

**[J-104-2006]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**WESTERN DISTRICT**

MARVIN J. WOODS, JR.,	:	No. 47 WAP 2005
	:	
v.	:	Appeal from the Order of the
	:	Commonwealth Court entered December
STATE CIVIL SERVICE COMMISSION	:	7, 2004 at No. 291 C.D. 2004, reversing
(NEW CASTLE YOUTH DEVELOPMENT	:	the Order of the Civil Service Commission
CENTER, DEPARTMENT OF PUBLIC	:	entered January 13, 2004 at No. 23111.
WELFARE),	:	
	:	865 A.2d 272 (Pa. Cmwlth. Ct. 2004)
APPEAL OF: NEW CASTLE YOUTH	:	
DEVELOPMENT CENTER,	:	
DEPARTMENT OF PUBLIC WELFARE	:	ARGUED: September 11, 2006

**CONCURRING AND DISSENTING OPINION**

**MADAME JUSTICE NEWMAN**

**DECIDED: DECEMBER 27, 2006**

I agree with the Majority's determination that the removal letter provided sufficient notice to Woods. However, I respectfully dissent from the Majority's conclusion that the New Castle Youth Development Center (Center) lacked just cause for his termination.

Woods worked as a counselor for juveniles who were committed to the Center after being adjudicated delinquent. (Reproduced Record (R.R.) 37a, 39a). Woods was assigned to a cottage unit that housed approximately thirty-five children. (R.R. 38a). He served as a role model to these students and interacted with their families and the

court on a regular basis. (R.R. 51a-54a). As a counselor, he assisted the students in individual and group therapy sessions and wrote a monthly report for the court. (R.R. 38a). Usually, families visited on a biweekly basis and Woods was expected to report to them on the progress of their child at the Center. (R.R. 54a).

On February 3, 2003, at approximately 9:00 a.m., state and local police arrived at the Center to arrest Woods on criminal charges of perjury,<sup>1</sup> a third-degree felony, and false swearing, a second-degree misdemeanor.<sup>2</sup> Charles Mitcham (Mitcham), the Program Director, requested that the officers wait to arrest Woods until the students living in the cottage left for their daily activities. (R.R. 41a-42a). The officers agreed and waited for the students to leave before arresting Woods in the lobby of the cottage. (R.R. 42a). A local television station aired coverage of the arrest that evening on the six o'clock news. (R.R. 46a). Several newspapers and television stations publicized information about the arrest and the underlying incident leading to these criminal charges. (R.R. 47a-48a).

Because of the media attention, the integrity of the Center and its counselors was questioned by families of the students, members of the court, and other counselors. (R.R. 53a-54a). Mitcham stated one family member asked, “[W]hat kind of employees do you have up there that are being arrested that we are seeing on television that are working with our students?” (R.R. 53a). He further noted that the Center lost credibility

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<sup>1</sup> 18 Pa.C.S. § 4902.

<sup>2</sup> 18 Pa.C.S. § 4903(a).

with the probation officers and even with the students. (Id.) Thus, the Center terminated Woods from his employment as a counselor.

Prior to his termination, the Center suspended Woods the day after the arrest in accordance with 4 Pa. Code § 7.173 because he was charged with a felony. In the suspension letter, the Center indicated that it would be conducting an internal investigation. As the Majority explains, the findings of the internal investigation were never revealed but the Center scheduled a Pre-Disciplinary Conference that Woods chose not to attend. Pursuant to 4 Pa. Code § 101.21(c), the Center could not continue the suspension past sixty work days. Although the Center had other options at the conclusion of the sixty-day period, it believed that there was just cause for Woods' removal.

A civil servant may only be removed from employment for just cause. 71 P.S. § 741.807. Although the Civil Service Act does not define just cause, this Court has determined that just cause “must be merit-related and the criteria must touch upon competency and ability in some rational and logical manner.” Pa. Game Comm'n v. State Civil Serv. Comm'n (Toth), 747 A.2d 887, 892 (Pa. 2000) (quoting Galant v. Dep't of Env'tl. Res., 626 A.2d 496, 497 (Pa. 1993)). The Majority found that an arrest on perjury and false swearing charges does not rationally and logically touch upon the competency and ability of Woods to act as a counselor to delinquent youths. I disagree because Woods, as a counselor, is required to maintain a relationship of trust and respect with the students and their families. After the media publicized information about the arrest of Woods on *crimen falsi* charges, the family members of the students

raised questions concerning not only the integrity of the Center but of its counselors and specifically Woods.

The criminal charges compromised the trustworthiness and integrity of Woods. I agree with the Majority that this Court should not adopt a *per se* rule that any appearance of impropriety provides just cause for removal. Nevertheless, the Commonwealth Court has frequently determined that the appearance of impropriety by an employee in a highly sensitive position justified removal. See Dep't of Corr. v. Roche, 654 A.2d 64, 69 (Pa. Cmwlth. 1995) (correctional officer arrested for perjury removed because his failure to report the assaults on prison inmates to the grand jury was a dereliction of duty and reflected his inability to perform his duties); Aiello v. Dep't of Env'tl. Res., 551 A.2d 664, 665-66 (Pa. Cmwlth. 1988) (mine inspector convicted of copyright infringement, though unrelated to his job, removed because the appearance of wrongdoing by an employee in a sensitive position reflects negatively on his ability to perform duties); Davis v. Youth Dev. Ctr. Dep't of Pub. Welfare, 507 A.2d 915, 917 (Pa. Cmwlth. 1986) (houseparent at a youth development center arrested on criminal charges removed because of the sensitivity of his position and the awareness on the part of the student body); Phila. County Bd. of Assistance v. Vinson, 463 A.2d 73, 76 (Pa. Cmwlth. 1983) (income maintenance worker with a prior conviction for robbery and conspiracy removed because he occupied a highly sensitive position); Stone v. State Corr. Inst. at Graterford, 422 A.2d 1227, 1228 (Pa. Cmwlth. 1980) (prison guard possessing marijuana at a state correctional institution removed because the offense violated the parameters of his sensitive position and cast doubt on his competency and ability to execute duties); Dep't of Justice v. Grant, 350 A.2d 878, 880 (Pa. Cmwlth. 1976) (prison guard arrested for violating the Uniform Firearms Act removed because

he held a highly sensitive position that required him to avoid the appearance of impropriety). While these cases are not binding on this Court, I cite them to show that public employers expect their employees in highly sensitive positions to have an untarnished reputation.

Admittedly, some of these cases dealt with convictions on criminal charges, but an arrest alone was sufficient in Roche, Davis, and Grant. In the matter *sub judice*, Petitioner was arrested on perjury and false swearing charges and pled guilty to criminal mischief in exchange for the dismissal of these charges. The Commonwealth Court relied on Davis to conclude that the Center lacked just cause because there was no evidence that the students were aware of the charges. In Davis, the court held that “the commission’s findings regarding the sensitivity of Mr. Davis’ position as a houseparent and the student body’s awareness of his criminal charges support the commission’s order upholding Mr. Davis’ employment termination for just cause.” Davis, 507 A.2d at 917. By applying the holding of Davis strictly, the Commonwealth Court believed that there must be evidence that the students were aware of the arrest and criminal charges. I do not agree that the lack of awareness on the part of the students should be the determining factor.

There should be no bright-line test for what constitutes just cause. Instead, public employers must decide these matters on a case-by-case basis. As long as their decision is rationally and logically related to the competency of the employee to perform his or her duties, it should be upheld. In this case, the nature of the charges involved, the publicity generated from the charges, and the awareness on the part of the families

of the students demonstrate that Woods' ability to work, as a counselor was impaired.  
Therefore, I respectfully dissent.

Mr. Justice Eakin joins this concurring and dissenting opinion.