

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 CA 1481



BURLAND CELESTINE, SR.

VERSUS



**DEPARTMENT OF PUBLIC SAFETY &
CORRECTIONS, ELAYN HUNT CORRECTIONAL
CENTER**

Judgment Rendered: May 4, 2007

On Appeal from the State Civil Service Commission
Docket No. S-15751
Honorable James A. Smith, Chairman

Mark E. Falcon
Baton Rouge, LA

Counsel for Plaintiff/Appellant
Burland Celestine, Sr.

Joseph J. LaPlace
St. Gabriel, LA

Counsel for Defendant/Appellee
DPSC-Elayn Hunt Correctional

Robert R. Boland, Jr.
Baton Rouge, LA

Counsel for Defendant/Appellee
State Civil Service Commission

BEFORE: PETTIGREW, DOWNING, AND HUGHES, JJ.

HUGHES, J.

This appeal by plaintiff, Burton Celestine, Sr., arises out of his termination from his job as a security guard at Elayn Hunt Correctional Center in St. Gabriel, Louisiana. The Louisiana Department of State Civil Service denied Sgt. Celestine's initial appeal. Pursuant to Article X, Section 12 of the Louisiana Constitution of 1974,¹ Sgt. Celestine has appealed directly to this court. For the following reasons, we affirm.

FACTS AND PROCEDURAL BACKGROUND

This case arises out of an incident that occurred on June 17, 2005. Sgt. Celestine reported for his evening and night shift at the Elayn Hunt Correctional Center in St. Gabriel, Louisiana, where he had worked as a guard since 1996. Sgt. Celestine's superiors at the prison had learned earlier in the day from an inmate informant, LaBarrick Refuge, that Sgt. Celestine was engaged in a trading scheme with another inmate, George Pryor. The arrangement allegedly involved Sgt. Celestine providing Mr. Pryor with chewing gum, which inmates may not possess.² In exchange, Sgt. Celestine was to receive a can of soda and a package of cookies from Mr. Pryor; Mr. Refuge was to act as the go-between.

Acting on this information, Lt. Col. Craig J. White, Sgt. Celestine's superior officer, apparently met with Mr. Refuge before the scheduled exchange and placed his initials as inconspicuous yet identifying markings on both the soda can and cookie package, which Mr. Refuge had received from Mr. Pryor and was to provide to Sgt. Celestine in the exchange. Lt. Col. White then returned the items to Mr. Refuge. Lt. Col. White

¹ "The State Civil Service Commission shall have the exclusive power and authority to hear and decide all removal and disciplinary cases....The final decision of the commission shall be subject to review on any question of law or fact upon appeal to the court of appeal wherein the commission is located."

² Gum is prohibited because it may be used to conceal contraband under inmate beds or lockers and also to jam locks so that officers cannot open them with master keys.

also wrote a record of the markings on a note that he kept in his pocket.

The record does not reflect exactly how the alleged exchange occurred,³ but later during the shift, Lt. Col. White and two other officers, one of whom knew of the situation, came into the break or “key” area where Sgt. Celestine and other guards took their breaks. Lt. Col. White offered to do a card trick for everyone and involved Sgt. Celestine with the deck of cards. Lt. Col. White told the group that he needed a cold drink for the trick and Sgt. Celestine got one from the microwave area in the room. Lt. Col. White said that can was dented and would not work for the trick; he asked for a smooth can and Sgt. Celestine produced a can from his lunch box.

Once Sgt. Celestine produced the can from his lunch box, Lt. Col. White took from his pocket the note he had written earlier with the record of his initials that matched those on the can. He also asked Sgt. Celestine whether he had a package of cookies and Sgt. Celestine replied “No.” When Lt. Col. White pressed the question, Sgt. Celestine soon relented and admitted that a package of cookies placed in the microwave were his. Lt. Col. White took those cookies and, as with the soda can, pointed out the matching initial markings on the package and how they matched the note he had in his pocket. Mr. Pryor’s bunk was later searched and two packs of gum were found under his pillow.

Sgt. Celestine was immediately placed on administrative leave. By letter dated July 6, 2005 the facility warden advised Sgt. Celestine that he had violated Rule 10 of the Corrections Services Employee Manual, “Falsifying Documents or Making False Statements”⁴ and also Rule 14,

³ Mr. Refuge did not testify in this matter. A subpoena was issued to the Iberville Parish Prison, where Mr. Refuge was incarcerated at the time of the hearing, but he did not appear.

⁴ In pertinent part, “[k]nowingly making false statements or deliberately omitting important facts on official reports or documents or in other work related circumstances is forbidden.”

“Unauthorized Activities with Inmates.”⁵ In light of past blemishes on Sgt. Celestine’s disciplinary record,⁶ he was to be terminated from employment, effective on July 15, 2005.

Sgt. Celestine appealed to the Civil Service Commission according to his right as a permanent employee. He denied the allegations against him and asserted a number of points, including that the July 6, 2005 letter lacked sufficient detail and specificity to prove the alleged violations, that the penalty of termination was too severe, that the prison had shown no “good cause” for terminating him as no impairment to the efficiency or operation of the facility had been demonstrated, and that he had been entrapped by the actions of Lt. Col. White.

The matter was heard on February 7, 2006. Sgt. Celestine testified that he had brought one soda can from outside the facility (either from home or from a nearby store) and put it behind the microwave so it would not be stolen. He also testified that he brought the package of cookies from outside and put them in the microwave so they would not be stolen. Sgt. Celestine testified that he had no idea how the “marked” soda can got into his lunch box or how Lt. Col. White’s initials got onto the cookie package.

The civil service referee issued an opinion on March 27, 2006 that affirmed the prison authorities’ decision to terminate Sgt. Celestine’s employment. The referee concluded that it was more likely than not that the

⁵ In pertinent part, “[b]ringing or knowingly permitting the introduction of any unauthorized item or message for an inmate into or out of a correctional facility or other Corrections office is forbidden.”

⁶ In August of 2000, DPSC reduced Sgt. Celestine’s pay by 4% over five months after it found he had violated Rule 13, “Malfeasance Aggravated,” by attempting to intimidate a fellow guard; in May of 2004, DPSC reduced his pay by 4% over two months after it found he had violated Rule 9, “Failure To Report For Duty On Time,” by showing up late on two occasions in 2004 after having been disciplined for four prior latenesses. Sgt. Celestine also received a “letter of counseling,” a form of written warning, regarding an incident where he neglected to pass on the security emergency transmitter to his shift successor, a lapse that effectively left no way for officers in a particular part of the facility to summon emergency help for over four hours. According to DPSC policy, this incident went on Sgt. Celestine’s record, but letters of counseling are not considered in penalty enhancement unless they are related to the instant conduct or incident.

soda can and package of cookies that Lt. Col. White initialed were originally provided by Mr. Pryor and that these were the same soda and cookies that Lt. Col. White later discovered in Sgt. Celestine's possession. The referee did not find Sgt. Celestine's testimony regarding the confrontation with Lt. Col. White in the break room to be credible, thus the violation of Rule 10 ("Making False Statements") was affirmed.

The referee's opinion did not affirm the alleged violation of Rule 14 ("Unauthorized Activities With Inmates"). Rule 14(b) prohibits DPSC employees from providing contraband to inmates and the opinion noted: "DPSC fell short of proving that Sgt. Celestine exchanged gum for the Sprite and cookies. The only evidence linking Sgt. Celestine to the gum was hearsay." Nevertheless, the referee upheld the termination based on the State's showing by a preponderance of the evidence that Sgt. Celestine had been dishonest in this event, coupled with his checkered disciplinary record. Sgt. Celestine has appealed directly to this court.

DISCUSSION

Sgt. Celestine asserts on appeal that the Commission erred in: (1) determining that the DPSC had proved by a preponderance of the evidence the legal cause upon which his removal was based, specifically the alleged violations set forth in the July 6, 2005 letter, (2) determining that although DPSC failed to prove that he had engaged in an exchange with an inmate, he nevertheless gave false statements about the transaction, (3) concluding that he knew that the second can of soda and the cookies had come from an inmate, and (4) failing to find in his favor, grant his appeal, and award the relief he seeks.⁷ Basically, Sgt. Celestine argues that, having failed to prove

⁷ Mr. Celestine seeks reinstatement, back pay, expungement of the incident from his personnel record, legal interest, and attorney fees.

a prohibited transaction pursuant to Rule 14, the DPSC cannot logically show false statements made by Sgt. Celestine concerning that transaction.

We adhere to the following standard of review, as articulated by the supreme court:

In civil service disciplinary cases, an appellate court is presented with a multifaceted review function. First, as in other civil matters, deference will be given to the factual conclusions of the Commission. Hence, in deciding whether to affirm the Commission's factual findings, a reviewing court should apply the clearly wrong or manifest error rule prescribed generally for appellate review....

Second, in evaluating the Commission's determination as to whether the disciplinary action is both based on legal cause and commensurate with the infraction, the court should not modify the Commission's order unless it is arbitrary, capricious, or characterized by abuse of discretion. "Arbitrary or capricious" means the absence of a rational basis for the action taken.

Employees with permanent status in the classified civil service may be disciplined only for cause expressed in writing. "Cause"...includes conduct prejudicial to the public service involved or detrimental to its efficient operation. Stated differently, disciplinary action against a civil service employee will be deemed arbitrary and capricious unless there is a real and substantial relationship between the improper conduct and the "efficient operation" of the public service. (citations omitted)

Bannister v. Dep't of Streets, 95-0404, p. 8 (La. 1/16/96), 666 So.2d 641, 647.

As noted *supra*, Sgt. Celestine argues that if the DPSC could not prove by preponderance of the evidence that the exchange of gum for soda and cookies occurred in violation of Rule 14, then he should not have been found in violation of Rule 10 for lying when Lt. Col. White asked him about the cookies. While possessed of a certain degree of logic, this assertion cannot absolve Sgt. Celestine. As alleged, the exchange at issue was a chain with multiple links: (1) Mr. Pryor would have had to get the soda and cookies and (2) provided them to Mr. Refuge; Mr. Refuge would then (3)

have had to get the soda and cookies to Sgt. Celestine and (4) received the gum in exchange; Mr. Refuge would then have had to return to Mr. Pryor and (5) give him the gum.

Without Mr. Refuge's testimony as to the particulars of the alleged transaction,⁸ DPSC could not prove the entire exchange by a preponderance of the evidence and thus no violation of Rule 14 was shown; the referee noted as much in his opinion.⁹ DPSC did, however, demonstrate by a preponderance of the evidence that at least several links in the chain more likely than not occurred as charged, specifically the journey of the soda and cookies from Mr. Pryor to Sgt. Celestine by way of Mr. Refuge and Lt. Col. White's interception and initialing of the can and package. DPSC also showed that when Lt. Col. White questioned Sgt. Celestine about the cookies, Sgt. Celestine first denied having any cookies then admitted the cookies in the microwave were his.

As noted, Sgt. Celestine testified that he had brought the cookies from home or from the store, put the cookies in the microwave to keep them from being stolen, and that he had no idea how the initials got on the cookie package. The inmate, Mr. Pryor, also testified to the effect that he had never been involved in such an exchange and had been set up and threatened with lockdown if he would not admit to prison authorities that he had taken part in the deal. Compared with the DPSC's showings, the Referee did not find either Sgt. Celestine's or Mr. Pryor's testimony credible and concluded it was more probable than not that Sgt. Celestine made a false statement in violation of Rule 10 when he denied knowing about the cookies in the microwave then said he had brought them from

⁸ See *supra* note 3.

⁹ See *supra* p. 5.

home. We find no manifest error in this conclusion. The DPSC Rules are not interconnected and a failure by the DPSC to prove a violation of Rule 14 does not mean it failed in proving a violation of Rule 10.

Sgt. Celestine argues also that flaws in Lt. Col. White's "sting operation" and the possibility of other explanations, including that Sgt. Celestine was "set up," sheds doubt on the Referee's conclusions. While we realize that several alternative scenarios could have occurred on that fateful evening, our review of the record leads us to conclude that none suggested by Sgt. Celestine outpaces the likelihood that once he knew from Lt. Col. White's pocket note concerning the soda that the cookies were at issue, he lied about them. We conclude that the DPSC proved by a preponderance that Sgt. Celestine violated Rule 10 by making false statements about the cookies and that the Referee committed no manifest error in concluding as such.

As quoted *supra*, we review the DPSC's decision to terminate Sgt. Celestine and the Referee's affirmation to determine whether it is arbitrary, capricious,¹⁰ or characterized by abuse of discretion. The DPSC's decision to terminate Sgt. Celestine, a permanent civil service employee, must be supported by legal cause. To do so, DPSC must have shown the Referee "by a preponderance of the evidence that the employee's conduct did, in fact, impair the efficiency and operation" of the prison facility.¹¹ Here, prison authorities based Sgt. Celestine's termination on the combination of

¹⁰ A conclusion of a public body is "capricious" when the conclusion has no substantial evidence to support it or the conclusion is contrary to substantiated competent evidence. The word "arbitrary" implies a disregard of evidence or of the proper weight thereof. **Coliseum Square Ass'n v. City of New Orleans**, 544 So.2d 351, 360 (La. 1989), **Sterling v. Dep't of Public Safety & Corrections, Louisiana State Penitentiary**, 97-1960, p. 13 (La. App. 1 Cir. 9/25/98), 723 So.2d 448, 455.

¹¹ See *supra* p. 6.

“your past disciplinary record and the nature of this present offense.”¹² The Referee affirmed, noting specifically that Sgt. Celestine’s position required trustworthiness and that his dishonesty in this incident amounted to cause for disciplinary action; when combined with his past disciplinary incidents, dismissal was warranted.

Our review of the record and jurisprudence suggests that terminating Sgt. Celestine was not arbitrary and capricious. The offense of making false statements is a serious one in the corrections context, especially when combined with the showing by DPSC that Sgt. Celestine’s conduct was more likely than not prohibited even without proof that he provided Mr. Pryor with the gum in violation of Rule 14. Our review of the record suggests that Sgt. Celestine could well have been found in violation of Rule 13(c), “Malfeasance—Aggravated,” which reads as follows:

No employee shall take or attempt to take the property of inmates, of other employees or of the state, nor use such property for his benefit or the benefit of another without authorization. **No employee shall accept property from an inmate, and inmate’s family or an inmate’s visitors without proper authorization.** Property includes, but is not limited to, such items as food, clothing, equipment or other personal items (emphasis added).¹³

Lt. Col. White’s “sting operation” may have lacked corroboration, but Sgt. Celestine’s immediate reaction and subsequent testimony concerning the incident proved to be highly damaging. No rule prohibits a guard from possessing soda and cookies, but the Referee was convinced that Sgt. Celestine acquired the soda and cookies from an inmate, Mr. Pryor. This is clearly prohibited by the rules, which Sgt. Celestine testified that he knew.

In terms of whether Sgt. Celestine’s conduct threatened the efficient

¹² See *supra* note 6 for discussion of these past infractions.

¹³ Sgt. Celestine testified to his knowledge of this policy at the hearing.

and orderly operation of the prison facility, as required under the standard quoted *supra* on page 6, we note both that a single incident may amount to legal cause for termination and that the broader implications of an incident or conduct may be considered. **Fields v. State, Dep't of Corrections**, 498 So.2d 174, 177 (La. App. 1 Cir. 1986).

Here, Sgt. Celestine's questionable acquisition and possession of the marked soda can and cookies, combined with his dishonesty to his superior officer at a point in the encounter that could easily be viewed as conducive to a lie, suggests a serious breach of prison security measures and violation of internal rules in and of itself. Furthermore, this alleged arrangement between Sgt. Celestine and selected inmates may have been ongoing and might have led in time to exchanges of items that posed an even more serious threat, such as narcotics or weapons. We find the DPSC's decision to terminate Sgt. Celestine and the civil service Referee's affirmation of this decision neither arbitrary, capricious, nor an abuse of discretion.

CONCLUSION

For the above and foregoing reasons, the judgment of the civil service Referee is affirmed. All costs of this proceeding are to be borne by plaintiff, Burtland Celestine, Sr.

AFFIRMED.