

1983

In The Matter of The Discharge of Wayne L. Jones : Brief of Respondent

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc2

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors. David E. Yocom; Attorney for Respondent

Recommended Citation

Brief of Respondent, *In Re: Walter L. Jones*, No. 19238 (1983).
https://digitalcommons.law.byu.edu/uofu_sc2/4155

This Brief of Respondent is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

IN THE SUPREME COURT OF THE UNITED STATES

IN THE MATTER OF THE)
DISCHARGE OF:)

WAYNE L. JONES,)

Respondent.)

Case No. 19238

BRIEF OF RESPONDENT

APPEAL FROM A DECISION OF THE THIRD DISTRICT
COURT FOR TOOELE COUNTY, STATE OF UTAH,
HONORABLE HOMER F. WILKINSON, DISTRICT JUDGE

DAVID E. YOCOM
Barber, Verhoef & Yocom
255 East 400 South, Suite 100
Salt Lake City, Utah 84111
Attorney for Respondent

RONALD L. ELTON
Tooele County Attorney
Tooele County Courthouse
Tooele, Utah 84074
Attorney for Appellant

FILED

NOV 5 1993

Clk, Supreme Court, Utah

IN THE SUPREME COURT OF THE UNITED STATES

IN THE MATTER OF THE)	
DISCHARGE OF:)	
)	
WAYNE L. JONES,)	Case No. 19238
)	
Respondent.)	

BRIEF OF RESPONDENT

APPEAL FROM A DECISION OF THE THIRD DISTRICT
COURT FOR TOOELE COUNTY, STATE OF UTAH,
HONORABLE HOMER F. WILKINSON, DISTRICT JUDGE

DAVID E. YOCOM
Barber, Verhoef & Yocom
255 East 400 South, Suite 100
Salt Lake City, Utah 84111
Attorney for Respondent

RONALD L. ELTON
Tooele County Attorney
Tooele County Courthouse
Tooele, Utah 84074
Attorney for Appellant

TABLE OF CONTENTS

	Page
Statement of the Case	1
Relief Sought by Respondent	1
Statement of Facts	1
Facts of Allegation I	3
Facts of Allegation II	4
Facts of Allegation III	5
Facts of Allegation V	6
The Decision of Judge Wilkinson	6
Statement of Points	6
Argument	6
Point I: The District Court's Decision in Upholding the Merit Commission's Findings of Fact Was Not Error	6
Point II: The District Court Correctly Ruled That the Merit Commission Had the Authority to Overrule or Modify the Sheriff's Disciplinary Action and to Order Reinstatement	10
Point III: The District Court Has the Authority to Affirm, Set Aside or Modify the Ruling of the Merit Commission Regardless of Whether the Merit Commission Has Such Authority	14
Conclusion	16

TABLE OF AUTHORITIES

CASES

	Page
Paris v. Salt Lake County Firefighters Civil Service Commission	15
State Personnel Commission v. Webb.	13
Vetterli v. Civil Service Commission of Salt Lake City.	11,13

STATUTES AND RULES

	Page
Utah Code Annotated, §17-30-19.	11,12
Utah Code Annotated, §17-30-20.	1,7,15
Utah Rules of Civil Procedure, Rule 65B(b)(2) and 65B(e)	13,14,15

IN THE SUPREME COURT OF THE UNITED STATES

IN THE MATTER OF THE)
DISCHARGE OF:)

WAYNE L. JONES,)

Respondent.)

Case No. 19238

BRIEF OF RESPONDENT

STATEMENT OF THE CASE

The Sheriff of Tooele County discharged the respondent, Wayne L. Jones, from his position as a Deputy Sheriff for Tooele County. Deputy Jones appealed to the Tooele County Deputy Sheriff's Merit Commission. The Merit Commission reinstated Deputy Jones, and the Sheriff filed a petition in the District Court under Rule 65B(b)(2) and 65B(e) of the Utah Rules of Civil Procedure to obtain a review by said court of the Merit Commission's ruling.

Third District Court Judge Homer F. Wilkinson upheld the ruling of the Merit Commission on all issues presented to the Court.

RELIEF SOUGHT BY RESPONDENT

Respondent requests that this Court affirm the decision of Judge Wilkinson.

STATEMENT OF FACTS

Wayne L. Jones was employed as a Deputy Sheriff for Tooele County for a period of ten (10) years prior to receiving

a Notice of Termination from Sheriff Shupert on February 11, 1982. The allegations contained in his termination letter consisted of the following:

1. That Deputy Jones improperly and/or illegally acquired personal property of a prisoner in the Tooele County Jail in Wendover, and that he improperly and/or illegally disposed or maintained possession of said property and made false reports concerning same.

2. That Deputy Jones illegally took possession of license plates from a truck owned by John Paras Furniture Company and used the plates on a vehicle improperly.

3. That Deputy Jones represented himself as a sergeant of the Tooele County Sheriff's Office contrary to direct orders of the Sheriff and a ruling of the Merit Commission.

4. Dismissed for lack of evidence.

5. That Deputy Jones improperly handled an investigation resulting in an altercation with Michael Stratz (Termination letter.)

The Merit Commission found:

1. That the evidence did not support Allegation I, except that they found he did make misleading reports concerning the vehicle on an impound report.

2. That Allegation II was proven but constituted a misdemeanor.

3. That the evidence presented did not prove Allegation III.

4. That the evidence did not support Allegation V. (Merit Commission Findings and Conclusions.)

FACTS OF ALLEGATION I

Douglas McArthur Jones, a black male beggar and transient from Berkley, California, was arrested by a Utah Highway Patrol officer on January 26, 1981, at a rest stop near Wendover, Utah. The trooper had received a complaint regarding a man causing a disturbance in the rest area who was begging for money and gas. He arrested Jones for loitering and driving on a revoked California driver's license. He was transported to the jail in Wendover, Utah, and booked. The arrestee had driven to the rest area in a pickup truck which contained a motorcycle in the back bed. The truck and motorcycle were impounded by the officer.

During the time Jones was incarcerated in the Wendover Jail, he became very upset and wanted to get out of jail very badly. Trooper LaMar Melville, a 23-year veteran of the Utah Highway Patrol, testified that the arrestee, Jones, the day after his arrest asked Deputy Jones if he could get out of jail. Deputy Jones told him he couldn't get out without posting bail. Douglas Jones then asked to borrow the bail money from Deputy Jones, but Deputy Jones declined. However, he did offer to call someone in California to send him the bail money. Douglas Jones then offered to sell Deputy Jones his 1967 truck. Deputy Jones declined several times. Jones then asked the deputy to go out on the street and find someone to buy the truck for the bail

money and also decided to throw in the motorcycle as part of the deal. Deputy Jones again declined. Trooper Melville and Deputy Jones left and went to the trooper's office. They then returned to the jail area where Douglas Jones again offered to sell the deputy his truck and motorcycle for the amount of his bail. Deputy Jones finally became interested enough to make a telephone call to the dealer in Wyoming where the truck had been purchased. (Tr. Vol II, pp. 44 to 48.)

After Deputy Jones talked the matter over with Trooper Melville and specifically asked the veteran officer if he saw anything wrong with buying the man's truck, Deputy Jones made calls to the Wyoming car dealers where the vehicles had been purchased. He also examined the truck and motorcycle and discovered that the truck battery was bad and the motorcycle had been damaged. Deputy Jones also discovered that there was a balance due on the truck of \$330.00 before he could obtain title. Deputy Jones decided that even though it was a risky deal because the man had no titles to the vehicles and he could not determine their mechanical condition, he would obtain notarized bills of sale and take the risk of getting the titles and pay the prisoner's bail. He also gave the man ten dollars for expenses after he was released from jail. (Jones' testimony, Tr. Vol. IV, pp. 4 to 39.)

FACTS OF ALLEGATION II

This allegation that Deputy Jones removed license plates from a truck which was in the impound lot and used to

plates on the truck he purchased from the prisoner was found by the Merit Commission to be sustained by the evidence, but the Commission found that the obtaining and using of the plates was a misdemeanor. Deputy Jones, in his testimony, admitted he removed and used the license plates after he was unable to obtain a title to the truck from the Wyoming dealer because the dealer had gone out of business and had not paid the bank which was holding the title. The bank wanted \$1,300.00 to obtain title to the truck. Deputy Jones further testified he was frustrated about the transaction and not having \$1,300.00 to obtain the title, and he needed to use the truck so he took the plates from what appeared to be an abandoned truck in the impound lot to use temporarily on his truck until he could find some way to get a title.

FACTS OF ALLEGATION III

Deputy Jones had been employed as a Tooele County Deputy during the term of former Sheriff William Pitt. During Sheriff Pitt's term, he had designated Deputy Jones as a sergeant. Deputy Jones had business cards with the rank of sergeant printed on the cards during the six years prior to Sheriff Shubert taking office. In 1980, Sheriff Shubert put out a directive to the effect that Deputy Jones was to no longer use the designation of sergeant. Deputy Jones removed the stripes from his uniforms and ceased representing himself as a "sergeant" in his duties as a Tooele County Deputy Sheriff. There were a few printed cards which were left over with the

designation of sergeant on them below the name of Wilcox, one of which was given to a citizen as a means to have a telephone number where the man could contact him. No oral representations were ever made as to Deputy Jones' being a sergeant.

FACTS OF ALLEGATION V

Sheriff Shubert did not seek a reversal of the Merit Commission's finding that this allegation was not proven. (See Brief of Appellant, page 3, Relief Sought on Appeal.) Therefore, this allegation is not involved in this appeal.

THE DECISION OF JUDGE WILKINSON

The Honorable Homer F. Wilkinson, in a complete review of the record, sustained the findings of the Merit Commission in all respects and further ruled that the Merit Commission had the authority to modify the Sheriff's decision by reinstating the deputy without back pay. (District Court Decision, p. 5.)

STATEMENT OF POINTS

POINT I: THE DISTRICT COURT'S DECISION IN UPHOLDING THE MERIT COMMISSION'S FINDINGS OF FACT WAS NOT ERROR.

POINT II: THE DISTRICT COURT CORRECTLY RULED THAT THE MERIT COMMISSION HAD THE AUTHORITY TO OVERRULE OR MODIFY THE SHERIFF'S DISCIPLINARY ACTION AND TO ORDER REINSTATEMENT.

POINT III: THE DISTRICT COURT HAS THE AUTHORITY TO AFFIRM, SET ASIDE OR MODIFY THE RULING OF THE MERIT COMMISSION REGARDLESS OF WHETHER THE MERIT COMMISSION HAS SUCH AUTHORITY.

ARGUMENT

POINT I: THE DISTRICT COURT'S DECISION IN UPHOLDING THE MERIT COMMISSION'S FINDINGS OF FACT WAS NOT ERROR.

Counsel for appellant contends that the Merit Commission's Finding of Fact in Allegation I was "so clearly outside of reason it must be deemed arbitrary and capricious" and that the failure of the District Court to substitute appellant's version of the facts for the Merit Commission's was error. The District Court action was a Petition for Writ of Certiorari under Rule 65B(b)(2) and 65B(e) of the Utah Rules of Civil Procedure. Rule 65B(b)(2) provides:

(b) Appropriate relief may be granted:

(2) Where an inferior tribunal, board or officer exercising judicial functions has exceeded its jurisdiction or abused its discretion.

Rule 65B(e) provides:

(e) Nature and Extent of Relief Under Subdivision (b)(2) of this rule.

. . . .

The review by the court issuing the writ shall not be extended further than to determine whether the inferior tribunal, board or officer has regularly pursued the authority of such tribunal, board or officer.

Counsel for appellant sought to have the District Court assume the position of a "super merit commission" and to reverse the findings made by the Merit Commission, which heard the evidence, had an opportunity to evaluate the witnesses, determine their credibility or lack thereof and draw conclusions based upon what they observed and heard. The scope of review under Rules 65B(b)(2) and 65B(e) is limited to (1) has the board exceeded its jurisdiction; (2) has the board abused its

discretion; and (3) has the board regularly pursuant to authority.

Judge Wilkinson's decision clearly points out that he found from a review of the record that the Merit Commission's findings and conclusions were not arbitrary and capricious and were in fact supported by the evidence. (Decision, p. 4). A full and complete review of the transcript of the hearing clearly supports Judge Wilkinson's decision that Deputy Jones' purchase of the truck and motorcycle was not illegal and/or Deputy Jones conducted his transaction with Douglas Jones at all times in the presence of fellow peace officers. He and the fellow officers, Sgt. Melville and Trooper Mansor, all testified that Douglas Jones was acting of his own free will and knew what he was doing when he made the agreement to sell his truck and motorcycle. His personal reasons for doing so are his personal reasons and not material to this proceeding. He was anxious to get out of jail and be on his way to San Francisco and the amount of consideration he wanted was his personal business. Are peace officers required to turn down a good deal when one comes by just because it is a good deal and they are peace officers? The seller was a willing seller and the buyer was a willing buyer. The risk for Deputy Jones was great. He had no titles to the vehicles and took the risk and expense of obtaining out-of-state titles. He further took the risk that the vehicles were operational. The motorcycle had a hole in the casing and oil was leaking out. There was no way of knowing

The price had internal damage and the engine was worthless. The truck was out of gas and had a dead battery and there was no way to determine the condition of the engine prior to its purchase. Deputy Jones did not even start the truck until after he had made the purchase. It is clear that Deputy Jones never attempted to conceal the purchase from anyone. He had a clear conscience and freely told anyone who inquired how he had made the purchase and for what price. He informed Deputy Tooele County Attorney Doug White, and there is some evidence that Sheriff Shubert knew of the transaction long before he started his investigation. Judge Poulsen, the Justice of the Peace for Wendover, testified that it was not unusual or illegal for officers to purchase merchandise from prisoners to help them get out of jail. People get stranded and broke in the gambling town and sometimes are in need of a few bucks to get home.

Judge Wilkinson found evidence was presented at the hearing to support the following conclusions:

1. The purchase was open and above board, and Deputy Jones at no time tried to conceal what he was doing.
2. That Douglas Jones offered to sell the vehicles to him (Deputy Jones).
3. There was no undue influence or duress exerted by the deputy on Douglas Jones.
4. Two other police officers knew what was taking place and neither expressed any question or advised the deputy not to go through with the purchase.

5. The Justice of the Peace stated that buying property from a prisoner was common practice.

The Court concluded that Deputy Jones may have used bad judgment in making the purchase but it was not sufficient reason to terminate his career employment. (Decision, p. 4.) The above findings are supported by the record reviewed by Judge Wilkinson.

POINT II: THE DISTRICT COURT CORRECTLY RULED THAT THE MERIT COMMISSION HAD THE AUTHORITY TO OVERRULE OR MODIFY THE SHERIFF'S DISCIPLINARY ACTION AND TO ORDER REINSTATEMENT.

Appellant incorrectly alleges that the Merit Commission modified the Sheriff's disciplinary action from a discharge to a 60-day suspension. There is no mention of a 60-day suspension in the Merit Commission's Findings of Fact and Decision. The Merit Commission made specific findings on each of the allegations upon which the termination was based and concluded that the Sheriff's termination of Deputy Jones was not supported by the evidence presented and ordered his reinstatement without pay. The Decision states:

Based on the acts above, which have been proven by a preponderance of the evidence, the Commission finds that these acts do not support the discharge of Wayne L. Jones by Sheriff Shubert, and we find that the action of the Sheriff in discharging Deputy Jones is excessive and order him reinstated as of April 16, 1992, but award no back pay for the period of time from the termination to the reinstatement. (Merit Commission Findings of Fact and Decision, p. 2.)

The net effect of the decision was to find the termination of Deputy Jones to be an excessive disciplinary action and to reinstate him without compensation for the period he was discharged. This procedure is not prohibited by §17-30-19, Utah Code Annotated, 1953, as amended, nor is it specifically permitted.

Appellant maintains that the Merit Commission had no statutory authority to alter the Sheriff's decision of termination if it found any of the allegations against him to be supported by the evidence presented. The Merit Commission found only one of five allegations (charges) made by the Sheriff to have been proven at the lengthy hearing (436 pages of testimony) held before the Commission. That allegation (No. II) was that Deputy Jones illegally took possession of license plates and used the plates on a vehicle improperly. The Merit Commission found this allegation to have been proven but found the violation to be a misdemeanor and not sufficient cause to terminate him. The District Court did not fully agree with the Merit Commission and found that the actions of Deputy Jones did not constitute a theft. (District Court Decision, p. 5.) In support of his position, appellant cites the 1944 Utah Supreme Court decision in Vetterli v. Civil Service Commission of Salt Lake City, 106 Utah 83, 145 P.2d 792. In Vetterli the Court was asked to review the authority of a civil service commission to substitute a lesser punishment for the admitted misconduct of a police officer in desertion from the police force. The

civil service statute involved gave the department head authority to suspend an officer for a period of not more than 15 days from which there was no right of appeal. A right of appeal to the Civil Service Commission existed only if the officer was terminated from his employment. The Court held that under the statute, the Commission could not order a suspension of the officer but did have the power to determine the sufficiency of the cause for removal. The Court stated at page 797:

We are of the opinion, and so hold, that the power conferred on the Commission to "determine the matter" brought before it on appeal is the power to determine the sufficiency of the cause of removal, and not simply to adjudge whether the cause alleged by the department head is true. It having that authority, it is not our province to interfere with the exercise of that judgment and direct an order of affirmance or reversal of the order of discharge. (Emphasis added.)

The right to appeal to the Deputy Sheriff's Merit Commission under §17-30-19, Utah Code Annotated, 1953, as amended, exists when a deputy is demoted, reduced in pay, suspended or discharged. The Commission is directed to hold a hearing; and after the hearing, the Commission must "make its decision in writing, including therein findings of fact." A person aggrieved by an act or failure to act of the commission may appeal to the District Court after exhausting his remedy of appeal to the Commission. The courts are vested with the power to review questions of law and fact and may affirm, set aside or modify the ruling complained of. (Section 17-30-20.)

The requirements by statute for the Merit Commission to hold an evidentiary hearing, to make a written decision and to make findings of fact contemplates more authority than to merely say that the Sheriff's allegations have been proven, and if proven, the order of termination is affirmed, or if not proven, to say the order of termination is reversed. In this case, the Merit Commission found only one of the five reasons (allegations) given by the Sheriff for termination of Deputy Jones to have been proven. They therefore decided that the one allegation which was proven did not warrant the termination order and ordered his reinstatement. The Merit Commission's determination that the one allegation proven was not sufficient cause for removal is within its power granted by the statute and by Vetterli v. Civil Service Commission, supra.

Even if the Merit Commission's decision is considered a "modification" of the Sheriff's order, there is ample authority for such action in court decisions of Arizona, California, Michigan and New Jersey.

The Arizona Court of Appeals in a 1972 decision, State Personnel Commission v. Webb, 500 P.2d 329, considered the question of the authority of a merit commission to modify or ameliorate an unduly harsh action taken by the employer (state). The Court stated at page 331:

We are concerned with an order entered by the Commission on an appeal to it, and the real question concerns the scope of the Commission's authority when entering an order at the termination of such appeal proceed-

ings. Is its authority limited to either affirming or reversing the action taken by the employer, or does it have authority to modify or ameliorate an unduly harsh action taken by the employer when in the opinion of the Commission the employee's conduct has been such as to justify the imposition of a lesser sanction allowed by the State Merit System Law? A.R.S. §38-910 governs appeals to the Commission, and we find no language in its provisions purporting to limit the action which the Commission may take when it issues its order. In the absence of such limitations, a civil service commission has the power to modify, as well as to reverse or affirm the decision of the employing agency. Hackett v. Morse, 45 Cal.App. 788, 183 P. 308 (1920); Groehn v. Michigan Corporation & Securities Commission, 350 Mich. 250, 86 N.W.2d 291 (1957). Cf. City of Newark v. Civil Service Commission, 114 N.J.L. 406, 177 A. 121 (1935). Any other approach would result in an inflexibility inconsistent with the orderly, swift and just disposition of merit system appeals. (Emphasis added.)

It should be noted that the Arizona statute, like the Utah statute, was silent as to the authority of the commission to modify a punishment imposed. The Arizona court relies on decisions from California, Michigan and New Jersey to support its decision.

POINT III: THE DISTRICT COURT HAS THE AUTHORITY TO AFFIRM, SET ASIDE OR MODIFY THE RULING OF THE MERIT COMMISSION REGARDLESS OF WHETHER THE MERIT COMMISSION HAS SUCH AUTHORITY.

Judge Wilkinson correctly pointed out in his decision that the District Court, under §17-30-20, Utah Code Annotated, 1953, as amended, or under its power of review under Rule 59 of the Utah Rules of Civil Procedure, can modify the ruling of the Deputy Sheriff's Merit Commission. (District Court

Section 17-30-20, Utah Code Annotated, provides:

The courts may review questions of law and fact and may affirm, set aside or modify the ruling complained of.

Rule 65B(b)(2) provides:

Appropriate relief may be granted:
 (2) Where a . . . board exercising judicial functions has exceeded its jurisdiction or abused its discretion.

Assuming that the Sheriff has the right to appeal as a "person aggrieved" under §17-30-20, he could have filed a direct appeal to the District Court to have the Merit Commission's ruling reversed or modified. The respondent maintained in his Motion to Dismiss that the Sheriff, based upon a prior ruling of the Third District Court for Tooele County in Case No. M-80-14, was a "person aggrieved." The appellant contends that contrary to this prior ruling by the Honorable Dean E. Conder, he is not, and therefore the procedure followed under Rule 65B is the only avenue of appeal by the Sheriff. Whether this action is an appeal by the Sheriff or an extraordinary writ, the authority of the District Court to modify the action of the Merit Commission should be the same. Paris vs. Salt Lake County Firefighters Civil Service Commission, Case No. 16722, decided April 16, 1980.

Judge Wilkinson in fact did modify one finding of the Merit Commission. The second allegation charged was that Deputy Jones illegally took possession of a set of license plates.

The Merit Commission found that the taking was a crime (theft). Judge Wilkinson's decision modified the Commission's finding and ruled that the evidence did not support a finding of theft. (District Court Decision, p. 5.)

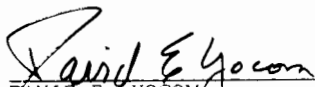
The purpose of judicial review by the district court by appeal or extraordinary writ of the rulings of those exercising judicial functions is to protect all parties concerned from the arbitrary and capricious use of their legislatively delegated authority. The District Court in this case has had such a review and based upon the record submitted, has found no such abuse by the Merit Commission. This Court should not disturb that ruling.

CONCLUSION

Respondent respectfully requests that this Court affirm the Third District Court's decision in all respects for the reasons stated herein.

Respectfully submitted this 11th day of ~~October~~ ^{Nov.} 1983.

BARBER, VERHOEF & YOCOM


 DAVID E. YOCOM
 Attorney for Respondent

MAILING CERTIFICATE

I hereby certify that a true and correct copy of the foregoing Brief of Respondent was mailed, postage prepaid, to Ronald L. Elton, Tooele County Attorney, Tooele County, Utah.