

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

RONNIE N. WILLIAMS,

Petitioner,

vs.

Case No. 14-3208

GADSDEN COUNTY SHERIFF'S OFFICE,

Respondent.

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RECOMMENDED ORDER

This case came before Administrative Law Judge June C. McKinney of the Division of Administrative Hearings for final hearing on March 25, 2015, with the hearing's conclusion on August 13, 2015, in Tallahassee, Florida.

APPEARANCES

For Petitioner: Ronnie Norris Williams, pro se  
(Address of Record)

For Respondent: Jason Eric Vail, Esquire  
Allen, Norton and Blue, P.A.  
906 North Monroe Street, Suite 100  
Tallahassee, Florida 32303

STATEMENT OF THE ISSUES

The issues in this case are whether Respondent engaged in an unlawful employment practice against Petitioner on the basis of race and whether Respondent retaliated against Petitioner in violation of the Civil Rights Act.

PRELIMINARY STATEMENT

On January 21, 2014, Petitioner Ronnie Williams ("Williams" or "Petitioner") filed a discrimination complaint with the Florida Commission on Human Relations ("FCHR") alleging that Respondent Gadsden County Sheriff's Office ("GCSO" or "Respondent") discriminated against Petitioner based on his race and retaliated against him.

The FCHR investigated the case and issued a Notice of Determination of No Reasonable Cause on June 24, 2014, which notified the parties that "no reasonable cause exists to believe that an unlawful employment practice occurred." Thereafter, Petitioner elected to contest the decision and pursue administrative remedies by filing a Petition for Relief with the FCHR on or about July 14, 2014.

The FCHR transmitted the Petition for Relief to the Division of Administrative Hearings (hereinafter "DOAH") on July 15, 2015, and the undersigned was assigned to hear the case. The final hearing was held on March 25, 2015. The case was continued and completed on August 13, 2015.

At the formal hearing, Petitioner presented the testimony of eight witnesses: Sheila Randolph, Jonathan Feltgin, Major Robert Barkley, Anne Marie Presnell, Lieutenant Kenneth Ellis, Lieutenant William Moore, Sergeant Rodney Moore, and Sheriff Morris Young. Petitioner's Exhibits 1 through 9 and 11 through

13 were received into evidence. The Respondent rested after Petitioner presented his case. Respondent's Exhibits 1 through 14 were received into evidence.

The proceedings were recorded and transcribed. On April 9, 2015, Volumes I and II of the Transcript were filed at DOAH, and Volume III was filed on August 26, 2015.

Both parties filed proposed recommended orders, which the undersigned considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

1. GCSO is a law enforcement agency in Gadsden County, Florida, which has approximately 129 employees. GCSO provides law enforcement services to Gadsden County. Sheriff Morris Young ("Sheriff Young") (black male) is the chief law enforcement officer for GCSO.

2. On February 5, 2005, Petitioner began employment with GCSO as a part-time reserve deputy. Petitioner is a black male.

3. On March 9, 2012, Petitioner was arrested in Crisp County, Georgia, and charged with Possession of Marijuana and Open Container.

4. On March 12, 2012, Captain Robert Barkley (Barkley) (black male) followed GCSO policy and suspended Petitioner because of his arrest. The hand-delivered notice of suspension informed Petitioner that his suspension was until further review

and detailed the two department policies that were violated by his arrest: General Order Chapter 3.0 Section 3a(35), Standard of Conduct/Integrity; and General Order Chapter 2.0 Section 2.2 (E), Obedience to Laws and Regulations. Law enforcement officers are required to be of good moral character.

5. GCSO is required to maintain the employment status of each law enforcement officer and notify Florida Department of Law Enforcement ("FDLE") of new hires or separations of employment within the agency through the Automated Management Training System ("AMTS"). Each officer has a global profile in the AMTS that is updated according to employment status. GCSO's human resource department manually updates the employment status for global profiles.

6. After Petitioner's arrest, GCSO updated Petitioner's employment status on his global profile several times. The first update was on April 3, 2012. GCSO Human Resource Manager Ann Marie Presnell ("Presnell") completed an Affidavit of Separation for FDLE's AMTS indicating Petitioner's separation date of March 9, 2012, the last day Williams worked with the agency. Presnell also changed Williams' status to suspension in the separation category.

7. After Petitioner was suspended, GCSO followed policy and started an internal affairs investigation to investigate Petitioner's arrest allegations. Investigator Ulysses Jenkins

(black male) was assigned to conduct the internal affairs investigation.

8. FDLE requires an internal investigation when an officer is arrested and that all documentation obtained during the investigation is forwarded to FDLE for review. Interviewing the accused officer is part of the investigation. GCSO policy violations can take place even if the accused officer is not prosecuted.

9. On May 1, 2012, the criminal citation/warrant charging Petitioner with Possession of Marijuana and Open Container was dismissed.

10. On June 1, 2012, during GCSO's internal investigation and unbeknownst to GCSO, Petitioner was hired as a part-time law enforcement officer by the City of Midway Police Department.

11. GCSO follows the dual-office holding policy which prohibits law enforcement officers from working for two different agencies at one time under Article II, section (5) (a) of the Florida Constitution.

12. On July 9, 2012, by memorandum, Investigator Jenkins updated Sheriff Morris Young on the status of Petitioner's internal affairs investigation. The memorandum stated:

During the week of May 25th, 2012 I spoke with Reserve Deputy Ronnie Williams two times in reference to the status of his position here at the Gadsden County Sheriff's Office in lieu of his arrest in Georgia on

March 9th, 2012. Williams was informed that, per FDLE Standards and Training, an Internal Affairs Investigation must be completed and any documents pertaining to his case must be forwarded to FDLE for review. Williams stated that he was going out of town and would get with me upon his return the following week. To the date of this memorandum, Williams has not contacted this office to complete the investigation in the events surrounding his arrest. It should be noted that his case was dismissed; however, FDLE requires that he be cleared administratively before returning.

His failure to comply with the requirements of FDLE and failing to contact this office to arrange the internal investigation keeps his law enforcement standards in a suspended status. Due to his failure to comply I recommend that he be terminated as a reserve deputy with this agency.

13. On July 11, 2012, Investigator Jenkins was finally able to serve Petitioner the Notification of Agency Policy Violation Form and the Confidentiality Notice. Petitioner signed a receipt for each. The notice informed Petitioner of the agency policy violations relevant in the investigation and that Petitioner "will be questioned . . . as a subject of an internal affairs investigation."

14. Over the next several months, Petitioner contacted various officers at GCSO but did not follow-up with Investigator Jenkins for his internal affairs investigation interview.<sup>1/</sup>

15. On October 26, 2012, Investigator Jenkins formally closed Petitioner's internal affairs investigation by letter to

Sheriff Young, Commander of Bureau of Internal Affairs Captain Barkley, and Petitioner's personnel file. Investigator Jenkins detailed in the letter how Petitioner failed to comply with agency policy and respond to requests to answer questions for the internal affairs investigation. Investigator Jenkins also reported in the letter that "Mr. Williams left this agency and began working with another."

16. After GCSO found out Petitioner was working for Midway Police Department, GCSO deemed Petitioner's employment status a voluntary separation because Petitioner initiated the separation when he sought and started employment elsewhere.

17. On January 7, 2013, FDLE notified Sheriff Young by letter that the Criminal Justice Standards and Training Commission had completed the review of the information submitted regarding Williams' arrest and found no basis for any further action. The letter also provided that "[d]eterminations by the Commission are separate and distinct from any employing agency action, and in no way reflects upon their investigation, findings, conclusions, and/or disciplinary action."

18. GCSO also received a memo dated January 7, 2013, from FDLE's Bureau of Standards, Professional Compliance Section recommending a no cause determination regarding Williams' arrest charges since Petitioner was exonerated after the internal affairs investigation completed by Midway Police Department on

May 28, 2012. The memo recommended that Williams' case be closed and designated Petitioner's reason for separation as a resignation with a separation date of March 9, 2012.

19. On March 25, 2013, Presnell updated the Petitioner's global profile status and checked the box voluntary separation while being investigated, not involving a moral character violation.

20. That same day Presnell sent a letter dated March 25, 2013, to FDLE amending Williams' Affidavit of Separation. The amended affidavit changed Williams' global profile status by voiding the previous one and checking the box voluntary separation while being investigated for violation of moral character standards defined in Florida Administrative Code Rule 11B-27.0011. The cover letter stated:

The separation reason for Ronnie Williams was entered incorrectly today. I have enclosed the original CJSTC 61 and also an amended one stating the correct separation reason. Your assistance in making the necessary changes as shown on the amended form will be greatly appreciated.

21. GCSO followed the same policies for the two white male part-time reservists that had criminal-related trouble as GCSO did for Williams after his arrest. Ronnie Albritton ("Albritton") was a white part-time reserve deputy suspended after an arrest pending an investigation and was eventually terminated for a moral conduct violation. Gary Lehr ("Lehr") was



another white reserve deputy that was arrested and simply terminated for moral conduct violations. Like Williams, his charges were later dropped, but GCSO's reason for separation in the AMTS global profile states that the separation is for moral conduct violations.

22. On January 21, 2014, Williams filed a discrimination complaint with the FCHR alleging discrimination and retaliation. FCHR found "no reasonable cause exists to believe that an unlawful employment practice occurred," and Petitioner contested FCHR's decision.

23. During the final hearing in this cause, Petitioner offered no direct evidence in support of his claim of race discrimination. Instead, Williams attempted to prove his case by comparators that were unlike Petitioner. Neither Albritton nor Lehr refused to cooperate and submit to an interview during the internal affairs investigation nor did they voluntarily go and start working for another law enforcement agency pending the investigation. Petitioner's approach to compare himself with Albritton and Lehr fails for they are not valid comparators for the purposes of establishing a prima facie case of race discrimination. Moreover, Williams' voluntary separation from GCSO did not have anything to do with his race. Additionally, no evidence was presented that any retaliation took place against Williams.

CONCLUSIONS OF LAW

24. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties hereto pursuant to sections 120.569 and 120.57(1), Florida Statutes (2015).

25. The Florida Civil Rights Act of 1992 ("FCRA"), is codified in sections 760.01 through 760.11, Florida Statutes. FCRA prohibits discrimination in the workplace.

26. Respondent maintains in its Proposed Recommended Order that Petitioner's complaint of discrimination is untimely pursuant to section 760.11(1) because Williams did not file his claim of discrimination and retaliation until January 21, 2014, well past the 365-day time limit.

27. Section 760.11(1), provides, in pertinent part, as follows:

(1) Any person aggrieved by a violation of ss. 760.01-760.10 may file a complaint with the commission within 365 days of the alleged violation, naming the employer, employment agency, labor organization, or joint labor-management committee, or, in the case of an alleged violation of s. 760.10(5), the person responsible for the violation and describing the violation . . . . On the same day the complaint is filed with the commission, the commission shall clearly stamp on the face of the complaint the date the complaint was filed with the commission. In lieu of filing the complaint with the commission, a complaint under this section may be filed with the federal Equal Employment Opportunity Commission or with any unit of government of

the state which is a fair-employment-practice agency under 29 C.F.R. ss. 1601.70-1601.80. If the date the complaint is filed is clearly stamped on the face of the complaint, that date is the date of filing . . . . The complaint shall contain a short and plain statement of the facts describing the violation and the relief sought. The commission may require additional information to be in the complaint. The commission, within 5 days of the complaint being filed, shall by registered mail send a copy of the complaint to the person who allegedly committed the violation. The person who allegedly committed the violation may file an answer to the complaint within 25 days of the date the complaint was filed with the commission. Any answer filed shall be mailed to the aggrieved person by the person filing the answer. Both the complaint and the answer shall be verified.

28. "As a jurisdictional prerequisite to filing an FCRA action, a plaintiff must exhaust his administrative remedies by filing a timely charge with the appropriate agency." Jones v. Bank of America, 985 F. Supp. 2d 1320 (M.D. Fla 2013). "To exhaust administrative remedies under the FCRA, a plaintiff must satisfy the requirements of Fla. Stat. § 760.11." Id. at 1325 citing Maggio v. Fla. Dep't of Labor & Emp. Sec., 899 So. 2d 1074, 1079 (Fla. 2005); Woodham v. Blue Cross & Blue Shield of Fla., Inc., 829 So. 2d 891, 894 (2002).

29. In this case, Petitioner failed to file a complaint with FCRA within 365 days of the alleged violation. The last date of the alleged unlawful occurrence was either March 9, 2012, the last date Petitioner worked at GCSO before he was suspended

or June 1, 2012, when Petitioner voluntarily started working with Midway Police Department, unbeknownst to GCSO. Therefore, Petitioner's complaint filing date of January 21, 2014, is time-barred due to it being more than 365 days after the alleged violation. Hence, there is no jurisdiction for FCHR or DOAH to entertain Williams' claim on the merits. Accordingly, Petitioner's failure to timely file his complaint ends any inquiry regarding discrimination or retaliation.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered by the Florida Commission on Human Relations dismissing the subject petition in its entirety due to lack of jurisdiction.

DONE AND ENTERED this 29th day of October, 2015, in Tallahassee, Leon County, Florida.



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JUNE C. MCKINNEY  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 29th day of October, 2015.

ENDNOTE

<sup>1/</sup> Petitioner's Exhibit 8 demonstrates the calls Petitioner made to Sheriff Morris Young, Major Robert Barkley, and Officer Woods, but the record lacks evidence that Williams ever contacted Investigator Jenkins after July 11, 2012, for the mandatory internal affairs interview.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.