

JOHN DESHOTEL

*

NO. 2007-CA-0363

VERSUS

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COURT OF APPEAL

DEPARTMENT OF POLICE

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FOURTH CIRCUIT

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STATE OF LOUISIANA

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BAGNERIS, J. CONCURS WITH REASONS

I respectfully concur and find that this Court should affirm the findings of the Civil Service Commission. In the days of Katrina the City of New Orleans and those in civil service were faced with new and unique circumstances. Sergeant Deshotel has been working with the New Orleans Police Department since 1987 and during the days of Katrina the CSC found that he continued to serve this City during its darkest days. Sergeant Deshotel seized the little window of opportunity that he had to obtain heart medicine for his eighty-year old mother. He had the decency to telephone his supervisor and report his whereabouts.

I find that the Commission is in the best posture to determine whether the NOPD sufficiently established that it met its burden of proof. "In reviewing the commission's findings of fact, the court should not reverse or modify such a finding unless it is clearly wrong or manifestly erroneous. In judging the Commission's exercise of its discretion in determining whether the disciplinary action is based on legal cause and the punishment is commensurate with the infraction, the court should not modify the Commission's order unless it is arbitrary, capricious or characterized by abuse of discretion. *Lombas*, 467 So.2d at 1275, quoting *Walters v. Department of Police of the City of New Orleans*, 454

So.2d at 114. *Cittadino v. Department of Police* 558 So.2d 1311 (La. App. 4 Cir. 1990).

I think that Sergeant Deshotel's suspension for forty days for neglect of duty was *not* commensurate to the violation considering the mitigating circumstances. I understand that the Superintendent put into place emergency orders imposing clear penalties for officers who failed to report or remain for duty thus requiring a 30-day suspension for any unauthorized absence of two hours up to six days. I also believe that this punishment was imposed for those limited circumstances in which some officers chose to outright not serve the City; whose whereabouts were unknown; who failed to contact their supervisor; and who took on a selfish, self-serving role to protect themselves only. Sergeant Deshotel did none of that.