

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Robert Matheny, Sheriff of Harrison County v. Lieutenant Gregory Scolapio

807 S.E.2d 278 (W. Va. 2017) · No. No. 16-0840 · Decided November 9, 2017

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed a circuit court order granting mandamus relief to Lieutenant Gregory Scolapio. The court held that a deputy sheriff who has received a pre-disciplinary hearing before a hearing board is entitled to a de novo evidentiary hearing before the county civil service commission under West Virginia law. The court also upheld the Sheriff's intervention in the mandamus proceedings.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Justice Davis; Chief Justice Loughry; Justice Ketchum
JURISDICTION	West Virginia
DECIDED	November 9, 2017
DOCKET	No. 16-0840
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Sheriff appealed a circuit court order granting Lieutenant Scolapio mandamus relief and requiring the Harrison County Deputy Sheriffs Civil Service Commission to provide him a de novo evidentiary hearing. Scolapio cross-assigned error to the circuit court's decision permitting the Sheriff to intervene.
STANDARD OF REVIEW	De novo review applies to a circuit court order granting mandamus relief and to statutory interpretation.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Robert Matheny, Sheriff of Harrison County v. Lieutenant Gregory Scolapio

TOPICS

[employment law](#)[administrative law](#)[statutory interpretation](#)[appellate procedure](#)[standard of review](#)

PRACTICE AREAS

employment law

administrative law

appellate procedure

civil service

QUESTIONS PRESENTED

1. Whether the Sheriff was properly permitted to intervene in Scolapio's mandamus proceeding.
2. Whether West Virginia Code § 7-14-17 required the Civil Service Commission to provide Scolapio a de novo evidentiary hearing after his termination and pre-disciplinary hearing-board proceeding.

HOLDINGS

1. The Sheriff was properly permitted to intervene because he had a cognizable and direct interest in litigation concerning disciplinary action that he initiated and that could affect his decision to recommend Scolapio's termination.
2. West Virginia Code § 7-14-17 requires the Civil Service Commission to grant a deputy sheriff's timely request for a public, de novo evidentiary hearing after disciplinary action. The statutory scheme provides both a pre-disciplinary hearing before a hearing board and a subsequent hearing before the Civil Service Commission.

KEY QUOTATIONS

"We find this language to be plain and to require the Commission to provide Lieutenant Scolapio the de novo hearing before the Commission that he has requested." (807 S.E.2d at 284)

"Thus, it is apparent that, regardless of whether disciplinary action was taken against Lieutenant Scolapio before he requested a hearing before the Commission, he was entitled to both a pre-disciplinary hearing before the hearing board and a hearing before the Commission, with a right to appeal the Commission's ultimate decision to circuit court." (807 S.E.2d at 287)

FACTUAL BACKGROUND

Lieutenant Scolapio supervised the bailiff division and assisted with courthouse security for the Harrison County Family Court. After an unattended cooler was left in a courthouse hallway and Scolapio allegedly failed to respond to a request to determine whether it was a suspicious package, the Sheriff investigated, suspended him with pay, and proposed termination. A hearing board found reasonable grounds for termination, Scolapio was terminated, and the Civil Service Commission denied his request for a de novo evidentiary hearing.

PROCEDURAL HISTORY

After Scolapio was terminated following a pre-disciplinary hearing board proceeding, the Civil Service Commission denied his request for a de novo evidentiary hearing and elected to decide the matter on the hearing-board record. Scolapio petitioned the Circuit Court of Harrison County for a writ of mandamus. The circuit court granted relief, held that he was entitled to a de novo hearing before the Commission, and permitted the Sheriff to intervene. The Supreme Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- *Staten v. Dean*, 195 W. Va. 57, 464 S.E.2d 576 (1995)
- *Harrison County Commission v. Harrison County Assessor*, 222 W. Va. 25, 658 S.E.2d 555 (2008)
- *State ex rel. Billy Ray C. v. Skaff*, 190 W. Va. 504, 438 S.E.2d 847 (1993)
- *State ex rel. Kucera v. City of Wheeling*, 153 W. Va. 538, 170 S.E.2d 367 (1969)
- *Myers v. Barte*, 167 W. Va. 194, 279 S.E.2d 406 (1981)
- *Appalachian Power Co. v. State Tax Department of West Virginia*, 195 W. Va. 573, 466 S.E.2d 424 (1995)
- *Chrystal R.M. v. Charlie A.L.*, 194 W. Va. 138, 459 S.E.2d 415 (1995)
- *State ex rel. Ball v. Cummings*, 208 W. Va. 393, 540 S.E.2d 917 (1999)
- *Smith v. State Workmen's Compensation Commissioner*, 159 W. Va. 108, 219 S.E.2d 361 (1975)
- *Dan's Carworld, LLC v. Serian*, 223 W. Va. 478, 677 S.E.2d 914 (2009)
- *State v. General Daniel Morgan Post No. 548, Veterans of Foreign Wars*, 144 W. Va. 137, 107 S.E.2d 353 (1959)
- *State v. Epperly*, 135 W. Va. 877, 65 S.E.2d 488 (1951)
- *Crockett v. Andrews*, 153 W. Va. 714, 172 S.E.2d 384 (1970)
- *Nelson v. West Virginia Public Employees Insurance Board*, 171 W. Va. 445, 300 S.E.2d 86 (1982)
- *Terry v. Sencindiver*, 153 W. Va. 651, 171 S.E.2d 480 (1969)
- *State ex rel. Ashley v. Civil Service Commission for Deputy Sheriffs of Kanawha County*, 183 W. Va. 364, 395 S.E.2d 787 (1990) (per curiam)
- *Burgess v. Moore*, 224 W. Va. 291, 685 S.E.2d 685 (2009)
- *State ex rel. Hardesty v. Aracoma-Chief Logan No. 4523, Veterans of Foreign Wars of the United States, Inc.*, 147 W. Va. 645, 129 S.E.2d 921 (1963)
- *Newhart v. Pennybacker*, 120 W. Va. 774, 200 S.E. 350 (1938)