

BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

BRIAN THURMOND

VS.

MISSISSIPPI DEPARTMENT OF
CORRECTIONS

FILED

MAR 29 2013

EMPLOYEE APPEALS BOARD

APPELLANT

NO.12-062

APPELLEE

ORDER

This cause came on for hearing on December 11, 2012, in Jackson, Mississippi. The Appellant, Brian Thurmond, represented himself and David Scott represented the Mississippi Department of Corrections ("MDOC").

Bryan Thurmond is a Field Officer I with the Hinds County Probation Office, MDOC. On September 17, 2012, Thurmond was suspended from duty for 10 days for insubordination for failure to follow MDOC policies, and falsification of records for including a false statement in an investigative statement. The letter of suspension states as follows:

[s]pecifically, you submitted an Incident Report and Written Statement in which you stated that on July 19, 2012, you attempted to serve a valid Arrest Warrant on Offender Tommy Cleveland . . . at West Highland Drive . . . You and Field Officer Defecio Stoglin entered the residence of Ray Marshall and Derius Harris, both private citizens, without consent, and without a search warrant. . . . You failed to report this incident to MDOC supervisory staff upon your return to the office until after complaints were filed by Mr. Marshall and Mr. Harris. Furthermore, in the written statement, you stated that Officer Stoglin apologized to the occupants prior to leaving the residence. This statement was proven false when Office Stoglin admitted that he did not make such a statement.

This tribunal finds as follows: Thurmond's duties include taking reports from parolees, collecting supervision fees from parolees, presentencing investigations, post sentencing investigations, and maintenance of files on offenders. Beginning in November of 2011, An Offender, Tommy Cleveland, failed to report as required by his parole conditions. Consequently an arrest warrant was issued for Cleveland. On July 19, 2012, an informant called Thurmond at the Hinds County Probation Office and reported that Cleveland was at a Highland Drive Address. Thurmond went to the Highland Drive address to ascertain whether Cleveland was at that address. If Cleveland was there, Thurmond intended to arrest him. Thurmond was accompanied by Field Officer Stoglin and two Jackson Police Department ("JPD") Officers. Stoglin knocked on the door of the Highland drive apartment. Stoglin did not identify himself or ask if Cleveland was in the apartment. When the door opened, Stoglin drew his weapon and ordered one of the apartment's residents, Marshall, to lie on the floor. Thurmond followed Stoglin into the apartment, while the JPD Officers remained outside. Thurmond walked down the hallway of the apartment and jiggled the handle of a bedroom door. When the other resident, Harris, opened the door he was escorted to the living room and told to lie down on the floor next to Marshall. While Marshall and Harris were on the floor Thurmond

showed them pictures of Cleveland. Marshall and Harris stated that Cleveland did not live there. As Thurmond and Stoglin left the apartment Marshall and Harris became upset, asked Thurmond and Stoglin for their badge numbers, and threatened to obtain an attorney. Neither Thurmond nor Stoglin responded to Marshall and Harris and Stoglin did not apologize to them. Thurmond thought that this incident was unusual and not in the ordinary course of his duties. Thurmond logged the incident in as a home visit in the file but did not note that a weapon had been drawn, discuss the incident with his supervisors, or file any other incident reports. Following this incident at the Highland Drive address, the improper search was reported in the news media.

MDOC Standard Operating Procedure 37-10-01 states that "[a]dequate justification must exist for initiating a general search beyond the violator and his immediate area." MDOC Standard Operating Procedure 37-13-01 states that, "[i]n most probation and parole situations, a certain amount of discretion will be required in determining whether or not some instances warrant a report. The best guideline to determine if a report should be submitted is to assess the possibility of negative news media involvement, or whether there is a potential heightened liability as a result of the incident." MDOC Standard Operating Procedure 12-02 states that "[s]taff being interviewed in an administrative matter will be

advised that questions will be related to the performance of their official duties or fitness for duty. The employee will answer fully and truthfully any questions for purposes of administrative review."

This tribunal finds as fact that Thurmond participated in an improper search of Marshall and Harris' apartment; that Thurmond did not report the incident to his supervisors; and that Stoglin did not apologize to Marshall and Harris, yet Thurmond stated that he did. These facts support MDOC's finding that Thurmond failed to follow MDOC policies, and falsified a report.

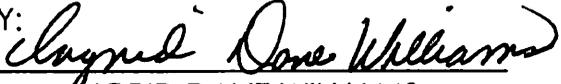
The other argument that Thurmond puts forward is that MDOC did not apply discipline in steps of increasing severity. Thurmond asserts that this is his only disciplinary offense and consequently a ten day suspension is too severe a punishment. While, the State Employee Handbook does state that disciplinary action "shall be applied in steps of increasing severity whenever practical . . .," it also states that "[e]ach appointing authority shall: distinguish between less serious and more serious actions of misconduct and provide disciplinary action accordingly and consistently." MDOC determined that, even as a first time offender, Thurmond's offenses were serious enough to warrant a ten day suspension. This tribunal does not disagree.

For the foregoing reasons Thurmond's ten day suspension is

affirmed.

SO ORDERED THIS THE 28th DAY OF March, 2013.

MISSISSIPPI EMPLOYEE APPEALS
BOARD

BY: 
Ingrid Dave Williams
INGRID DAVE WILLIAMS
Hearing Officer