

HERMAN FRANKLIN * NO. 2010-CA-1581
VERSUS * COURT OF APPEAL
DEPARTMENT OF POLICE * FOURTH CIRCUIT
* STATE OF LOUISIANA
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LOVE, J., CONCURS AND ASSIGNS REASONS

I respectfully concur with the majority. However, I find that a discussion of “tolling” is unnecessary and, unlike the majority, I do not find that *Wyatt v. Harahan Mun. Fire and Police Civil Serv. Bd.*, 06-81 (La. App. 5 Cir. 7/25/06), 935 So. 2d 849, is analogous. Rather, I find that the *Wyatt* court found that no disciplinary investigation began until after the conclusion of an investigation into alleged criminal activity, whereas a disciplinary investigation of Officer Franklin began in September 2007, prior to the case being referred to the Orleans Parish District Attorney’s Office.

If more than 120 days passed prior to the completion of the disciplinary investigation into Officer Franklin’s alleged misconduct summary dismissal is not required. *Carter v. Dep’t of Police*, 09-0723, p. 4 (La. App. 4 Cir. 10/21/09), 24 So. 3d 255, 258; *Thornbar v. Dep’t of Police*, 08-0464, p. 3 (La. App. 4 Cir. 10-15-08), 997 So. 2d 75, 77-78. Rather, I find that determining whether a police officer was prejudiced by the failure of the CSC to comply with the sixty-day time period is the essential question and the crux of the case *sub judice*.

An investigation into Officer Franklin’s alleged misconduct was initiated on September 25, 2007. Officer Franklin received a “Notice to Accused Law Enforcement Officer Under Investigation of a Pre-Disciplinary Hearing or a

Determination of an Unfounded or Unsustained Complaint” on November 30, 2007. The disciplinary letter stated that the “internal administrative disciplinary investigation” was completed. In *Carter*, we held that the disciplinary letter, which contained the date of a pre-disciplinary hearing, was sufficient to signal the completion of the investigation. 09-0723, p. 5, 24 So. 3d at 258. Accordingly, I do not find that the disciplinary letter was sufficient to comply with La. R.S. 40:2531, as it failed to include a date for a disciplinary hearing or indicate whether any of the charges levied against him were sustained. On February 20, 2008, when the Bureau Chief’s Disciplinary hearing was held, more than 120 days elapsed from the date the investigation began. Following the Bureau Chief’s Disciplinary hearing, wherein the matter was referred to the Orleans Parish District Attorney’s Office, Officer Franklin was accepted into the voluntary diversion program. On February 6, 2009, PIB allegedly received a letter indicating that Officer Franklin completed the diversionary program.¹ Officer Franklin did not receive a pre-disciplinary hearing until May 20, 2009. Ergo, we should determine whether Officer Franklin was prejudiced by the delay.

Officer Franklin gave his compelled statement in the investigation on October 31, 2007, and stated that he could not find the deputy that allegedly worked the private detail at Walgreens for him on the eight days in question. Given that Officer Franklin was unable to locate the alleged deputy a month after the investigation began and that he voluntarily entered the diversionary program, which deferred his pre-disciplinary hearing further, I do not find that Officer Franklin established in the record that he was prejudiced by the delay and would affirm.

¹ The NOPD asserts that it did not know Officer Franklin completed the diversionary program until April 9, 2009.