

**NOT DESIGNATED FOR PUBLICATION**

**COURT OF APPEAL**

**STATE OF LOUISIANA**

**FIRST CIRCUIT**

**2008 CA 1664**

**ANTHONY MORRIS, JR.**

**VERSUS**

**DEPARTMENT OF PUBLIC SAFETY & CORRECTIONS,  
WASHINGTON CORRECTIONAL CENTER**

**Judgment rendered: FEB 13 2009**

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**On Appeal from the State Civil Service Commission  
Parish of Washington, State of Louisiana  
Docket Number: S-16016  
The Honorable James A. Smith, Chairman;  
Burl Cain, Vice Chairman;  
Chatham Reed, David Duplantier,  
G. Lee Griffin, Rosa B. Jackson  
And John McLure**

**Anne S. Soileau, Director  
Department of State Civil Service**

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**BEFORE: CARTER, C.J., WHIPPLE AND DOWNING, JJ.**

*Whipple, J. concurs.  
Carter C.J. concurs*

## **DOWNING, J.**

This appeal, filed by plaintiff/appellant Anthony Morris, arises out of his prison guard employment termination. The State Civil Service Commission (Commission) upheld the termination. For the following reasons, we affirm the Commission's decision.

### **PROCEDURAL BACKGROUND**

Morris was terminated from his position at the Washington Correctional Institute, now known as Rayburn Correctional Center (RCC)<sup>1</sup> for failing to assist his fellow officers in subduing an inmate. Morris filed a petition of appeal with the Commission urging that the disciplinary action was unwarranted and the penalty excessive. The Commission appointed Referee Elliot B. Vega to conduct the hearing; the matter was heard on December 13, 2006. The Referee's decision, rendered February 7, 2007, determined that Morris' termination was not supported by the record. The Referee ordered Morris reinstated and reimbursed for lost back pay. RCC appealed to the Commission.

The Commission, reversing the Referee decision and reinstating the termination, stated that Morris failed to assist his fellow officers who were under attack. Morris appealed to this court alleging that the Commission erred: (1) in finding that the inconsistent statements and discrepancies made by the witnesses were insignificant; (2) in finding that he did not assist, and in finding that his actions were noncompliant to Rule 5; and (3) in viewing Rule 5 so narrowly.

### **CIVIL SERVICE RULE 13.36 Application for Review of a Referee's Decision**

- (a) Any party may file with the Commission an application requesting the Commission to review a decision of a referee on any question of law or fact.

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<sup>1</sup> Morris was notified of the termination, effective August 1, 2006, by letter dated July 21, 2006. The letter stated that on June 23, 2006, Morris violated Rule 5 of the Corrections Services Employee Manual.

(f) After consideration of the application for review, along with the pleadings and exhibits specified pursuant to subsection (b)(5) of this Rule, the Commission may:

1. Remand the appeal with instructions to the referee; or
2. Hold new hearings or take additional evidence or both, and render its own decision thereon.
3. Reverse or modify the Referee's decision on an issue of law.
4. Affirm the Referee's decision by denying the application for review.
5. Listen to pertinent portions of the sound recordings of the proceedings conducted before the Referee or read and review the transcript of the proceedings before the Referee, and, thereafter, reverse or modify the Referee's decision on an issue of fact, and/or take any of the actions specified in 1 through 4 above.

### STANDARD OF REVIEW

When reviewing the Commission's findings of fact, the appellate court is required to apply the manifestly erroneous or clearly wrong standard of review. However, in evaluating the Commission's determination as to whether the disciplinary action taken by the appointing authority is based on legal cause and commensurate with the infraction, the reviewing court should not modify or reverse the Commission's order unless it is arbitrary, capricious, or characterized by an abuse of discretion.

**Foreman v. LSU Health Sciences Center**, 04-0651, p. 3 (La.App. 1 Cir. 3/24/05), 907 So.2d 103, 106.

### FACTS

On June 23, 2006, at about 4:45 a.m., John McNeil, an inmate orderly, attacked Sergeant Stuart Breland inside the Wind 2 dorm. The Wind Dormitories 1-4 house transitional inmates who are trying to earn privileges lost due to disciplinary infractions. The front doors of the dormitories all face onto a common breezeway/walkway area. Wind 1 and 2 are adjacent, and Wind 3 and 4 are adjacent. When the doorways are open, Wind 2 and Wind 3 have an unblocked thirty-foot view into each other's dorm. At the time of the incident, the doors were open, and Sgt. Morris was assigned to Wind 3, Sgt. Mary McDonald to Wind 4, Sgt. Breland to Wind 2, and Sgt. Katie Dillon to Wind 1. There is a sixty-six inmate capacity in each dorm, but the exact number of inmates residing at the time at issue is not in the record.

When the incident occurred only the orderlies were moving between the dorms because the general wake-up call had not yet been given. Another inmate saw the attack and alerted the Key Control Officer, Sgt. Charlie McDonald, who oversees the Wind unit<sup>2</sup>. When Sgt. C. McDonald arrived on the scene, McNeil stopped the attack on Sgt. Breland and began striking Sgt. C. McDonald's head and chest with closed gloved fists. Sgt. C. McDonald testified that Lt. Marc Forrest came to assist him, but since he felt the situation was under control he told Lt. Forrest<sup>3</sup> to go help Sgt. Breland who was unmoving in a pool of blood.

Sgt. C. McDonald testified that inmate McNeil then renewed his attack on him so he called out for assistance to the other dorm officers whom he knew were present.<sup>4</sup> Sgt. Mary McDonald came to her husband's assistance. Sgt. Katie Dillon heard the call for help, activated her beeper, and joined the fray. Lts. Richard Steadman, Christian Moses, Darryl Mizell and Aaron Richardson and Cpt. Lester Mitchell arrived on the scene. Inmate McNeil was finally subdued, and Sgt. M. McDonald and Sgt. Dillon returned to their respective dorms.

Sgt. C. McDonald testified that while he was trying to control inmate McNeil, he looked directly into the Wind 3 doorway and saw Sgt. Morris watching the altercation. He said that Sgt. Morris neither came to his aid nor activated his beeper. During cross examination, Sgt. C. McDonald indicated that he did not specifically ask Sgt. Morris for help, but was looking directly at him when requesting assistance.

Sgt. C. McDonald and K. Dillon testified that they cleared the breezeway/walkway of all inmate traffic after inmate McNeil was restrained.

Sgt. Morris was charged with Failure to Aid Fellow Employees, a violation of Rule #5 of the Corrections Services Employee Manual.

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<sup>2</sup> Sgt. McDonald was assigned as "Wind Keys" which means he was controlling traffic on the breezeway.

<sup>3</sup> Marc Forrest, a Sergeant Master was "Acting Lieutenant" on the date of the incident.

<sup>4</sup> Sgt. C. McDonald testified that he knew the officers were near because when he ran into the Wind unit all of them were standing in front of their designated dorms with the dorm doors open.

## **FAILURE TO AID FELLOW EMPLOYEES:**

Whenever it is apparent that a fellow employee is in need of assistance, it is the obligation of all employees to take reasonable steps to render aid and assistance.

### **DISCUSSION**

The main issue of this appeal is whether the Commission erred in finding that Sgt. Morris violated Rule #5 of the Corrections Services Employee Manual, Fifth Edition, January, 2003. Sgt. Morris argues that the Commission erred in finding that he did not assist his fellow officers who were engaged in the altercation with inmate, McNeil. He claims that the Commission construed Rule 5 too narrowly because he did take reasonable steps to assist the officers by staying at his post and keeping other inmates from joining the fight.

The Commission report stated that Sgt. Morris testified that he became aware that three officers were physically engaged with an inmate when he stepped out into the common area between the dorms to determine the source of the noise. He testified that he had a beeper and that based on his past experience he knew that if he activated his beeper the lieutenants and captains in the compound would stop what they were doing and immediately converge upon the location of the activated beeper. Sgt. Morris testified that when he first saw the officers physically engaged with the inmate he did not know whether a beeper had been sounded or not. He also testified that he did not sound his beeper, but sought to patrol the common area because he was concerned about what might occur with the other inmates. He also testified that he did not go the aid of the officers because it appeared that the inmate was not struggling and under control.

Our review of the record shows that although Sgt. Morris presented the story from one point of view, every other witness recited a totally different version. Sgt. M. McDonald and Sgt. Dillon testified that they saw Morris standing in the Wind 3 doorway as they ran to Wind 2 to help Sgt. C. McDonald and Sgt. Breland. Lt.

John Mitchell also testified that Sgt. Morris never left his Wind 3 dorm to assist the officers involved in the Wind 2 confrontation.

Sgt. Morris countered this testimony by saying that the statements made by the correction officers were significantly inconsistent. He points out that the Referee even found that the statements made by the witnesses to be particularly troubling. The Referee stated that Sgt. Richard Magee, Lt. Darryl Mizell and Lt. Steadman all gave sworn statements against Sgt. Morris. Yet, when cross examined it was revealed that they had not written the statements, but simply attached their names to the statement that had been written for them.

In the Referee's report he stated the following:

Lt. Magee, Lt. Mizell and Lt. Steadman each completed a UOR concerning the events of June 23, 2006. These statements were typed and may not have been prepared by the officers whose name appears on them. Although there were minor differences, the content of these reports is nearly identical. Each of these Lieutenants also provided a memo to Assistant Warden Bickham concerning Sgt. Morris. The memos are all dated June 23, 2006 and, like the UORs, the text of Lt. Steadman's and Lt. Lt (sic) Mizell's memos is (sic) nearly identical, consisting of a single sentence that indicated that they did not see Sgt. Morris and that he did not assist in Wind 2. Lt. Magee also sent a memo to Assistant Warden Bickham. Like the others, this memo was also dated June 23, 2006. However, with respect to Sgt. Morris, Lt. Magee's memo included only an assertion that he did not "see" Sgt. Morris.

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... I find there are a number of unanswered questions. Particularly troubling are the following:

If, when responding to her husband's calls, Sgt. Mary McDonald saw Sgt. Dillon standing in her doorway and told her to activate her beeper, why did Sgt. Dillon testify that she was in her dorm at the security desk when she heard Sgt. Charlie McDonald call for help and that she responded by going through the closet connecting her dorm to Wind 2?

If, as stated in his June 23, 2006 memo to Assistant Warden Bickham, Sgt. Charlie McDonald repeatedly called out for help from other officers, and, as Sgt. Mary McDonald testified, he initially called to Sgt. Morris, then why did Sgt. Dillon indicate that Sgt. Charlie McDonald called out only for his wife?

How can Sgt. Charlie McDonald's testimony that he called to his wife and Sgt. Morris *after* Lt. Forrest's arrival be reconciled with Lt. Forrest's testimony that he did not hear Sgt. Charlie McDonald call for help while he was in Wind 2?

As Sgt. Charlie McDonald's testimony suggests that he called to his wife and Sgt. Morris only after Lt. Forrest's arrival, how can his testimony be reconciled with Sgt. Mary McDonald's testimony that her husband called repeatedly to Sgt. Morris *before* she alerted Lt. Forrest.

While there is considerable confusion in the record with respect to the events of June 23, 2006, I have no doubt that Sgt. Charlie McDonald did call for help at some point during his struggle with inmate McNeil. I also find that Sgt. Charlie McDonald and Sgt. Dillon saw Sgt. Morris in the breezeway. However, I can only determine with any certainty that these officers saw Sgt. Morris in the breezeway during the time that they and Sgt. Mary McDonald were already struggling with inmate McNeil. This is consistent with Sgt. Morris' assertions that, when he came out of his dorm, he saw the three officers on top of inmate McNeil and chose to police the breezeway to control the otherwise unsupervised inmate population of approximately 264 inmates.

With respect to whether Sgt. Morris's actions violated Corrections Rule 5, I find that "assistance" under the Rule must be interpreted in light of the circumstances. Sgt. Morris had no way to know of the assault on Sgt. Breland and/or why three officers were holding inmate McNeil on the floor of Wind 2. He also had no way to know then that the incident would remain confined to one inmate in one dorm, and no time to ascertain the true nature of what was happening before having to make his decision. I therefore find that Sgt. Morris did attempt to "assist" his fellow officers on June 23, 2006, by remaining in the breezeway and ensuring that the inmates from the Wind dorms did not become a threat or engage in other activities that were detrimental to the safety of the officers or other inmates. Based on the foregoing I find no violation of Rule 5.

The Commission, disputing the Referee's conclusion, did recognize that there was conflicting testimony. The Commission's opinion stated:

There is conflict in the testimony about who saw the appellant when and where, and the Referee expressed significant concerns about this conflict. The discrepancies that exist here involve the testimony of appellant, the two female dorm officers, and the key control sergeant who first sought to subdue the inmate. These are the type of discrepancies one expects to see when several witnesses to rapidly unfolding events describe the events. None of those discrepancies help appellant the lieutenants and the one captain who responded to the beeper testified that the inmate continued to struggle until he was handcuffed by the compound captain who was the last to arrive. The

appellant's own testimony about what he was doing while these events unfolded demonstrate [sic] his fault.

After a careful review of the record we cannot say that the Commission erred in its factual determinations or conclusions of law. The record shows that Lt. Magee testified that he was assigned to the Rain unit that morning, which is just south of the Wind unit. When he heard the urgent radio call he bicycled over to Wind to help. He said he heard a second radio call from Lt. Forrest saying "officer down." As he arrived, he saw Sgt. M. McDonald leaving Wind 4 and running to Wind 2. He saw Sgt. Breland inside Wind 2 leaning over a table holding his head. As he entered Wind 2, he saw that inmate McNeil was on the floor and Sgts. Dillon, C. McDonald and M. McDonald were trying to restrain him; Lt. Forrest was attending the injured Sgt. Breland. He said that shortly after his arrival Lts. Mizell and Steadman came in.<sup>5</sup> About 10 seconds later, Lt. Richardson arrived, and Cpt. Mitchell came a few seconds after Richardson. Lt. Magee said that he did not remember seeing Sgt. Morris.

Sgt. M. McDonald testified that she heard her husband, Sgt. C. McDonald, call to Sgt. Morris for help, and then when he did not come he called for further assistance.<sup>6</sup> She said she asked another inmate to go get Lt. Forrest and told Sgt. Dillon to hit her beeper. Sgt. M. McDonald said that as she entered Wind 2 she saw Sgt. Morris standing in the doorway of Wind 3 looking directly into Wind 2. She testified that there were ten to fifteen inmates on the breezeway and she ordered them to return to their rooms. She said that she did not hear Sgt. Morris order any commands to clear the breezeway.

Sgt. Katie Dillon testified next. She stated that she heard Sgt. C. McDonald say "Mary, help, he is about to get up." Sgt. Dillon said that she hit her beeper and then went into Wind 2 and jumped on Inmate McNeil's back. Sgt. Dillon testified

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<sup>5</sup> Lt. Mizell told the Referee that he and Lt. Magee arrived on bicycles within seconds of each other.

<sup>6</sup> On cross-examination, she admitted that her husband may not have specifically called out for Sgt. Morris.



that Lt. Mizell arrived and took over her position on top of inmate McNeil's back. At that moment, she saw Sgt. Morris standing in the breezeway looking into the Wind 2 doorway. On cross, Sgt. Dillon was asked "[d]o you think it is a possibility that he [Morris] could have been doing something in his dorm and he didn't know what was going on over there until you looked up and saw him come to the door?" She answered "No, because he could look right across in there." She did admit that she did not know how long Sgt. Morris was in the doorway.

Lt. Steadman, testifying, said that he was working in the Sun unit when at 4:42 he heard over the radio that an officer needed assistance. When arriving at the Wind unit he saw several officers trying to keep inmate McNeil pinned down. He said Sgt. Breland was slumped over bleeding. Lt. Steadman testified that he tried to cuff inmate McNeil by grabbing his wrist. He said it took all of the officers to subdue McNeil. Lt. Steadman testified that Sgt. Morris did not assist in controlling inmate McNeil. He stated that, in his opinion, Sgt. Morris did not need to police the breezeway in order to control the other inmates.

Lt. Aaron Richardson testified next. He said that he was at the Snow unit which is 300–400 yards from Wind when he heard the radio call for help, and he rode his bike right over. He said that when arriving, the only officer he saw was Sgt. Morris standing in the doorway of Wind 3. He then saw that in Wind 2, Sgt. McDonald, Lts. Magee, Mizell and Steadman were trying to subdue an inmate who was face down but still not totally compliant. After the inmate was handcuffed, he said that he went to retrieve the shackles. Lt. Richardson said when he returned with the shackles, he placed them on the inmate. Lt. Richardson testified that since the inmate was uncooperative and refused to walk, he was put on a laundry cart and taken away to the Sleet unit. While all this was going on, Lt. Richardson said that a nurse was attending Sgt. Breland. On redirect, Lt. Richardson admitted that if all the Lieutenants were already on the scene, it would have been reasonable for

Sgt. Morris to stay in place by his dorm. He said that it just depends upon the situation, but when an officer hears "Officer down," he would go assist.

Lt. Christine Moses testified next. She told the Referee that she had just reported for work when she heard a radio alert that an officer was down in the Wind unit. She grabbed a bike and arrived in about two minutes right behind Lt. Mitchell, who was Acting Captain that day, who was also on a bike. Arriving she did not notice Sgt. Morris, but her bike tilted over and he came over and asked if she was ok. She said that Sgt. Morris did not mention that anything was going on in the Wind unit. Lt. Moses said when she entered the Wind unit, she heard loud commands from the officer telling the inmate to stop resisting and saw a nurse with Sgt. Breland. When entering Wind 2, she said she was told to go get the nurse some ice for Sgt. Breland's head; she did not see Sgt. Morris when she returned with the ice. Lt. Moses testified that after inmate McNeil was taken away, she took over control of the Wind 2 dorm, and at 5:20 a.m. Sgt. Morris relieved her. Lt. Moses testified that she then proceeded to the infirmary and did not return to the Wind unit.

Master Sgt. Marcus Keith Forrest testified next. He said that an inmate came and warned him that there was trouble in Wind 2, so he ran over and observed Sgt. C. McDonald on the floor in a violent struggle with inmate McNeil. He said that he noticed that Sgt. Breland was on his hands and knees and appeared to be badly hurt. He testified that he got on his radio and called for all units to come to Wind 2, and announced, "Officer Down." He said that he went to Sgt. Breland, who was disoriented, and tried to keep him from getting up off the floor. He then saw Sgt. M. McDonald run in and at that time noticed Sgt. Morris standing in the Wind 3 doorway. He admitted that he never called out for Sgt. Morris to give a hand. After everything was under control and inmate McNeil and Sgt. Breland were removed from Wind 2, several inmates were on the breezeway. He

said that Sgts. C. and M. McDonald cleared them with his help. He could not recall seeing Sgt. Morris at that time. Sgt. Forrest testified that in his opinion, the inmate would have been restrained more quickly had Sgt. Morris helped, due to his size.

Rain unit Lt., John Lester Mitchell, testified next. He said that when he arrived at the Wind unit the officers were still struggling with the inmate, trying to get him under control and off the unit. As he arrived, he saw Sgt. Morris on the breezeway standing in front of Wind 3, while Lt. Richardson and Lt. Moses ran into Wind 2. He saw that a nurse was attending Sgt. Breland. Lt. Mitchell said he grabbed inmate McNeil's arm and handcuffed him. He said Lt. Richardson ran to get the shackles. After inmate McNeil was finally restrained, cuffed and shackled, Lt. Mitchell said he went to the infirmary to see Sgt. Breland and to start the notification process for the Warden. He did not see Sgt. Morris when he left the Wind unit. Lt. Mitchell initiated the disciplinary action against Sgt. Morris. He said he did this because of the reports from several of the officers and also from what he witnessed with his own eyes. He admitted that Sgt. Morris could not have prevented what happened to Sgt. Breland, but was adamant that Sgt. Morris should have helped Sgt. C. McDonald subdue the inmate.

Assistant Warden Keith Bickham was the last witness to testify against Sgt. Morris. He told the Referee that he had been employed at the prison over twenty-one years. Shortly after the incident he had reports that Sgt. Morris did not assist the officers. He had each of them write an "unusual occurrence report" (UOR). From those reports he determined that he had an officer assaulted, several officers had to assist in restraining the inmate, and it was a long struggle. He said that there was nothing in the UOR's that led him to determine that there was an employee

rule violation.<sup>7</sup> Warden Bickham said that what sparked this investigation was the fact that someone told him Sgt. Morris did not assist. He then asked for documentation that supported the allegation. He said that he did not make the determination of a possible violation until after he talked to all concerned, including Sgt. Morris. He said he talked to Sgt. Morris and asked Sgt. Morris why he stayed in the breezeway when he knew that officers were being attacked. He said that Sgt. Morris told him that he remained on the breezeway to control the other inmates. Warden Bickham said he asked him if there were any inmates out there and he answered “no,” but was controlling in case they decided to come out and run in on the other officers. The Warden said that Sgt. Morris told him that at that time “that if the inmates did so, he was going to yell in there and let them know they were coming.” The Warden said that his decision regarding Sgt. Morris was based primarily on Sgt. Morris’ own statement.

The final witness was Sgt. Morris. He told the Referee that he had been employed at the prison for two years when he was terminated. He said that he had only been on Wind 3 for one or two nights and did not know Sgt. C. McDonald well. He said that on the morning of the incident, he was making his round and he heard a loud noise. When making his way to the front t.v. room, he saw Sgt. M. McDonald, Sgt. C. McDonald and Sgt. Dillon pinning an inmate to the floor. He said that he did not know if this was a diversion tactic or a decoy for a riot. He said that the inmate appeared to be flat down on the ground so he began to patrol the breezeway. He said that in his mind that was a form of assistance. He said he saw Officer Moses fall off her bike and came over to help. He said he never heard anyone call for his assistance or for assistance from anyone else. He said that he did not realize Sgt. Breland was injured until they brought him out. He said that had he known Sgt. Breland was injured he would have gone to his aid. He testified

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<sup>7</sup> Possible employee rule violations would not go into the UOR because the reports go on everyone’s computer and everyone has access to them.

that he listened to the other officers' testimony and it was false. He said he never heard anyone ask for his help, and he thought he did assist by controlling the breezeway. He said that Rule 5 does not specify what "assist" means.

Pursuant to Civil Service Rule 13.36, the Commission has the authority to reverse or modify the Referee's decision on an issue of fact or conclusion of law. From the record before us, we cannot say that the Commission abused its discretion in reversing the Referee's decision. We agree that the word "assist" in Rule 5 is ambiguous and does not set forth a specific protocol. However, different scenarios would call for different types of assistance. The Commission determined that Sgt. Morris' testimony shows that he either knew there was a need for him to become physically involved and he did not want to do that or that he did not want to know whether there was a need for him to become physically involved with an inmate. The Commission's report states that correctional officers have a difficult and dangerous responsibility. They must keep incarcerated felons from harming themselves, each other, and the officers who are responsible for both their safety and the safety of the public. Without a concerted team approach to quickly subdue any such attack, the ability of correctional officers to meet their responsibilities is impaired. There is a reasonable basis for the Commission's decision. Therefore, the assignments of error are without merit and the ruling of the Commission is affirmed.

#### **DECREE**

For the foregoing reasons, we cannot say that the Commission manifestly erred in finding legal cause to terminate Anthony Morris. Accordingly, the decision is affirmed. The costs of this appeal in the amount of \$1,770.50 are assessed to Mr. Morris.

**AFFIRMED**