



counsel on behalf of DOC. Jones proceeded *Pro se*.

At the beginning of the hearing, DOC introduced into evidence, without objection, exhibits consecutively marked as DOC's Exhibits 1 - 7. The Employee submitted three additional exhibits during the hearing, consecutively marked as Employee's Exhibits 1 - 3. The undersigned informed the parties that Jones' personnel file at the Alabama State Personnel Department is included in the record as evidence in this cause.

DOC called Warden III Patrice Jones ("Warden") to testify on its behalf. Jones testified on his own behalf. Jones' father also testified on his son's behalf.

## **I. PROCEDURAL HISTORY AND CHARGES**

Jones was dismissed from employment with DOC on June 19, 2020. *See* June 22, 2020, dismissal letter ("dismissal letter") signed by DOC Commissioner Jefferson S. Dunn.<sup>1</sup> Jones timely appealed his dismissal to the Alabama State Personnel Board, pursuant to *Ala. Code 1975, § 36-26-27(a)*.

In the dismissal letter, DOC alleged:

You, Correctional Officer Senior, Dominique Jones, were hired by the Alabama Department of Corrections (ADOC) on April 16, 2018. A recent investigation revealed that you were arrested on April 7, 2018, for the felony charge of Unlawful Possession of a Controlled Substance and a misdemeanor charge of Pistol in a Vehicle. Since your arrest,

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<sup>1</sup> *See* DOC's Exhibit #3.

you were served an indictment and entered a guilty plea to the charges on December 13, 2018 and are currently in Pre-Trial Diversion. You never informed your Warden of your arrest, guilty plea, and participation in court proceedings as a criminal defendant.

...

Jones' actions violated Alabama Department of Corrections Administrative Regulation 208 – Employee Standards of Conduct and Discipline with respect to the following provisions:

...

Section V.A.7. – Employees shall observe all laws, rules and regulations;

Section V.A.8. – Employees shall uphold, with integrity, the public's trust involved in their position;

...

Section V.A.10. – Employees shall immediately inform and provide a written report to the Warden/Division Director regarding any incident of arrest or conviction of a felony or misdemeanor (except minor traffic violations), arrest/conviction for Driving Under the Influence and any requirement to appear as a defendant in a criminal court;

...

Section V.E. – Employees shall be subject to disciplinary action for falsifying or failure to sign documents in connection with the application process, their job duties, performance evaluation, or a departmental requirement.

...

Annex H, Number 18 – Serious violations of rules, policies, procedures, regulations, laws, or reasonable conduct expectations.

....

Annex H, Number 24 – Failure to immediately inform and provide written report to the Warden/Division Director concerning any incident of arrest, conviction, or when required to appear as a defendant in any criminal court, except minor traffic violations.

....

On September 8, 2020, the undersigned conducted a *de novo* hearing (“the hearing”), at which ore tenus and documentary evidence was received.

## **II. FACTUAL BACKGROUND**

Having reviewed the documentary evidence and having heard the testimony presented at the hearing and having observed the witnesses’ demeanor and assessed their credibility, the undersigned finds the greater weight of the evidence supports the following findings of facts.<sup>2</sup>

### **A. Employee’s Personnel File<sup>3</sup>**

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<sup>2</sup> All references to exhibits and testimony are intended to assist the State Personnel Board in considering this recommended order and are not necessarily the exclusive sources for such factual findings.

<sup>3</sup> See generally SPB Rules 670-X-18-.02(5) and 670-X-19-.01(1)(b) (employee’s work record, including performance and disciplinary history, and length of service considered in dismissing employee).

Jones began his employment with DOC on April 16, 2018, as a “Correctional Officer Trainee” and assigned to Bullock Correctional Facility (“Bullock”). On November 1, 2019, Jones was promoted to Correctional Officer at Bullock. Jones remained in that job classification until DOC dismissed him in June 2020.

Jones’ annual performance appraisals (“APA”) while at DOC reflect:

<u>Date Ending</u>	<u>Total Score</u>	<u>Category</u>
03/20	7.0	Partially Meets Standards
04/19	24.0	Meets Standards
10/18 <sup>4</sup>	20.0	Meets Standards

Jones’ prior disciplinary history at DOC includes the following disciplinary action (in reverse chronological order):

- Written Reprimand, Refusal of a supervisor’s instructions to remain on duty during a shortage or personnel situation and/or emergency situation on January 19, 2020 (Pending);
- 3-day suspension, Late for work (tardiness)/failure to follow proper call-in procedures on December 20, 2019 (Pending);
- 3-day suspension, Sleeping or giving the appearance of sleeping on duty on July 3, 2019 (Pending);
- 3-day suspension, Late for work (tardiness)/failure to follow proper call-in procedures on June 20, 2019 (Served November 19, 2019 - November 21, 2019);
- Written Reprimand, Leaving assigned post and/or workstation before the end of the shift/workday without permission from proper authority or proper relief

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<sup>4</sup> Final probationary Appraisal.

and no serious consequences occur on June 13, 2019 (Served on August 14, 2019);

- Warning, Non-compliance with policies, procedures and regulations on June 10, 2019 (Served on June 24, 2019);
- 3-day suspension, Late for work (tardiness)/Failure to follow proper call-in procedures on April 16, 2019 (Served August 4, 2019 – August 6, 2019);
- 3-day suspension, Late for work (tardiness)/Failure to follow proper call-in procedures on March 22, 2019 (Served June 18, 2019 – June 19, 2019);
- Written Reprimand, Late for work (tardiness)/Failure to follow proper call-in procedures on March 6, 2019 (Served on April 29, 2019);
- 2-day suspension, Sleeping or giving the appearance of sleeping on duty on February 13, 2019 (Served July 22, 2019 – July 23, 2019);
- Warning, Late for work (tardiness)/Failure to follow proper call-in procedures on April 25, 2018 (Served on April 25, 2018).

*See generally* State Personnel Board Rule 670-X-18-.02(5); State Personnel Board Rule 670-X-19-.01(1)(b) (prior work record, including performance and disciplinary history, and length of service considered in dismissing employee).

**B. DOC Policies/Procedures Forming the Basis of the Charges**

DOC Administrative Regulation 208 provides, in pertinent part:

**V. PROCEDURES**

A. All DOC employees shall adhere to the following standards:

...

7. Employees shall observe all laws, rules and regulations;
8. Employees shall uphold, with integrity, the public's trust involved in their position;

...

10. Employees shall immediately inform and provide a written report to the Warden/Division Director regarding any incident of arrest or conviction of a felony or misdemeanor (except minor traffic violations), arrest/conviction for Driving Under the Influence and any requirement to appear as a defendant in a criminal court;

...

- E. Employees shall be subject to disciplinary action for falsifying or failure to sign documents in connection with the application process, their job duties, performance evaluation, or a departmental requirement.

## **ANNEX H**

...

18. Serious violations of rules, policies, procedures, regulations, laws, or reasonable conduct expectations.  
(First Offense – Written Reprimand; Second Offense – 2 days suspension; Third Offense – 3 days suspension; Fourth Offense – Dismissal).

...

24. Failure to immediately inform and provide written report to the Warden/Division Director concerning any incident of arrest, conviction, or when required to appear as a defendant in any criminal court, except minor traffic violations.

### **SPB General Work Rules Forming the Basis of the Charges**

Rule 670-X-19-.01 provides, in part:

(1) In addition to any special rules issued by the various appointing authorities for the guidance of their employees, the following standard general work rules shall apply to all classified employees:

(a) Violations that normally result in disciplinary actions of increasing severity:

...

(b) More serious violations that may result in suspension or discharge on the first offense.

...

10. Serious violation of any other department rule.

...

13. Conduct unbecoming a state employee.

...

### **C. Facts Forming the Basis of Dismissal**



On March 30, 2018, DOC notified Jones by letter that he was conditionally appointed to the Correctional Officer Trainee Position, effective April 16, 2018.<sup>5</sup> On April 7, 2018, Jones was arrested for Possession of a Controlled Substance, a felony charge, and Carrying a Concealed Weapon in Vehicle, a misdemeanor charge.

Jones began his employment with DOC on April 16, 2018 at Bullock. Jones did not disclose his April 7, 2018, arrest at the time he began work at Bullock. On June 1, 2018, Jones was transferred from Bullock to the Correctional Officer Training Academy in Dallas County. Jones submitted an Affidavit stating he was never convicted of a felony and attesting he listed all misdemeanor arrests and convictions on his Academy Application.<sup>6</sup> Jones failed to place his April 7, 2018, arrest on his Academy Application. Jones pled guilty to both charges on or about December 13, 2018 and was ordered into Pre-Trial Diversion. Ultimately, Jones fulfilled the requirements of his Pre-Trial Diversion and he received an amended disposition of his charges to reflect they were nolle prosequi.<sup>7</sup>

Correctional Warden III, Patrice Jones (“Warden”) testified that pursuant to DOC rules and regulations, Jones had a duty to report his April 7, 2018, arrest

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<sup>5</sup> DOC Exhibit 1, page 106.

<sup>6</sup> DOC Exhibit 1, page 37.

<sup>7</sup> DOC Exhibit 6, page 11.

directly to her. Warden testified Jones never did.

Jones testified he notified Captain Wannamaker at the Academy and also testified he told the Warden during a meeting on his first day back at Bullock from the Academy.<sup>8</sup> Jones testified others in the meeting with the Warden included Captain Lamar, Captain McCorvey and Warden McLain. Jones clarified he did not give them any documentation, he just notified them in the meeting. Jones did not mention this meeting during his pre-dismissal conference.

During his pre-dismissal conference, Jones told the Warden he notified Sergeant Johnson or Lieutenant Smith. Following the pre-dismissal conference, the Warden followed up with Sgt. Johnson and Lt. Smith and both denied knowing anything about Jones' April 2018 arrest. The Warden testified that if Jones gave any documentation to his supervisors, it would have been placed in his 201 (personnel) file. The Warden testified there is no documentation pertaining to Jones' April 2018 arrest in his 201 file. The Warden also testified there was no meeting when Jones returned from the Academy to Bullock where he disclosed his April 2018 arrest.

Jones also testified he forwarded documentation from the Academy to the

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<sup>8</sup> Captain Wannamaker is not a Warden and was not the Division Director over the academy, so even assuming Jones notified Cpt. Wannamaker, it did not satisfy the demands of the rule.

Warden in an e-mail that showed he presented evidence of his April 2018 arrest. Jones produced an e-mail heading, but the body of the email and the date of the email are not visible.<sup>9</sup> The Warden testified she did not receive an email from Jones pertaining to his April 2018 arrest.

The Warden testified she aggravated the punishment for this offense because of Jones' prior discipline and his behavior during the Pre-Dismissal Conference. The Warden described Jones as belligerent, volatile and abrasive. Upon review of the DOC transcript, it certainly appeared Jones was frustrated because he claimed he had exculpatory evidence on his cell phone; cell phones are prohibited at Bullock. Jones had an opportunity to print out the contents of his phone before this hearing and call additional fact witnesses. Jones did not do either.

### **III. ISSUE**

Did DOC produce sufficient evidence to warrant Jones' dismissal?

### **IV. DISCUSSION**

The purpose of the administrative appeal is to determine if the termination of the employee's employment is warranted and supported by the evidence. *Kucera v. Ballard*, 485 So.2d 345 (Ala.Civ.App. 1986); *Thompson v. Alabama Dept. of*

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<sup>9</sup> Employee Exhibit 3.

*Mental Health*, 477 So.2d 427 (Ala.Civ.App. 1985); *Roberson v. Personnel Bd. of the State of Alabama*, 390 So.2d 658 (Ala.Civ.App. 1980). Recently, in *Earl v. State Personnel Board*, 948 So.2d 549 (Ala.Civ.App. 2006), the Alabama Court of Civil Appeals reiterated:

“[D]ismissal by an appointing authority ... is reviewable by the personnel board only to determine if the reasons stated for the dismissal are sustained by the evidence presented at the hearing.”

*Id.* at 559, quoting *Johnston v. State Personnel Bd.*, 447 So.2d 752, 755 (Ala.Civ. App. 1983).<sup>10</sup>

In determining whether an employee’s dismissal is warranted, the departmental agency bears the burden of proving the charges warrant termination by a “preponderance of the evidence.” The law is well settled that a “preponderance of the evidence” standard requires a showing of a *probability* that the employee is guilty of the acts as charged. Thus, there must be more than a mere possibility or one possibility among others that the facts support the disciplinary action at issue. The evidence must establish that *more probably than not*, the employee performed, or failed to properly perform, as charged. *See Metropolitan Stevedore Co. v. Rambo*,

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<sup>10</sup> The Alabama Court of Civil Appeals went further to hold: “both this court and the circuit court must take the administrative agency’s order as ‘prima facie just and reasonable’ and neither this court nor the circuit court may ‘substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.’” *Id.* at 559, citing Ala., Code 1975, § 41-22-20 (k); *State Dept. of Human Res. v. Gilbert*, 681 So.2d 560, 562 (Ala.Civ.App. 1995).

521 U.S. 121, 117 S.Ct. 1953, 138 L.Ed. 2d 327 (1997), holding that a “significant possibility” falls far short of the APA’s preponderance of the evidence standard. *See also Wright v. State of Tex.*, 533 F.2d 185 (5<sup>th</sup> Cir. 1976).<sup>11</sup>

An administrative agency must act within its constitutional or statutory powers, supporting its decision with substantial evidence. “Substantial evidence has been defined as such ‘relevant evidence as a reasonable mind might accept as adequate to support a conclusion,’ and it must be ‘more than a scintilla and must do more than create a suspicion of the existence of a fact to be established.’” *Alabama Alcoholic Beverage Control Bd. v. Tyson*, 500 So.2d 1124, 1125 (Ala. Civ. App. 1986).

In the present case, DOC presented sufficient evidence to warrant Jones’ dismissal. A.R. 208 provides the following:

### III. DEFINITION(S) AND ACRONYM(S)

A. Active Corrective Action: A corrective action issued within the previous 12-month period.

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M. Inactive Corrective Action: A corrective action that was finalized/served on an employee more than 12 months prior to the action being contemplated.

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<sup>11</sup> In *Bonner v. City of Pritchard*, 661 F.2d 1206, 1209 (11th Cir.1981), the Eleventh Circuit adopted as binding precedent all Fifth Circuit decisions handed down prior to the close of business on September 30, 1981.

## V. PROCEDURES

G. (4) When implementing or recommending formal discipline, the Warden/Division Director shall consider active and inactive corrective actions received by the employee as indicated below:

c. Suspension – Only active corrective actions.

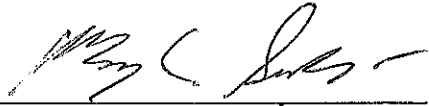
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e. Dismissal – All active and inactive corrective actions.

Appendix H, rule 24 states, “Failure to immediately inform and provide written report to the Warden/Division Director concerning any incident of arrest, conviction, or when required to appear as a defendant in any criminal court, except minor traffic violations.” The regulation itself is long-suffering. A first offense results in a Written Reprimand, a second offense results in a 3 days suspension and a third offense results in dismissal. Under Section O. of A.R. 208, V. Procedures, punishment may be mitigated or aggravated depending on the circumstances surrounding the infraction. In this case, the Warden aggravated Jones’ discipline to dismissal on the first offense because of the seriousness of his arresting charge, specifically, felony possession of drugs; the length and seriousness of his past disciplinary history during his short tenure at DOC; and his demeanor during the pre-dismissal conference.

The undersigned has carefully considered mitigation in this case. The undersigned finds no grounds for mitigation exist justifying a lesser disciplinary action than dismissal. It appears the Warden has lost trust in Jones to an extent that is irretrievable. Accordingly, the undersigned finds the totality of the evidence warrants dismissal in this cause. Therefore, the undersigned recommends to the State Personnel Board that the dismissal be UPHELD.<sup>12</sup>

Done, this the 10th day of November 2020.



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RANDY C. SALLÉ  
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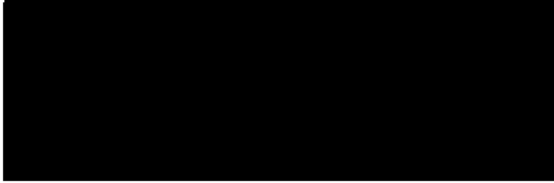
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<sup>12</sup> Having found sufficient evidence to uphold the dismissal, any/all remaining issues are moot.

COPIES TO:

**VIA E-MAIL AND FIRST-CLASS U.S. MAIL**

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