

State of New York  
Supreme Court, Appellate Division  
Third Judicial Department

Decided and Entered: December 22, 2011

512396

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In the Matter of TERRY GUYNUP,  
Appellant,

v

MEMORANDUM AND ORDER

COUNTY OF CLINTON et al.,  
Respondents.

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Calendar Date: October 13, 2011

Before: Mercure, Acting P.J., Peters, Spain, Rose and  
Kavanagh, JJ.

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Nancy E. Hoffman, Civil Service Employees Association,  
Inc., Albany (Steven A. Crain of counsel), for appellant.

O'Connell & Aronowitz, Plattsburgh (Dean C. Schneller of  
counsel), for respondents.

Thomas A. Mitchell, Albany, for New York State Sheriffs'  
Association, amicus curiae.

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Kavanagh, J.

Appeal from a judgment of the Supreme Court (Muller, J.),  
entered January 11, 2011 in Clinton County, which dismissed  
petitioner's application, in a proceeding pursuant to CPLR  
article 78, to review a determination of respondent Michael E.  
Zurlo terminating petitioner's employment.

In October 2008, petitioner, a lieutenant employed by the  
Clinton County Sheriff's Department, was charged with misconduct,  
incompetence and insubordination in violation of Department rules  
and regulations. One charge stemmed from an incident that

occurred in September 2008 when two officers of the Department served an order of protection on petitioner requiring that he surrender his firearms. After being informed of the content of the order, petitioner was alleged to have uttered "no f\*\*\*ing way are you taking my guns. I will go home right now, load those f\*\*\*ers up and I'll be waiting" (charge 1). Another charge alleged that petitioner was guilty of incompetence because, while the order of protection was in effect, he could not carry a firearm and could not faithfully execute his official responsibilities as an officer within the Department (charge 3). Petitioner was also charged with making threatening statements to his wife regarding the Sheriff of Clinton County (charge 2) and with making derogatory public comments about the administration and operation of the Department (charge 4).

A hearing was held pursuant to Civil Service Law § 75 after which a Hearing Officer found petitioner guilty of insubordination (charge 1) and incompetence (charge 3), but dismissed the remaining charges. As for his penalty, the Hearing Officer recommended that petitioner be required to participate in an employee assistance program and be suspended without pay for 30 days. As the appointed authority designated to review this report and the Hearing Officer's findings, respondent Michael E. Zurlo, the Clinton County Administrator, agreed that petitioner was guilty of insubordination and incompetence. However, he rejected the Hearing Officer's conclusion that petitioner was not guilty of making threats directed at the Sheriff, and found that petitioner was guilty of that charge. Zurlo also disagreed with the Hearing Officer's conclusion as to the penalty to be imposed, and ruled that petitioner should be terminated from his position within the Department. Petitioner challenged Zurlo's determination in a CPLR article 78 proceeding and this Court, upon review, found that substantial evidence existed to support Zurlo's determination as to petitioner's guilt of misconduct and incompetence (charges 1 and 3) (74 AD3d 1552 [2010]). However, Zurlo's determination that petitioner was guilty of uttering threats against the Sheriff (charge 3) was set aside and that charge was dismissed (*id.*). Given that finding, the matter was remitted for a new determination as to the penalty to be imposed on the remaining charges (*id.*). Upon remittal, Zurlo again found that petitioner should be terminated from his position.

Petitioner, in response, commenced this CPLR article 78 proceeding, challenging that determination. Supreme Court dismissed the petition, prompting this appeal.

Initially, we note that a correction officer is a law enforcement official and, as such, may be held to a higher standard in measuring his or her conduct in terms of the execution of his or her official duties and responsibilities (see Matter of Covert v Schuyler County, 78 AD3d 1309, 1311 [2010], lv denied 16 NY3d 706 [2011]; Matter of Castell v City of Saratoga Springs, 24 AD3d 1059, 1061 [2005]; see also Matter of Billings v County of St. Lawrence, 139 AD2d 809, 811 [1988]). As for the penalty that Zurlo imposed, we note that our review of such an administrative determination is "limited to whether the penalty is so disproportionate as to be shocking to one's sense of fairness" (Matter of Nygard v County of Warren, 79 AD3d 1354, 1356-1357 [2010] [internal quotation marks and citations omitted]; see Matter of Mapp v Burnham, 8 NY3d 999, 1000 [2007]; Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County, 34 NY2d 222, 233 [1974]; Matter of Lory v County of Washington, 77 AD3d 1265, 1268 [2010]). Here, petitioner stands convicted of threatening law enforcement personnel who were attempting to execute a court order requiring that he surrender his firearms. Such conduct, especially when committed by an individual who occupies a senior position in law enforcement, is "clearly at odds with the strict discipline necessary to effectively operate a [Sheriff's Department]" where he is employed and supports the decision imposing termination as his penalty (Matter of Longton v Village of Corinth, 57 AD3d 1273, 1275-1276 [2008], lv denied 13 NY3d 709 [2009]). As a result, we do not find that the decision to terminate petitioner from his position as a lieutenant with the Department, under the circumstances presented, should be set aside.<sup>1</sup>

Mercure, Acting P.J., Peters, Spain and Rose, JJ., concur.

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<sup>1</sup> As a result of this finding, we need not address the consequences of petitioner having been found guilty of charge 3.

ORDERED that the judgment is affirmed, without costs.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style with a prominent initial "R".

Robert D. Mayberger  
Clerk of the Court