



TORONTO POLICE SERVICE DISCIPLINE HEARING

IN THE MATTER OF ONTARIO REGULATION 268/10
MADE UNDER THE POLICE SERVICES ACT, RSO 1990,
AND AMENDMENTS THERETO:

IN THE MATTER OF THE

THE TORONTO POLICE SERVICE

AND Constable Richard WHITE #9597; (He/Him)

Charge: Discreditable Conduct (61/2019)

DISPOSITION DECISION

Hearing Officer: Inspector Suzanne Redman; Toronto Police Service; (She/Her)

Prosecutor: Mr. Matthew Capotosto, Toronto Police Service; (He/Him)

Defence Counsel: Ms. Joanne Mulcahy; (She/her)

Case Number: 61/2019

Hearing Dates: 2024.04.16

Decision Date: 2024.11.25

Before commencing my decision on penalty and sentencing in this matter, I would like to thank Ms. Mulcahy, Defence Counsel, and Mr. Capotosto, the Service Prosecutor, for their joint submissions as to penalty and exhibits tendered, all of which have assisted me in reaching my decision.

Note: This decision is divided into four parts: PART I: OVERVIEW; PART II: THE HEARING; PART III: ANALYSIS AND FINDINGS FOR DISPOSITION; and PART IV: DISPOSITION.

PART I: OVERVIEW

Background

1. PC Richard WHITE #9597, commenced his employment with the Toronto Police Service (TPS) in 2006, and has 18 years of service. He has spent almost his entire career at 12 Division, from PRU, to Traffic, CRU, Neighbourhood Enforcement Unit, then Frauds, with a brief stint in TAVIS.

Allegations of Misconduct

2. PC Richard WHITE #9597, being a member of the Toronto Police Service, you are alleged to have committed misconduct in that you did act in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the police service of which you are a member, contrary to Section 2(1) (a) (ix) of the Schedule Code of Conduct of Ontario Regulation 268/10 and therefore, contrary to Section 80(1) (a) of the Police Services Act, R.S.O. 1990 as amended.

Plea

3. On Tuesday the 16th of April, 2024, Police Constable Richard WHITE #9597 pleaded guilty to the Notice of Hearing and was found guilty of Discreditable Conduct, contrary to the Police Services Act.

Decision

4. I have carefully considered the joint submissions and relevant information presented by both the Prosecutor and Defence Counsel, as well as reviewed previous Tribunal Decisions. In light of the mitigating and aggravating circumstances, and in particular, the seriousness of the matter, I impose the following sanction under Section 85(1) (c) of the Police Services Act (PSA).

For Discreditable Conduct in that Constable White is guilty of: acting in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the police force of which he is a member;

-A Reduction in Rank Classification from First Class Constable to Second Class Constable for a period of 24 months, after which Constable White can be returned to his previous classification of First Class Constable.

- Constable White is further ordered under Section 85 (7) (b) of the *Police Services Act (PSA)*, to attend in person within 60 days at the Toronto Police College, to A/Supt Paul Rinkoff, or a person designated by the College, and seek relevant training as recommended by the Toronto Police College.

The remaining Charges 2-6 are marked withdrawn at the request of the Prosecutor.

PART II: THE HEARING

Exhibits

5. The exhibits for this matter are listed in Appendix 'A', attached hereto. To avoid repetition, all exhibits will be referred to by number without the preface of Appendix 'A'.

Representation

6. In this matter, Ms. Mulcahy represented PC White and Mr. Capotosto represented the Toronto Police Service.

Agreed Statement of Facts

The facts of this matter as amended are substantially agreed upon by the parties. The Agreed Statement of Facts, that being the amended Notice of Hearing:

Being a member of the Toronto Police Service, you were attached to 12 Division.

During the period of April 5, 2017 and July 20, 2017, you failed to keep appropriate notes in your memo book.

On at least twenty (20) occasions during that period, you left large gaps and failed to make appropriate notes in your memorandum book.

On Tuesday May 23, 2017, you became involved in an investigation into H.N. that resulted in criminal charges laid against H.N. During this investigation, as a result of deficiencies in your notes, an inaccurate record of events was created:

You made notes that you observed drugs in plain view in H.N.'s vehicle subsequent to the arrest, when in fact those drugs were not in plain view

You failed to make notes of a search of H.N.'s vehicle that was conducted by yourself and other officers at the scene

On February 23, 2018, at the preliminary hearing of H.N. you did not accurately testify about the circumstances of the arrest of H.N. and the search of H.N.'s vehicle.

In doing so, you committed misconduct in that you did act in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the Toronto Police Service.

Positions on Penalty

Submissions

Prosecution Submissions

10. The Prosecutor – Mr. Matthew Capotosto, began his submissions stating this was a joint submission for a two year Reduction in Rank Classification from First Class Police Constable to Second Class Police Constable.

11. Mr. Capotosto then referenced the Supreme Court Case of Anthony Cook at Tab E, of Exhibit 4, where it stands for the proposition that a judge should not depart from a joint position or sentence unless the proposed sentence will bring the administration of justice into disrepute or is otherwise contrary to the public interest, and that can be found in paragraphs 32-36 of Tab E.

12. Mr. Capotosto advised the joint penalty was as a result of significant discussions and negotiations between counsels and that they believe they have arrived at a fair resolution in the matter.

13. Mr. Capotosto submitted that the 15 factors relevant to determination of penalty, depending on the factual circumstances of each case, that are outlined in Ceyssans Legal Aspects of Policing, which can be found at Tab 1 of the Book of Records and has repeatedly been accepted by the commission.

14. Mr. Capotosto advised he would be focusing on public interest, the seriousness of the misconduct, recognition of the seriousness of the misconduct, employment history, consistency of disposition and the need for specific and general deterrence.

15. Mr. Capotosto submitted that public interest must be considered in each case given the objectives of the police disciplinary process is the protection of the public. That police have considerable power and discretion of matters that have effects on the fundamental human rights of members of the public, including charter rights and as a result officers are held to a higher standard of conduct and the necessary public scrutiny and transparency. Public interest arises where the misconduct has offended or undermined public confidence in police.

16. Mr. Capotosto submitted that there was no doubt that PC White's discreditable conduct conviction has implications with the public trust; that we as an organization strive so hard to uphold. In this particular case the public has strong interest as it involved enforcement against drug traffickers.

17. Mr. Capotosto advised that for matters involving drug crimes it's important for officers to keep an accurate record of searches done in their notes and it is even more important that they testify accurately. He further advised that when they don't, the case falls apart and allegations are raised about police misconduct which greatly impacts public trust, and these are the types of cases that show up in the news all the time.

18. Mr. Capotosto submitted that in this case we have very serious misconduct starting with the officer making inaccurate notes of observations of drugs in plain view and completely failing to record a search that was done. Then testifying inaccurately as a result of that. He went on to say, "Surely this has significant implications on public trust and competence and policing." And further that, during that time period, on several occasions this would cause a greater jeopardy to the reputation of the Service.

19. Mr. Capotosto then referenced Tab C of his Book of Authorities, the case of Toronto Police Service vs Elliot, page 19 which states “Police services work hard to develop a positive public image and the behaviour of Constable Elliot in this matter will cause them to question the integrity of the Toronto Police Service”.

20. Mr. Capotosto advised Constable Elliot was convicted of discreditable conduct very similar to PC White’s misconduct, making inaccurate notes in his memo book and then testifying inaccurately, which resulted in a finding of a charter violation and exclusion of evidence.

21. Mr. Capotosto then returned to the quote “Police services work hard to develop a positive public image and the behaviour of Constable Elliot in this matter will call into question the integrity of the Toronto Police Service. It’s reasonable to conclude that the extent of the damage to the reputation of the police service increases in proportion with the seriousness of the misconduct. The public will be watching to ensure the Toronto Police Service has responded accordingly to the level of Constable Elliot’s misconduct. The penalty must correspond to the degree of misconduct which in this case means the sanction must be significant in order to help instill confidence in the community and to restore the reputation of the Police Service”.

22. Mr. Capotosto submitted that the penalty they are proposing is one of the highest short of dismissal, which is necessary to demonstrate to the public that we take this misconduct very seriously.

23. Mr. Capotosto submitted that the seriousness of the misconduct, the formal hearing process itself, initiated by the Chief is a reflection of the seriousness of the misconduct in issue.

24. Mr. Capotosto submitted that the conduct taken both individually and collectively represents a serious departure from the expectations of police officers, the facts underlying the misconduct strike at the core of policing duties here. Taking accurate notes of your duties, and testifying accurately as to what happened. He

further submitted that this must be assessed on the more serious end of the spectrum of misconduct.

25. Mr. Capotosto went on to say the misconduct took place in the context of a serious criminal investigation involving drug trafficking, notes that the officer observed drugs in plain view subsequent to the arrest, when there were not, calling into question the credibility, integrity of the investigation and lead to an inevitable charter challenge. Further doing a search of a vehicle incident to arrest and failing to record this in the notes would also cause significant jeopardy to that case. Finally testifying inaccurately at a preliminary hearing with these circumstances raises this to a new level that calls into question the integrity and honesty of the officer.

26. Mr. Capotosto submitted that this was not the first time this happened or a one off, but that it's indicated on a least twenty occasions between April 5th and July 20th, that the officer left large gaps, and failed to take appropriate notes. He went on to say that this was 20 different cases that could be called into jeopardy by this officer's misconduct, and this misconduct calls for a strict penalty and a warning to this officer.

27. Mr. Capotosto next addressed the recognition of the seriousness of the misconduct by stating that , like in Elliot, Exhibit 4, tab C, page 15, the officer should receive credit for his guilty plea and for acknowledging the facts in issue and for agreeing to a considerable sanction and should get credit for that.

28. Mr. Capotosto noted that counsel for the officer approached Prosecution Services for a resolution prior to the matter being taken out of sine die, so it was an early attempt at resolution and the officer should be given credit for that, and that plea and sanction should be seen as a sign of recognizing the seriousness of the conduct and a sign of his remorse.

29. Mr. Capotosto next referenced employment history, stating employment history is either a mitigating or aggravating consideration closely related to the disposition consideration of rehabilitation potential. That in this case the officer's

employment history is both aggravating and mitigating, and that defence would speak to the many mitigating aspects of PC White's employment history.

30. Mr. Capotosto went on to say that the officer does not come to the Tribunal unblemished, in 2013 PC White had a previous finding of guilt and a penalty of a forfeiture of 18 days and eight days to be served consecutively on two charges related to utilizing police databases for personal reasons and that this is outlined in the officer's TPS 950, in Exhibit 3, tab 2..

31. Mr. Capotosto submitted that there is no doubt the officer has done many positive things in his time as an officer, but his disciplinary history is concerning and the fact that he comes to us unblemished distinguishes this officer from some of the other competitor cases he is referring to which call for a higher penalty than those officer's received.

32. Mr. Capotosto next referenced consistency of disposition, stating that this represents one of the most basic principles of the discipline process and flows from the idea that similar misconduct should be treated in a similar fashion, recognizing that no two cases are alike.

33. Mr. Capotosto next quoted Schofield and Metropolitan Police Service, which he did not present, where it's stated that "consistency in the discipline process is often the earmark of fairness. The penalty must be consistent with the facts and consistent with similar cases that have been dealt with on earlier occasions."

34. Mr. Capotosto advised he only provided a few cases as it is a joint position, one being Andrews and Midland in Exhibit 4 at Tab A, in this case Andrews failed to conduct an investigation into a bar fight involving police officers and failed to properly supervise subordinate officers to do the same. He then subsequently lied to investigators about the reason he attends the bar, the facts are outlined in paragraph 6-8 of that decision.

35. Mr. Capotosto went on to state that the conduct in Andrews and the Midlands PS was very serious, rehabilitation was a key factor considering the officers prior unblemished employment record, and that in this case PC White does not have an unblemished record, and has previous findings in the Tribunal.

36. Mr. Capotosto submitted that in Andrews the OCPC reduced the penalty from a five year demotion to two years at Second Class Constable. He further stated that there are some distinguishable factors, in this case, the Andrews misconduct was more serious in some aspects as there was a deliberate lie to investigators, however in PC White's case the inaccuracy was communicated at a criminal preliminary hearing which is a bit more serious as the officer was sworn under oath. In Andrews the case was more about the officer covering up bad acts of other officers, in this case the context is a serious drug investigation where the conduct puts in jeopardy the prosecution of this matter.

37. Mr. Capotosto further stated that Andrews was a very serious case where the officer failed to conduct an investigation and lied to investigators, however Andrews also had a prior unblemished record, and the sentence was reduced from five years to two years, but it was two ranks, and that this was a good comparator case.

38. Mr. Capotosto next referenced Exhibit 4, Tab B, Ebdon and the DRPS, in this case the officer gave inconsistent and contradictory evidence before the Superior Court in relation to his interactions with "BC", they were captured on surveillance video and the judge found the report of this interaction with BC did not bear any resemblance to what the surveillance video recorded, and was a "work of fiction". That despite the officers conduct, BC's charter application was dismissed, so it didn't really have any final impact on the case, but surely it had impact on the reputation of the police service, just from the judge's comments. The appellant was further found to have given inconsistent evidence with respect to his interaction with two other officers. Officer Ebdon had only one formal reprimand on his record but the hearing officer found a consistent theme of the officer not accepting responsibility for his actions, he had a reduction in rank to Third Class Constable for 6 months, followed by Second Class Constable for 6 months before returning

to First Class Constable, and although it was a shorter period of time, it was a more significant one as it involved a reduction of two ranks.

39. Mr. Capotosto then submitted comments from the Ontario Civilian Police Commission upholding the decision of Ebdon and DRPS, found in Exhibit 4, tab B, paragraph 27, the commission stated “it is clear to us from reviewing the entire decision that the hearing officer took a balanced approach to sentencing and in doing so he found the misconduct at the high end of the spectrum” writing at page 15 “I’ve used the conduct at the high end of the spectrum and serious enough to warrant a severe penalty in today’s reality. The public expects a much higher level of professionalism from police officers in order to keep their trust. A clear message must be sent to both PC Ebdon and all police officers that these actions compromise the integrity of our profession and put the confidence of the public in jeopardy.”

40. Mr. Capotosto suggested that Ebdon is the same as the case here, the officer testified to two major inconsistencies at a preliminary inquiry, although credibility is not an issue at a preliminary inquiry, in this case, if it had reached trial these two inconsistencies would have been extremely problematic and would have been fatal to the case.

41. Mr. Capotosto next referenced the case of Elliot and the Toronto Police Service, Exhibit 4, Tab C. Officer Elliot inaccurately noted and then inaccurately testified to circumstances that drew his attention to a vehicle prior to a drug arrest, leading the judge to be critical of his testimony which lead to a dismissal of the charges on a charter voir dire. Elliot, unlike Officer White, had no prior incidents of misconduct and had a very distinguished career.

42. Mr. Capotosto stated that Elliot was given consecutive sentences, for one count of discreditable conduct, he received a demotion of twelve months and for the other count he received a forfeiture of 15 days and a concurrent twelve month reduction in rank, and that this was a joint penalty application as in this case. Mr. Capotosto suggested that Officer White’s conduct in recording inaccurate notes

was more serious as it was not one but two bigger inaccuracies about the circumstances post arrest related to the search, and as was demonstrated in our case, there was a pattern of misconduct of making inaccurate notes.

43. Mr. Capotosto then mentioned comments from Elliot on page 10, bottom paragraph, where it talks about his actions “Constable Elliot committed serious misconduct. Members of the public expect behaviour of this nature to generate a sanction which corresponds to the seriousness of the misconduct. I fully expect the public to be disappointed in Constable Elliot’s behaviour when they become aware of it; he demonstrated a lack of respect for the judicial system when he made poor and inaccurate notes and then provided erroneous testimony based on those notes”. And that this was on point in this case, continuing on page 11 “However significant sanction will contribute to the process of re-instilling public confidence in the Toronto Police Service, knowing that Constable Elliot was held accountable for his actions, that the matter was taken very seriously by his employer” and that is the importance of having a lengthy 24 month reduction in rank in this case.

44. Mr. Capotosto then continued below this on page 11 “ seriousness of misconduct can be amplified if the behaviour in question is repeated and deliberate, but a single incident of misconduct can be viewed in a similar light if it is of significant nature. The conduct in question is an isolated incident, but I consider it to be of a serious nature nonetheless. I find that the behaviour demonstrated by Constable Elliot in this case was very serious misconduct which warrants a corresponding sanction”.

45. Mr. Capotosto submitted that in this case it has been distinguished that we have both, a single serious incident with regards to the investigation of H.N., and also a pattern of repeated misconduct during that time period of 20 different incidents where there was inaccurate notes taken, which calls for a higher sanction in this case.

46. Mr. Capotosto advised that there were further comments on the impact of deficient note taking which he had highlighted in the case book, page 11 and 12 which he would leave for the Tribunal to read.

47. Mr. Capotosto submitted the next comparator case Gini and the Toronto Police Service, Exhibit 4, tab D. In this case Officer Gini engaged in a warrantless search of a bedroom without prior judicial authorization. The officer further made inaccurate note entries and testified at the preliminary inquiry that he only located and seized the drugs after the search warrant was granted. During the trial he came clean and provided an accurate account that he had found them prior to the search warrant. His inaccurate note taking and his inaccurate testimony resulted in the drug exhibits being excluded at trial, PC Gini's positive employment history was considered mitigating as there was no prior misconduct, he received a nine month reduction in rank and on page 6 you can see the joint submission penalty, comments are found at paragraph 57, "the penalty must be appropriate in the circumstances of the case."

48. Mr. Capotosto quoted on page 57 of that decision "the penalty has to be appropriate to the circumstances and the penalty imposed in one case may not be appropriate in another similar case based on the disposition factors that are present. In the matter before me the misconduct was serious and the circumstances surrounding his actions involved the criminal court proceeding his actions demonstrate a lack of judgement and were not in keeping with the expectations of police officers. In this case a penalty of demotion is appropriate the penalty I'm imposing is within the range of penalties for other similar cases involving similar misconduct."

49. Mr. Capotosto submitted that the facts in the present case are more serious with the officer making greater inaccuracies in his notes and testimony related to observing drugs in plain view where there were not any and failing to testify to the entire search of the vehicle. As well, in this case Officer White has a prior discipline record compared to no prior record of discipline for PC Gini. The only comment about PC Gini which was positive was his employment history was mitigating.

50. Mr. Capotosto then referenced paragraph 53 where it states “as discussed in Andrews and the Midland Police Service, an officer with a prior unblemished employment record should be provided with the opportunity to rehabilitate. I believe PC Gini has the ability to be reformed or rehabilitated”. He submitted that we believe that PC White has the ability to be reformed or rehabilitated but the fact that he does not have an unblemished record calls for a longer reduction in rank in this case.

51. Mr. Capotosto next addressed specific and general deterrence and referenced Andrews and the Midland Police Service Exhibit 4, tab A, paragraph 73 where the commission stated “That the penalties imposed for misconduct must be strong enough to send a clear message to other officers that such conduct, or any conduct of this nature will not be tolerated”. Mr. Capotosto then advised that for specific deterrence, that this officer has demonstrated a pattern of deficient note taking around the time, the height of which was the incident where he failed to take notes regarding his observations in the vehicle, or to search the vehicle and then testified inaccurately at a prelim. A strong message needs to be sent to this officer that this will not be tolerated.

52. Mr. Capotosto submitted that for general deterrence a message needs to be sent to other members of the Service, that there are serious consequences when an officer breaches his duties to take accurate notes and testify accurately, which can lead to significant consequences for cases before the court, and can lead to significant negative impact on our image in the community. That it is this type of conduct that can give the Police Service a bad reputation.

53. Mr. Capotosto submitted in conclusion that the officer’s plea is a significant sign of remorse. However his conduct here is on the very serious end of the spectrum and had significant impact on the administration of justice. Further the officer does not have a prior unblemished disciplinary history, with previous findings guilt in this Tribunal. That a significant reduction in rank of two years is necessary to send the message to this officer, and all officers and to show the public that we take this misconduct very seriously.

Defence Submissions

54. Ms. Mulcahy opened her submissions by submitting a book of records, performance appraisals of Constable White – Exhibit 6.

55. Ms. Mulcahy submitted that this was a joint submission for penalty for a reduction in rank for two years from first to second class constable and at the end of two years, a return to first class constable. In addition they are in agreement that the penalty include a component of training by the Service specific to note taking, as it is apparent from the Notice of Hearing that Constable White is in this position because of his notes and training makes sense, and he's more than agreeable to participate in that training.

56. Ms. Mulcahy referenced the Supreme Court of Canada decision of Cook and advised it makes it clear that as this is a joint position it must be accepted because it is not contrary to the public interest and it would not bring the administration of justice into disrepute.

57. Ms. Mulcahy next submitted with respect to the factors, commonly referred to as the Ceyssan factors. Factors which the Commission has endorsed, this joint position squarely addresses the public interest, its obvious there is public interest in this matter, we are in a Tribunal, it is a public Tribunal, this is a public penalty hearing. It is acknowledged that this is serious misconduct and accepted, but it is clear on Constable White's employment record that this misconduct is out of character. Further we see that the misconduct is during a period of time he failed to keep appropriate notes on 20 occasions, it's not worded as inaccurate it's worded as appropriate notes, and that he left large gaps, in the Agreed Statement of Facts.

58. Ms. Mulcahy submitted that with respect to May 23rd, 2017 it's agreed to, and he pled too, that he had deficiencies in his notes which resulted in an inaccurate record concerning two areas. In addition, as a result, he inaccurately testified at the preliminary hearing.

59. Ms. Mulcahy submitted that much of this was driven by, referencing his TPS 950, and from his evaluations stating that this was very out of character, was that during that time period the Officer was in a Neighbourhood Enforcement Unit which was a Unit created by 12 Division and 23 Division to focus on getting guns and significant drugs off the road. And that as a part of this Unit he went from search to search, arrest to arrest, back to back and he got overwhelmed. He got very behind in his notes, and its clear that he mixed up occurrences including a related arrest involving someone with a similar name, that does not justify the misconduct, but it does give it context.

60. Ms. Mulcahy submitted that we see from the Agreed Statement of Facts his square admissions, with commuting, he was working long hours and he failed to balance, which resulted in this misconduct of failing to keep appropriate notes and an accurate record, the failure to prepare for the preliminary hearing as well showed inaccuracies and mixing up things and has been a huge lesson to Constable White, being involved in this process from start to finish, including today.

61. Ms. Mulcahy submitted Mr. Capotosto fairly acknowledged the mitigating factor of the recognition of the seriousness of the misconduct. That the commission and the courts have indicated that a plea of guilty is a significant mitigating factor and here it's a huge mitigating factor. If this had been a trial or hearing this would have been easily a one month hearing, so in terms of mitigation as a result, witnesses did not need to be inconvenienced and it's saved up a significant amount of hearing time at this Tribunal. That he's taken ownership, accountability, responsibility and acknowledgement of misconduct and as Mr. Capotosto acknowledged there is remorse. Also to the prosecutor's credit, he acknowledged that the defence have sought to have this matter resolved even before this matter was brought back to the Tribunal and it's something we have been working on, and that the delay had nothing to do with him. Unfortunately there were other people involved other than Mr. Capotosto and we are greatly appreciative Mr. Capotosto got assigned this as he took up the defence's request to resolve this. And this is all mitigating factors.

62. Ms. Mulcahy stated in terms of PC White's employment history, it was acknowledged he has previous discipline history, but that if looking at the 950 it is completely unrelated and that it was her submission that for that reason it has minimal impact on the disposition being brought, however it was a major consideration as we heard from Mr. Capotosto's position in terms of what would be an appropriate joint submission because we see in the Toronto Police Service other officers who were faced similar situations as PC White receive lower penalties because they did not have prior discipline. But it is also still important to take into account his employment history as a significant mitigating factor notwithstanding the prior discipline.

63. Ms. Mulcahy advised that PC White joined the Service in 2006, and has 18 years with the Toronto Police Service. He has spent his entire career at 12 Division, from PRU, to Traffic, to CRU, to this Neighbourhood Enforcement Unit. In the last three years at 12 Division he had been at Frauds and for a short time under former Chief Blair, at TAVIS, but 12 Division was his home Division. That we can see, as shown in the 950 he has 22 commendations and awards, and specifically 12 awards. These commendations and awards relate to his involvement in complex investigations, arrests, representing the Service, providing information and intelligence and this highlights how out of character this misconduct was. His very first award he got for his part in drafting and executing a search warrant stemming from a fraud investigation that recovered credit cards, illicit drugs and a firearm that all came about from a phone call from the Phoenix Police Service and he answered the phone at the Fraud Unit, his assistance was described as exemplary and an exemplary work ethic in a complex investigation that went from a period of October 2018 to January of 2019.

64. Ms. Mulcahy further advised that you will see in a number of these commendations and awards that as a result of his involvement, firearms have been recovered. We can on March 12, 2018, a member of the public thanked him for his professionalism and expertise throughout her complaint. We have a head of a securities firm writing on January 19, 2018 praising him for his extraordinary effort

and exceptional work ethic in a serious fraud investigation affecting that security firm.

65. Ms. Mulcahy continued, we see that he received an award on December 28, 2017 for his contribution as a member of the neighbourhood enforcement team in which they executed 91 Criminal Code and CDSA Search warrants in ten months, so that gives the Tribunal a real flavour of how he got into the situation, and that team took off the road, 12 guns, 12 firearms, 700 rounds off the road. They took off the road over 5 kilos of cocaine, fentanyl, MDA, heroin, oxycodone, crystal meth. In terms of their involvement there were 69 accused persons. So this unit was very, very, successful. And another award from October 12, 2017 which resulted in the recovery of 5 firearms along with other ammunition. Before he even went into that Unit, when he was in CRU, he received a commendation for his role in 12 Divisions project Cleanup in which they had a number of premises who were not complying with the liquor licence act and as a result of his involvement a number of infractions were laid.

66. Ms. Mulcahy advised you can see there's a number of people thanking him for the information he provided, and an award in 2014 where he's recognized for his teamwork which resulted in the arrest of a youth who had several weapons. In 2013, he gets an award for proactive policing, exceptional communication skills, and diligence in the investigation of a suspect, and execution of a search warrant which interestingly lead to the recovery of a firearm stolen back in 1956 and also a significant amount of drugs. We see over the course of his career commendations and awards for the arrest of a habitual break and enter artist, for his professionalism, teamwork and shutting down an illegal night club, the arrest of an armed man in a strip mall, the arrest of a fraud suspect and again the arrest of a break and enter suspect all of which you'll see when you look at the information from his personal file which is contained in Mr. Capotosto's Book of Records, Exhibit 3.

67. Ms. Mulcahy next referenced Exhibit 5, which is PC Whites evaluations from 2014 to 2018 and that they are all excellent performance evaluations, in terms of

core competencies most of what is checked off, in 2018 is listed as exceeds expectations, and in terms of his supervisors rating that he excelled in the fraud office, that he's developed excellent relationships with the banking industry with all major banks. He works extremely well with the assistant Crown Attorneys at Toronto North Courts and has a solid reputation. There's even a note that he never says no when asked to preform job related tasks and is quite honestly a pleasure to work with and to supervise. It may be the case that in the future he has to learn to say no as balancing is important.

68. Ms. Mulcahy advised the Staff Sergeant rates that he is reliable he shows proven competence, handles challenging situations with proficiency and ease, and has strong communication skills. DC White is a valued investigator who strives for professionalism, is keen to affecting positive prosecutorial outcomes with impressive victim focus. And that the Unit Commander at 12 Division wrote that he is a valued member and valued for his work ethic and positive attitude.

69. Ms. Mulcahy advised that that was said in 2018, but when we look at 2017, and that this was when he was in the neighbourhood Enforcement Unit, we see on the last page he's described as confident and assertive, that he wrote multiple authorizations, and search warrants, began cultivating and acting on confidential source information, he's a quick learner and not afraid to make mistakes knowing that they wont be repeated. Ms. Mulcahy then advised that the Tribunal can be assured that this misconduct will not be repeated.

70. Ms. Mulcahy advised that the Detective Sergeant indicates that PC White is a valuable member of a team of hand picked, highly dedicated officers that were tasked with addressing street level drug activity and gun violence plaguing the community. That the Inspector of 12 Division describes him as a hard working dedicated officer with an outstanding reputation as an investigator in that Unit, the NET Unit and in the Fraud Unit.

71. Ms. Mulcahy next addressed his evaluation from 2015 and again almost all the core competencies exceed expectations, the personal qualities are superior and the Sergeant indicates he is highly motivated, he's a leader on the shift and

works as a shift manager when the Sergeant is off, that he spends a good deal of time helping trainees learn new skills, describes him as very knowledgeable regarding the liquor licence Act and instrumental in closing some of the most problem bars in 12 Division. That the Staff Sergeant concurs with these comments as does the Unit Commander who also states that he's well respected and a leader on the shift.

72. Ms. Mulcahy next referenced his 2014 evaluation where he's described as a valued member of the Community Response Unit, self motivated and a mentor for young officers. So that gives you a sense of why this is a mitigating factor and obviously this positive employment history, and these excellent evaluations were part of the consideration with respect to this joint submission.

73. Ms. Mulcahy next advised PC White's personal circumstances to take into account, he's 48 years old, he has a 14 year old daughter, and he has had real tragedy in his life over the last two years, his life partner died..

74. Ms. Mulcahy next referenced specific and deterrence generally there's no dispute with Mr. Capotosto's submission that the Tribunal decision, this joint submission, is focused on general deterrence and obviously Constable White having a reputation amongst his peers that will be a significant deterrence. In terms of specific deterrence, that this was not as much of a focus for the Tribunal as he has gone through this process, the matter has hung over his head, he has no intention of appearing before you again, but it is acknowledged that this penalty of a 24 month reduction in rank to Second class constable is a huge deterrence component.

75. Ms. Mulcahy advised the next factor she wished to address is rehabilitation, and when we look at his employment history, when you see the comments of his supervisors that he learns from his mistakes there should not be any concern for the Tribunal in terms of reoccurrence.

76. Ms. Mulcahy advised that it should be evident from his career history and his guilty plea in terms of consistency of the disposition, she agreed with Mr. Capotosto that the decision of Schofield, which is clear that the consistency is the hallmark of fairness, and with respect to the cases provided to the Tribunal, they all have different facts but they provide a range and this matter is well within that range which highlights that this is very much a higher penalty, it is reasonable because there is case law to support it.

77. Ms. Mulcahy submitted that Mr. Capotosto noted that Andrews is an outlier, and is distinguishable. There are some similarities, but there are also significant differences and some of the differences include it did involve deceit, there was off duty assault by officers and this was a cover up of that off duty assault and although he did not have prior discipline his evaluations were not at the level of Constable White. And the other significant factor in Andrews, that can't be used as an aggravating factor, but it can't be used as a mitigating factor in Andrews as he had a full hearing so it doesn't get the mitigation of a guilty plea.

78. Ms. Mulcahy submitted this is the same as Ebdon, at Tab B of the Book of Authorities, Ebdon had a full hearing he did not have the mitigation of a guilty plea or acceptance of responsibility, and the other thing that is distinguishable of Ebdon is that he had very, very poor evaluations in which his supervisor acknowledged his inability to take ownership, he would blame others, he would blame management, he was very inflexible and so his performance was described as substandard, there was very negative evidence after the hearing, from his supervisors, about the quality of his work, and that's a distinction.

79. Ms. Mulcahy acknowledged that Mr. Capotosto correctly stated that Elliot was very relevant. Elliot highlights that this is clearly within the range of penalty before you and the same with Gini. Both of these were Toronto Police Service cases and it highlights what's being sought here is not contrary to the public interest and most certainly would not bring the administration of justice into disrepute, and this penalty is clearly acceptable as all the factors have been taken into account.

80. Ms. Mulcahy submitted the last factor is damage to the reputation of the service, and obviously that is acknowledged, but you also have to take into account that over many, many years Constable White has brought credit to the service as well.

Prosecution Reply

81. – no reply

Constable White

82. Constable White advised the Tribunal “Just looking forward to getting this by me, and back on the road to serve the City again.”

Analysis

83. I would like to start my discussions on penalty by first outlining the objectives of discipline. These objectives are to:

- Correct unacceptable behaviour
- Deter others from similar behaviour
- Assure the public that the police are under control

84. The extent of informative detail before the Tribunal is limited to what is listed in the Agreed Statement of Facts, and submissions made by the prosecution and defence. I have reviewed all of the information and evidence that was submitted

The facts of the matter are not in dispute.

85. I have considered all 15 principles with respect to disposition, however I will only comment to the ones I find to be particularly relevant and those that submissions were made on as this is a joint position penalty that I have substantially agreed to the position.

86. Both Prosecution and defence made submissions highlighting almost all the following areas:

- Public Interest
- Seriousness of the Misconduct
- Recognition of the Seriousness of the Misconduct
- Employment History
- Potential to Reform or Rehabilitate the Police Officer
- Damage to the Reputation of the Police Service
- Specific and General Deterrence
- Consistency of Disposition

87. The prosecution submitted the following cases in their Book of Authorities: see Exhibit 4

88. The Prosecution submitted the following in their Book of Records: see Exhibit 3

89. The Defence submitted the following in their Book of Records: see Exhibit 5.

Public Interest

90. Constable White's conduct will undoubtedly have impact on public trust. Failing to make accurate notes of his interaction with a suspect, neglecting to take notes of a vehicle search, and then testifying inaccurately at a preliminary inquiry. This violates the very core of our duties as officers, to investigate crime and take notes.

91. Standards of Conduct state "19. A police officer shall not, by act or omission, fail to perform their duties appropriately without lawful excuse if, at the time, they know or reasonably ought to know that their act or omission would amount to a failure to perform their duties appropriately."

And "20. A police officer shall take notes in accordance with the duties of a constable and the procedures established by their chief of police." The public rely

on us as officers to conduct ourselves appropriately and with integrity, making accurate notes of our investigations and interactions and testifying accurately with credibility to those investigations and interactions when required.

92. Constable White failed to take notes, not once, but 20 times over a period of time from April 5, 2017 to July 20, 2017, and at least one serious criminal matter was derailed as a result of his inaccurate notes and inaccurate testimony. The effect of Constable White's conduct will undoubtedly tarnish the image of the Toronto Police Service, which we strive so hard to uphold and undoubtedly cause the public to also question the integrity of the Service. I can only find this to be aggravating.

93. As quoted from Elliot and the Toronto Police Service, Exhibit 4, tab C, page 19 "It's reasonable to conclude that the extent of the damage to the reputation of the police service increases in proportion with the seriousness of the misconduct. The public will be watching to ensure the Toronto Police Service has responded accordingly to the level of Constable Elliot's misconduct. The penalty must correspond to the degree of misconduct which in this case means the sanction must be significant in order to help instill confidence in the community and to restore the reputation of the Police Service." Constable White's proposed penalty of a two year reduction in rank to a second class constable will serve to address this.

Seriousness of the Misconduct

94. The Seriousness of this Misconduct is noted by the formal public hearing process initiated by the Chief and is a direct reflection of the seriousness of the misconduct.

95. The prosecutor submitted that the conduct taken both individually and collectively represents a serious departure from the expectations of police officers, and that the facts underlying the misconduct strike at the core of policing duties, and I agree with this submission.

96. Further the fact that this occurred not once, but 20 times, over the period in question, potentially jeopardizing 20 cases can only be described as aggravating.

97. I agree with both the prosecution and the defence that this type of behaviour must be assessed on the more serious end of the spectrum.

Recognition of the Seriousness of the Misconduct

98. Constable White appears to recognize the seriousness of his misconduct and shows remorse and this can be seen in his guilty plea and acceptance of such a significant penalty.

99. Constable White also appears to recognize the seriousness of the misconduct and show remorse by his attempting an early resolution of this matter, prior to it coming out of sine die, and I recognize the delay wasn't attributed to his willingness to accept responsibility but due to multiple administrative matters that caused the delay in resolution. I can only find this all to be mitigating.

Employment History

100. Constable White has been employed by the Service for 18 years, having spent most of his career at 12 Division. For the vast majority of his career he has had an excellent record, with multiple commendations and awards and excellent evaluations. This is all clearly mitigating.

101. Constable White does have a prior discipline history with prior Tribunal convictions in 2013, for two counts of Insubordination for which he received penalties of 18 days, and 8 days respectively, served consecutively. This was in relation to misuse of Police Data Bases. This is clearly aggravating.

Potential to Reform or Rehabilitate the Police Officer

102. Arguably, the best indicator of future behaviour is past behaviour. Constable White's employment history with respect to his TPS 950, would indicate an officer who is dedicated to his profession, but who has now twice exercised such extremely poor judgement that it has brought him to the Tribunal. Admittedly the

prior convictions are over 10 years old and the matter before the Tribunal is dated to 2019.

103. Constable White advised that he was eager to put this behind him and move on with his career serving the City. Given Constable White's guilty plea, willingness to accept such a significant penalty, and his attempts to resolve the matter before it came back from sine die, I find that his potential to reform is encouraging and therefore mitigating.

104. Having said that, Constable White is an experienced officer who undoubtedly now knows better, and should he find himself before the Tribunal again he will no doubt face an even more significant penalty, possibly even termination. Given the potentially dire consequences of further misconduct, I believe this will also serve as a reminder to Constable White to exercise better judgment going forward.

Damage to the Reputation of the Police Service

105. The damage to the reputation of the Toronto Police Service is a vital consideration in the determination of a disposition. Policing by consent and public trust is crucial to the organization's ability to function as a public institution. Constable White's conduct compromised the trust that the public places in the police. Police agencies must ensure visible accountability in all aspects of service delivery and member conduct. As the police, we are accountable to all citizens in everything we do.

106. Constable White swore an Oath of Office to discharge his police duties according to law. As a result of his conduct, Constable White has undermined the credibility, reputation and the Core Values of the Toronto Police Service. The public has trust in us as officers to discharge our duties faithfully and ethically. Failing to keep notes of his interactions with the public on multiple occasions and then testifying inaccurately causing a Criminal/CDSA case to become no longer viable does such a disservice to the public, as a possible criminal did not have to answer for his/her alleged crimes and was allowed to return to society possibly to re-offend

and further victimize. The public, once aware, will surely question the credibility and integrity of the entire Service. I find this to be aggravating.

107. As noted in Elliot and very applicable in this case “The penalty must correspond to the degree of misconduct which in this case means the sanction must be significant in order to help instill confidence in the community and to restore the reputation of the Police Service”. The proposed penalty of a two year reduction in rank to second class constable, with training, will show the public that this type of behaviour will absolutely not be tolerated and will be taken very seriously by the Service and hopefully will serve to instill public trust in the Service.

Specific and General Deterrence

108. With respect to specific and general deterrence, Andrews and the Midland Police Service, as stated by the commission and repeatedly accepted “That the penalties imposed for misconduct must be strong enough to send a clear message to other officers that such conduct, or any conduct of this nature will not be tolerated”. There is no doubt in my mind that the proposed penalty will serve to educate Constable White and other officers that this type of behaviour will not be tolerated. This decision will be readily available to all Service Members and the public and the message is clear.

Consistency of Disposition

109. In Schofield, the Ontario Police Commission noted: “Consistency in the discipline process is often the earmark of fairness. The penalty must be consistent with similar cases that have been dealt with on earlier occasions.” The penalty in this case must be consistent with sanctions imposed in previous cases with similar circumstances. It is my responsibility to ascertain the appropriate range of penalties available to the Tribunal based on the cases provided by the Prosecution and supported by the Defence. Additionally, I must apply the appropriate weight to each of the relevant disposition considerations and identify where in the range Constable White sits, based on the pertinent penalty principles.

110. I have reviewed the cases submitted by the Prosecutor, which were supported by Defence. This is a case where there are no exact comparator decisions. However the cases involve comparable elements. The submitted cases provide good direction with respect to the joint position penalty, the cases were also helpful in confirming that the nature of this misconduct was serious and although it is above the higher end of the ranges, the previous discipline findings warrant such a significant penalty.

Disposition:

The disposition in this matter imposed under 85 (1) (c) of the Police Services Act will be:

For Discreditable Conduct in that Constable White is guilty of: acting in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the police force of which he is a member;

A reduction in rank for 24 months, specifically from First Class Constable to Second Class Constable for a period of 24 months, after which Constable White can be returned to his previous classification of First Class Constable

And further that Constable White is ordered under Section 85 (7) (b) of the *Police Services Act* (PSA), to attend in person within 60 days at the Toronto Police College , A/Supt Paul Rinkoff, or a person designated by the College, and seek relevant training as recommended by the Toronto Police College.

The remaining charges 2-6 are marked withdrawn at the request of the Prosecutor.



Suzanne Redman
Inspector
Hearing Officer

November 25, 2024

Appendix 'A' - List of Exhibits 61/2019

Constable Richard White #9597

(Exhibit 1) Delegation – Inspector Redman

(Exhibit 2) Designation –Mr. Capotosto

(Exhibit 3) Prosecution Book of Records

(Exhibit 4) Prosecution Book of Authorities

(Exhibit 5) Defence Book of Records