removal of a dangerous narcotics and violent offenders from Jefferson Davis and Covington Counties. *Id.* Wilson even utilized his personal vehicle on the volunteer duties. *Id.* Lastly, Wilson opined that his punishment was too severe, in light of his alleged violations and the sanctions he has seen imposed on other Department employees, who have committed far worse violations. R. at 63.

SUMMARY OF THE ARGUMENT

The decision of the EAB in finding sufficient grounds to terminate Officer Wilson was arbitrary and capricious, in light of the spirit of substantial compliance in following MDOC regulations that was pervasive in the Hattiesburg Field Office. Indeed, the record reflects that MDOC did not follow their own policies to the letter, thus Officer Wilson should be not penalized for failing to strictly adhere to them. Moreover, testimony revealed that other probation officer files were not regularly checked to ensure compliance, thereby giving the appearance that Officer Wilson files alone were subjected to closer scrutiny.

Likewise, the ruling of the EAB was not supported by substantial evidence. The record belies that there existed considerable confusion as to the necessity of maintaining paper files or exclusively electronic files, as well as the ACA accreditation issues. There is nothing in the record to rebut that Wilson made timely computer entries as per his prior practice of the Pearl River County Field Office.

Lastly, the ruling of the EAB to terminate Officer Wilson was to serve given prior EAB decisions, most notably *Walley v. M.D.O.C.*, and *M.D.O.C. v. Pennington*. In *Walley*, the EAB reinstated a correctional officer who committed two class three offenses by intimidating and assaulting a fellow officer. Here, even assuming the allegations are true, Wilson's conduct pales in comparison to the officer's conduct in *Walley*, especially considering save for this incident he had been an acceptable officer, and never subject to any disciplinary proceedings. Further, the record reflects that Wilson went above and beyond to assist other law enforcement agencies and was commended for his actions.

Likewise, his professional development aspirations were commendable and in keeping with Consequently, the Hearing Officer's determination was arbitrary and capricious when viewed alongside all attendant circumstances and prior EAB decisions. Quite simply, termination is too severe for Wilson's alleged limited misconduct.

ARGUMENT

Standard of Review:

On review the Court must affirm the agency's decision unless the employee meets the burden of proof to show that the agency's action was arbitrary, capricious, or against the overwhelming weight of the evidence, or in violation of some statutory or constitutional right." *See, Davis v. Miss. State Dep. of Health*, 865 So.2d 485 (Miss. Ct. App. 2000). Further, an agency's decision is arbitrary when it is not based on reason and judgment, but depending on the will alone. *Id.* Whereas, a decision is capricious if done without reason implying a lack of understanding or of a disregard for the surrounding facts and settled controlling principles. *Id.*

Likewise, it is important to note that the EAB may modify a decision when the employee was punished too severely. *See, M.D.O.C. v. Pennington*, No. 2009-CC-01595-COA.

I. The Decision of the EAB Was Arbitrary and Capricious in Light of the Spirit of Substantial Compliance With Department Policies which was Prevalent in Wilson's Assigned Field Office.

In the instant case, the record contains ample evidence from Wilson's supervisors that the Hattiesburg Field Office did not fully comply with all M.D.O.C. policies and

regulations. Tr. at 16 and 48. Accordingly, since the M.D.O.C. does not strictly adhere to their own regulations, one could logically infer that supervisors pick and choose which policies to selectively enforce. Likewise, it could leave an employee in the unenviable position of having to determine which policies are to be rigidly followed and which to simply ignore. Selective enforcement by its very nature is arbitrary in light of the case law. *See, Davis* at 856 So.2d 485. Even more telling, is that no other employees' files were subjected to review to ensure compliance, or to explore the confusing paper versus electronic file entry requirements. Tr. at 25.

II. The Decision of the EAB was Not Supported By Substantial Evidence Given the Nature of the Allegations.

Here, the record indicates that at a minimum there was confusion as to what was to be maintained in electronic format as opposed to the traditional paper format. Tr. at 47. While, Wilson did admit to signing in certain offenders for good reason, there is nothing in the record to rebut that he made timely computer entries. Tr. at 43. Similarly, there is nothing in the record to rebut Wilson's position that he simply carried the practice over from the neighboring 15th Circuit Court District. Tr. at 33-34. The infraction should be viewed in the context that an audit of Wilson's files failed to discover any negative results. Tr. at 47. Even more telling, Supervisor Bunnell, testified that at one time the department was informed to stop keeping paper files. *Id.* Consequently, the importance placed on the alleged failure to properly maintain paper files is deminimis at best.

III. The Ruling of the EAB to Terminate Wilson was Arbitrary and Capricious in That It Was to Severe and Disproportionate Given Prior EAB Decisions.

Here, Wilson's punishment is too severe in light of the EAB decisions in *Walley v. M.D.O.C.*, 766 So.2d 60 (Miss. Ct. App. 2000); *M.D.O.C. v. McGlee*, 677 So.2d 736 (Miss. 1996); and *M.D.O.C. v. Pennington*, No. 2009-CC-01595-COA. In *Walley*, the EAB reinstated a correctional officer who intimidated and physically assaulted a fellow officer. *Id.* The officer's conduct was in violation of two class III offenses. *Id.* Further, in *McGlee*, the EAB reinstated a correctional officer who had fallen asleep twice while on duty as a prison guard. 677 So.2d 736 (*overturned on other grounds*). Likewise, in *Pennington*, the EAB refused to dismiss an employee who knowingly violated security procedures at Parchman by bringing personal tools onto the grounds of the prison.

In the instant case, even assuming the allegations are true, Wilson's violations pail in comparison with assaulting a fellow officer or falling asleep twice while on duty. Moreover, Wilson's actions, if true, could arguably be described as minor infractions not rising to the level of the ultimate sanction of termination. This is especially true since the record reflects that Wilson had never been the subject of any formal or informal disciplinary proceedings. Tr. at 16. Likewise, his commendable work with fellow law enforcement agencies should have factored in with his work history, before imposing the harshest sanction possible.

CONCLUSION

For the foregoing reasons, the decision of the Circuit Court of Forrest County affirming the EAB should be reversed, and Officer Wilson should be immediately reinstated with the Mississippi Department of Corrections for the reasons discussed *supra*. Alternatively, his punishment should be reevaluated and lesser sanctions imposed in light of severity when compared to prior decisions of the EAB

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Lee Turner", is written over a horizontal line.

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CERTIFICATE OF SERVICE

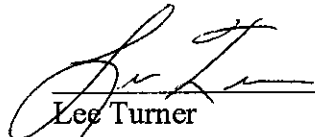
I certify that I have served the following persons by first class postage prepaid and
or hand delivery a true and correct copy of the above and foregoing Brief of the

Appellant to the following:

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This the 12th day of July, 2011.



Lee Turner
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