

SUPREME COURT OF SOUTH DAKOTA

S.D. Comm'n on Gaming v. Johnson (In re Support License #A8365-14-SP)

2018 S.D. 49 · No. #28436 · Decided June 20, 2018

SUMMARY

The South Dakota Supreme Court reviewed the revocation of Charles Johnson's gaming support license and his exclusion from South Dakota gaming establishments. The Court held that the Commission on Gaming's findings that Johnson improperly placed a patron's chips in a tip box and was dishonest during the investigation were not clearly erroneous. The Court also held that the Commission did not abuse its discretion in imposing the sanctions, reversed the circuit court, and affirmed the Commission's decision.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	Gilbertson, Chief Justice; Zinter, Justice; Kern, Justice; Jensen, Justice; Severson, Retired Justice
JURISDICTION	South Dakota
DECIDED	June 20, 2018
DOCKET	#28436
DISPOSITION	reversed
PROCEDURAL POSTURE	The South Dakota Commission on Gaming appealed from the circuit court's reversal of the Commission's administrative decision revoking Johnson's gaming support license and excluding him from all South Dakota gaming establishments.
STANDARD OF REVIEW	When the circuit court's review is confined to the administrative record, the Supreme Court conducts the same review of the agency's action as the circuit court. Questions of law are reviewed de novo, reviewable exercises of discretion for abuse of discretion, and agency factual findings under the clearly erroneous standard. The agency's decision may be affirmed or remanded, but may not be reversed or modified absent a showing of prejudice.
PRECEDENTIAL VALUE	published, precedential opinion

PARTIES

South Dakota Commission on Gaming v. Charles Johnson

TOPICS

gambling agency adjudication judicial review of agency action administrative procedure act
standard of review

PRACTICE AREAS

administrative law gaming regulation appellate procedure

QUESTIONS PRESENTED

1. Whether the Commission erred in finding that Johnson acted dishonestly or fraudulently in placing a patron's chips in the tip box and in making inconsistent statements during the investigation and hearing.
2. Whether the Commission erred in finding that Johnson failed to report an irregularity under ARSD 20:18:33:11.
3. Whether the Commission abused its discretion by revoking Johnson's gaming support license and placing him on the gaming exclusion list.

HOLDINGS

1. The Commission did not clearly err in finding that Johnson took money belonging to a patron and placed it in the tip box, or in finding that Johnson was dishonest during the subsequent investigation and hearing.
2. The Commission did not abuse its discretion by revoking Johnson's gaming support license and excluding him from all South Dakota gaming establishments.

KEY QUOTATIONS

“Questions of law are reviewed de novo. Id. Matters of reviewable discretion are reviewed for abuse. SDCL 1-26-36(6). The agency’s factual findings are reviewed under the clearly erroneous standard. SDCL 1-26-36(5).” (¶ 13)

“If any irregularity occurs, the dealer shall notify the box person or pit supervisor, who shall direct the dealer to take the most appropriate action which the box person or supervisor believes to be fair and equitable, and shall observe such action being taken.” (¶ 24)

FACTUAL BACKGROUND

Charles Johnson was a licensed gaming employee at a Deadwood casino when a suspected cheater left \$20 in chips at a craps table. Johnson placed the chips near the table bank and later put them in the tip box, although casino policy required found or unclaimed chips to be held or placed in the cage. Johnson gave differing accounts during the investigation and hearing about whether he attempted to notify the patron and whether he believed the chips were intended as a tip. The Commission found that Johnson acted dishonestly, revoked his license, and excluded him from South Dakota gaming establishments.

PROCEDURAL HISTORY

The Commission held a formal administrative hearing and found that Johnson violated gaming regulations by placing a patron's chips in the tip box and by being dishonest during the investigation and hearing. The Commission revoked his gaming support license and placed him on the gaming exclusion list. The circuit court, reviewing the administrative record, found several factual findings clearly erroneous and held that the sanction was an abuse of discretion. The Supreme Court of South Dakota reversed the circuit court and affirmed the Commission's decision.

DISPOSITION

reversed

CASES CITED

- Dakota Trailer Mfg., Inc. v. United Fire & Cas. Co., 2015 S.D. 55, ¶ 11, 866 N.W.2d 545, 548
- Peterson v. Evangelical Lutheran Good Samaritan Soc'y, 2012 S.D. 52, ¶ 13, 816 N.W.2d 843, 847
- Aguilar v. Aguilar, 2016 S.D. 20, ¶ 9, 877 N.W.2d 333, 336
- Clough v. Nez, 2008 S.D. 125, ¶ 8, 759 N.W.2d 297, 301
- Foley v. State ex rel. S.D. Real Estate Comm'n, 1999 S.D. 101, ¶ 9, 598 N.W.2d 217, 220

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