

OCCPS Decision # 08-08

CONSTABLE RYAN VENABLES  
Appellant

AND

YORK REGIONAL POLICE SERVICE  
Respondent

Presiding OCCPS Members:

Murray Chitra, Chair  
Garth Goodhew, Member  
Tammy Landau, Member

Appearances:

William R. MacKenzie, for the Appellant  
Jason D. Fraser, for the Respondent

Heard:

May 20, 2008

Date of Decision:

October 3, 2008

**UNNECESSARY FORCE** - Unprovoked assault on handcuffed and unresisting prisoner resulting in injuries to prisoner - Appellant also uttered ethnic slurs - Appellant convicted on criminal charge of assault - Hearing Officer concluding that mitigating factors outweighed by seriousness of misconduct - Penalty of dismissal failing resignation was within appropriate range - Appeal dismissed.

**DISCREDITABLE CONDUCT - Discriminatory conduct** - Unprovoked assault on prisoner accompanied by ethnic slurs - Hearing Officer found misconduct caused serious damage to reputation of the service - Concerns about demonstrated ethnic bias and public trust not unreasonable - Penalty of dismissal failing resignation was within available range - Appeal dismissed.

**DISCREDITABLE CONDUCT - Criminal offences - Assault** - Unprovoked assault on handcuffed prisoner - Appellant pled guilty to criminal charge of assault and received suspended sentence with probation - Element of ethnic intolerance increasing seriousness and offensiveness of Appellant's misconduct - Hearing Officer acknowledging mitigating factors but concluding Appellant's future usefulness to the service as a police officer was spent - Conclusion supported on the facts - Appeal dismissed.

**SENTENCING - Aggravating factors - Reputation of the service** - Unprovoked assault on handcuffed prisoner with clear ethnic overtones - Misconduct self-evidently egregious - Hearing Officer found that assault jeopardized public trust and raised issues of police accountability and integrity - Open to Hearing Officer to conclude that Appellant's future usefulness to the service was spent - Appeal dismissed.

#### Summary of Reasons for Decision

Constable Venables appealed the penalty imposed by the Hearing Officer, dismissal failing resignation within seven days, after he pled guilty to three counts of misconduct: one count of discreditable conduct, contrary to s. 2(1)(a)(i) of the Code of Conduct, a second count of discreditable conduct, contrary to s. 2(1)(a)(ix) and one count of unlawful or unnecessary exercise of authority, contrary to s. 2(1)(g)(ii) of the Code.

On November 11, 2006 Cst. McNamee had arrested a suspected drunk driver in the City of Vaughan. He was assisted by Cst. Partridge. The officers charged VB with refusing to provide a roadside breath sample. VB was handcuffed and placed in the back of Cst. McNamee's cruiser. Constables DeWinne and Venables arrived on the scene while the paperwork was being completed. Constable Venables approached the cruiser and asked VB if he was Russian. The prisoner replied that he was. Constable Venables then called VB a "fucking drunk Russian" and punched the prisoner on the side of his head. When Cst. Venables returned to his own cruiser he remarked to Cst. DeWinne, "I hate Russians."

The prisoner sustained injuries in the form of a chipped tooth and a cut and swollen lip. VB informed Cst. McNamee of what had occurred. Before the end of the shift Cst. Venables was suspended from duty with pay. The next month he was arrested for assault causing bodily harm. On May 2, 2007 Cst. Venables pled guilty to the *Criminal Code* offence of assault. He received a suspended sentence and 18 months probation subject to terms.

At his disciplinary hearing Cst. Venables pled guilty to two charges of discreditable conduct and one charge of unlawful or unnecessary exercise of authority. An agreed statement of facts was submitted. In addition, character evidence was presented on behalf of Cst. Venables. The statement related Cst. Venable's acknowledgement of wrongdoing to investigators. He stated that: he was frustrated from a previous call that evening; he never intended to punch the prisoner; he didn't recall making the ethnic comments but was embarrassed that he had; his conduct was out of character; following the incident he had attended anger management courses and had registered for a course on racial sensitivity.

The Hearing Officer acknowledged the mitigating factors: an essentially clear employment record, guilty plea, apology to the victim and a sincere expression of remorse. However, in his view these factors were outweighed by the serious, "reprehensible" nature of the misconduct and the damage to the reputation of the service.

Counsel for the Appellant argued that the Hearing Officer erred in principle by disregarding positive character evidence, rehabilitative potential and by failing to apply principles of progressive discipline. Counsel for the Respondent argued that the Hearing Officer properly identified all sentencing factors; and he was entitled to conclude that the misconduct was so reprehensible that Cst. Venables was no longer useful to the service.

*Held*, penalty upheld; appeal dismissed.

The Hearing Officer described the Appellant's conduct as "egregious". The offensiveness of an unprovoked assault on an unresisting, handcuffed prisoner was self-evident; however, in this case it was aggravated by two factors: the clear discriminatory overtones and the criminal conviction that resulted from Cst. Venable's conduct.

The Hearing Officer identified several mitigating factors, including a good prior employment record. Nevertheless Cst. Venables was a very junior officer: he had been in uniform only 31 months at the time of the incident. Thus the mitigating value of his employment record was limited by its brevity.

With regard to the Appellant's future usefulness, the Hearing Officer observed that the assault had damaged the reputation of the service, jeopardized public trust and raised serious issues of police accountability and integrity, especially given the overtones of racial intolerance, which could undermine community outreach initiatives in the multicultural population served by the York Regional Police. The Hearing Officer concluded that the Appellant's rehabilitative potential was outweighed by the seriousness of the misconduct and the potential damage to the reputation of the service if he were to remain on the force.

The Appellant's conduct violated fundamental principles of policing, as set out in the first section of the *Act*. Given the disturbing facts of this case, it was open to the Hearing Officer to conclude that the Appellant's egregious misconduct presented insurmountable obstacles to his suitability as a police officer.

#### Statutes cited

*Police Services Act* R.S.O. 1990, c.P.15, s. 64(7)  
O. Reg. 123/98, ss. 2(1)(a)(i), 2(1)(a)(ix) and 2(1)(g)(ii)

#### Authorities cited

**Williams and Ontario Provincial Police** (1995), 2 O.P.R. 1047 (OCCPS)  
**Groot and Peel Regional Police Service** (2002), 3 O.P.R. 1552 (OCCPS #02-04)  
**Maguire and Ontario Provincial Police** (1975), 1 O.P.R. 229  
**Kyle and York Regional Police Service** (March 11, 2003, OCCPS #03-06)

[Further authorities as submitted by the parties may be found at pp. 5-7 of the decision.]