

Saugeen Shores Police Service Discipline Hearing

In the Matter of Ontario Regulation 268/10

Made Under the *Police Services Act*, R.S.O. 1990,

And Amendments Thereto:

And

In The Matter Of

Saugeen Shores Police Service

And

Police Constable William MacDonald

Appearances:

Mr. Glenn P. Christie

for the Saugeen Shores Police Service

Ms. Joanne Mulcahy

for Police Constable William MacDonald

Before:

Terence Kelly, Deputy Chief (Ret.)

York Regional Police Service

Hearing Officer

Sentence Date: February 5th, 2018.

SENTENCE

POLICE CONSTABLE WILLIAM MACDONALD

February 5th, 2018

Deputy Chief Terence Kelly (Ret): before dealing with sentence in this matter; I wish to thank Ms. Joanne Mulcahy, defence counsel and Mr. Glenn Christie, the Service Prosecutor, for their able arguments and exhibits tendered, all of which have assisted me in reaching my decision.

Police Constable William MacDonald has pled guilty, and been found guilty, of one count of Discreditable Conduct, laid under the *Police Services Act*.

The guilty plea was advanced with an Agreed Statement of Facts (*Exhibit #5*).

Agreed Statement of Facts

Discreditable Conduct

This matter arises from an O.I.P.R.D. directed hearing

The Allegation:

Discreditable Conduct contrary to Section 2(1)(a)(xi) contained in Schedule to Part V of Ontario Regulation 286/10 as amended.

On May 29th, 2015, Police Constable MacDonald was on duty as a police officer with the Saugeen Shores Police Service. He was assigned in a plain clothes capacity with another officer. Constable MacDonald was operating an unmarked police vehicle.

He began his shift at 4:30 p.m. and briefed his colleague with respect to information he had received about drug traffickers who Constable MacDonald believed were actively trafficking narcotics within Port Elgin. Constable MacDonald stated the information which he had received regarding the drug trafficking came from a confidential source. He also stated that there was a weapons tip from the same confidential informant.

Surveillance was commenced by the officers at approximately 5:30 p.m. that day.

Initially, a hand-to-hand drug transaction was believed to have been observed by the officers conducting the surveillance. This transaction involved a suspect on a bicycle and the target was a pedestrian. Surveillance was continued and the target was later observed in a motor vehicle.

The vehicle was observed at a residence known for drug activity and other hand-to-hand drug transactions were believed to be observed involving the target.

Eventually, another vehicle attended at the residence where the target was and a number of occupants of that vehicle entered the residence briefly. Constable MacDonald was told by another officer the vehicle had been at the residence for a short period of time; he believed that a drug transaction had taken place and the parties in this vehicle were in possession of a controlled substance.

A decision had been made to arrest the occupants of the vehicle for possession for the purpose of trafficking in a controlled substance.

No information had been provided to Constable MacDonald by the other officer that there were any weapons in the vehicle in question or that any of the occupants were in possession of any weapons.

Not long after receiving the information from the other officer about his observations and beliefs, Constable MacDonald observed the vehicle speeding and run a stop sign. A decision was made by Constable MacDonald to affect a traffic stop on the vehicle that contained three members of the public.

Constable MacDonald was alone when he initiated the traffic stop.

When Constable MacDonald conducted the traffic stop, he did so with his firearm drawn because he decided to conduct a high risk stop.

As Constable MacDonald and the other officer had reasonable grounds to believe that the occupants within the vehicle were in possession of a controlled substance for the purpose of trafficking, Constable MacDonald relied on his experience that drug dealers often carry weapons. On the basis of that experience, he made the decision to conduct a high risk stop with his firearm drawn.

At one point during the traffic stop, Constable MacDonald pointed his firearm at one of the members of the public who was in the car subject to the traffic stop.

There was no basis for Constable MacDonald to draw or point his firearm at the member of the public.

I accept the guilty plea based on the facts in this case. The facts stated and agreed to, provide clear and convincing evidence of the alleged misconduct strongly supporting Constable MacDonald's plea of

guilty. If not for the guilty plea, which I take into account as a mitigating factor and recognition of his conduct, I would consider a greater penalty.

Due to the circumstances surrounding this misconduct, notwithstanding the guilty plea and the Agreed Statement of Facts, I believe the allegations when taken into the broader context of employee/employer relations, it is prudent to provide written reasons for my findings.

The seriousness of the offence is, of course, the primary consideration. In this particular case the actions of Police Constable MacDonald were clearly inappropriate and an embarrassment to the Saugeen Shores Police Service.

The discipline system of an organization is designed to ensure compliance with the rules and regulations representing the minimum requirements of good standing. How effectively and fairly the disciplinary system does its job is one measure of organizational integrity.

The police officer is the person most responsible for initially setting the wheels of justice in motion and therefore the public cannot be expected to respect the law if it does not respect and believe in the dedication and integrity of the Police Service.

The duties the police have to perform are varied and exacting; they are increasing and will probably increase in variety and complexity, and a person cannot make a good police officer unless their general intelligence, memory and powers of observation are clearly above average. Further, when they become a police constable, they are entrusted with powers which may gravely affect the liberty of a subject, and they must at all times be ready to act with tact and discretion and on their own initiative and responsibility in all sorts of contingencies. The burden of individual discretion and responsibility placed upon a constable is much greater than that of any other public servant.

In a police service, the disciplinary system must function to reassure the public that basic standards of professional and ethical conduct are being met. Strong discipline is required in police services, not only for the protection of the public by ensuring officers do not exceed their authority, but because it has been proven that persons who exercise discipline must understand discipline and be themselves, subject to it. At the same time, the disciplinary system must function to assure members of the Service that they will receive justice, equitably administered, and good faith efforts to carry out the Mission Statement of the Service will be supported.

The Tribunal has given careful consideration to the seriousness of the offence; the public's trust in the police, and the possible damage to the reputation of this police service. I have also considered the officer's recognition of the seriousness of the offence; the possibility of rehabilitation; the affect upon the officer.

The conduct of Police Constable MacDonald in this matter is completely at variance with the high standards expected of members of the Saugeen Shores Police Service. Informed officers possess a sense of reasonability to the Service of which he or she is employed and the community, which they serve. It is unfortunate when dealing with this situation Constable MacDonald would not have permitted himself to be guided by his better judgment and responsibility.

I remind Constable MacDonald that no one need choose to be a police officer or to bear the public trust; but those who do so, must acquire the excellence of character necessary to live up to it.

Given all the information provided to me with regard to Constable MacDonald's career profile with the Saugeen Shores Police Service and his previous employer, Peel Regional Police Service along with the various challenges he has faced in his personal life. I am left with the distinct impression that Constable MacDonald is a fine, capable and decent officer who is actively engaged in the community in which he serves. It appears on this occasion, his actions, although well intentioned, were nevertheless done without authority and in clear violation of the Service's policies and procedures.

Constable MacDonald's remorse is self-evident in his appearance today. He pled guilty to the offence and is willing to accept whatever punishment is handed down. I hope he now understands the Public Complainant's concerns with regard to this type of conduct.

To reflect the seriousness of this offence, it is the decision of this Tribunal that Police Constable William MacDonald be assessed a penalty of a forfeiture of forty (40) hours in accordance with the *Police Services Act*.

Terence Kelly, Deputy Chief (Ret.)

York Regional Police Service

Hearing Officer.

Sentence Date, February 5th, 2018 (sent electronically)