

IN THE MATTER OF
ONTARIO REGULATION 123/98
MADE UNDER THE *POLICE SERVICES ACT*, R.S.O.1990, C.P.15
AND AMMENDMENTS THERETO;
AND IN THE MATTER OF
POLICE CONSTABLE AHMAD HAFIZI #1930
AND THE
OTTAWA POLICE SERVICE

SENTENCE

APPEARANCES:

Ms. Lara Malashenko

for the Ottawa Police Service

Mr. Michael Lamothe

for Police Constable Ahmad Hafizi

BEFORE:

Deputy Chief (Ret), Terence Kelly

York Regional Police

Hearing Officer

SENTENCE DATE

November 15th, 2018

SENTENCE

Police Constable Ahmad Hafizi Badge Number #1930

November 15th, 2018

Deputy Chief Terence Kelly (Ret.) before commencing with sentence in this matter, I wish to thank Ms. Lara Malashenko, the Service prosecutor, and Mr. Michael Lamothe, counsel for Police Constable Ahmad Hafizi, for their comments and exhibits entered, all of which have assisted me.

Police Constable Ahmad Hafizi, #1930 has pleaded guilty and been found guilty of two counts of discreditable conduct, and one count of insubordination laid under the ***Police Services Act***.

The guilty pleas were advanced with an Agreed Statement of Facts (Exhibit #7).

Agreed Statement of Facts

Count 2 and 4 – Discreditable Conduct

Count 3 – Insubordination

On May 6th, 2016, Constable Hafizi and friends were in Kingston and met with Constable Nungisa. They began drinking alcohol in the late afternoon and continued to drink over the course of the evening. Constable Hafizi noticed that Constable Nungisa's behaviour had changed, and he advised Constable Nungisa to take a break from consuming alcohol.

Prior to attending a bar in the downtown area, Constable Hafizi and Constable Nungisa took a taxi to a restaurant where Constable Hafizi tried to get Constable Nungisa to eat and drink water. They subsequently met with friends at a nearby bar.

At approximately 1:00 a.m. Constable Hafizi went to his friend's house for the rest of the evening, and returned to his hotel between 7:00 a.m. and 8:00 a.m. on May 7th, 2016.

On May 7th, Constable Hafizi was advised Constable Nungisa's car had been stolen along with his use of force equipment that was in the trunk. Prior to learning this, Constable Hafizi was not aware that Constable Nungisa had brought his duty belt and use of force equipment with him to Kingston.

Constable Hafizi called Constable Nungisa, who advised Constable Hafizi he had notified Kingston Police Service. Constable Hafizi and his friends went to Constable Nungisa's hotel to pick him up and assist him in searching for his vehicle.

After several hours, they located the vehicle, locked and undamaged, in the grocery store parking lot where Constable Nungisa had left it the previous night. Constable Nungisa immediately checked the trunk of his vehicle to verify his use of force equipment was still there.

At this point, Constable Hafizi believed that Constable Nungisa was still intoxicated. In an effort to protect Constable Nungisa, Constable Hafizi decided to take Constable Nungisa's entire duty belt, including the firearm, and placed it in the trunk of his brother's vehicle which he had driven to Kingston. The firearm remained loaded in the holster and unsecured in Constable Hafizi's trunk. Constable Hafizi returned to the hotel, packed his belongings and began the trip back to Ottawa, accompanied by a friend who was not a member of the Ottawa Police Service

After leaving Kingston at approximately 1:00 a.m., Constable Hafizi and his civilian friend stopped at a casino in Gananoque for approximately thirty (30) minutes. During this time, Constable Hafizi left Constable Nungisa's firearm loaded in the holster and unsecured in the trunk of his car.

Constable Hafizi and his civilian friend stopped in Barrhaven to drop off his brother's car and pick up his personal car. Constable Hafizi transferred Constable Nungisa's duty belt and firearm from his brother's trunk, to under the front seat of his own personal vehicle. Constable Nungisa's use of force equipment remained loaded and unsecured.

Upon his return to Ottawa, Constable Hafizi and his civilian friend stopped at the Rideau Centre to purchase a new cell phone, as his had broken the night before in Kingston. During this time, Constable Hafizi again left Constable Nungisa's firearm loaded and unsecured under the front seat of his vehicle.

Constable Hafizi then drove to his civilian friend's residence in Orleans. Constable Hafizi called Constable Nungisa to arrange the return of his duty belt and use of force equipment. Constable Nungisa informed Constable Hafizi that he had not yet left Kingston and could not pick up his use of force equipment. Constable Hafizi decided to transfer Constable Nungisa's use of force equipment to his civilian friend.

Constable Hafizi removed Constable Nungisa's duty belt from his vehicle, wrapped it in a shirt, and transported it into his civilian friend's residence. Constable Hafizi left the loaded and unsecured firearm on the floor of the civilian friend's basement, and attended to plans he had with his family.

Upon returning to Ottawa, Constable Nungisa called Constable Hafizi to advise him that he attended at the Tenth Line Police Station to meet with Sergeant Salehe and Inspector Cartwright. Constable Nungisa advised Constable Hafizi he had taken responsibility for the incident.

Upon learning that Constable Nungisa was not in possession of his use of force equipment, Inspector Cartwright contacted the civilian friend and Sergeant Salehe and Sergeant Haggarty attended the residence and recovered Constable Nungisa's unsecured use of force equipment.

The Ottawa Police Service initiated a criminal investigation into the incident.

Between May 5th, 2016 and his criminal interview, Constable Hafizi met with Constable Nungisa three times. The civilian friend was present at the first two of these meetings. At these meetings, Constable Hafizi and the civilian friend conspired to provide a false story to the criminal investigators. They agreed to tell the investigators that Constable Hafizi never took possession of Constable Nungisa's firearm, nor did he transfer the firearm to the civilian friend.

On May 26th, 2016 during his first criminal interview on the matter, Constable Hafizi advised the investigator that he never had possession of Constable Nungisa's firearm. The civilian friend who had taken possession of the firearm also corroborated this false version of the events.

After Constable Hafizi's first interview, Constable Nungisa advised him that he intended to tell the investigators the truth about Constable Hafizi's involvement. As a result, on June 6th, 2016, Constable Hafizi requested a second interview. On June 8th, 2016, Constable Hafizi clarified the inaccuracies from his first interview, and admitted he had taken possession of Constable Nungisa's firearm and subsequently transferred the firearm to his civilian friend.

On December 14th, 2017, Constable Hafizi was found guilty by the Honourable Justice A.G. Letourneau of the criminal offence of transferring a restricted firearm to a member of the public without authority, contrary to section 101 (2) of the *Criminal Code of Canada*. Constable Hafizi was sentenced to twelve (12) months of probation and a conditional discharge.

I accept the pleas based on the facts in the case. The facts stated and agreed to provide clear and convincing evidence of the alleged misconduct strongly supporting Police Constable Hafizi's pleas of guilt. If not for the pleas and the apology of Constable Hafizi to the community and the Ottawa Police Service for his behaviour, which I take into account as a mitigating factor and recognition of his misconduct, I would consider a greater penalty.

Due to the circumstances surrounding the misconduct, notwithstanding the guilty pleas and the Agreed Statement of Facts, the allegations when taken in the broader text of employee/employer relations, it is prudent to provide written reasons for my findings.

Analysis and Decision

There are a number of relevant factors to be taken into consideration when assessing penalty. When assessing what might be the appropriate penalty for such behaviour, a Hearing Officer is obliged to take into account a number of factors. In ***Williams and Ontario Provincial Police (1995) 2 O.P.R. 1047*** the Ontario Civilian Police Commission (O.C.P.C), identified three key elements. These include: the nature and seriousness of the misconduct in question; the ability to reform or rehabilitate the officer; and the damage to the reputation of the Police Service. I also note other factors that can be relevant; either aggravating or mitigating the penalty depending on the misconduct in question. These include the officer's employment history and experience and recognition of the transgressions.

Public interest must be considered in each case for the misconduct and the disposition for the misconduct of a police officer must give the public the assurance the officer has received the appropriate penalty. Public faith in the running of a police service would not be well served and undermined if this type of behaviour by a serving police officer was not treated seriously.

Professionalism and integrity cannot be compromised. The public are entitled to high expectations of the Police Service and its members and to retain the trust and confidence they must be professional and ethical in everything they do.

In stressing this point, the case of **Bright v. Konkle**, (*Board of Enquiry, Ontario Police Services Act, March 1997*) stated. Page 491, paragraph (44).

“Good character in a police officer is essential to both the public’s trust in the officer, and to a police service’s ability to utilize that officer. The public has the right to trust that its police officers are honest and truthful, and that, absent extenuating circumstances, they will not be officers any longer if they breach this trust.”

Specific and General Deterrence

Specific and general deterrence is a well-recognized principle in sentencing law, which is meant to discourage others from participating in similar misconduct. It is particularly important where it is desirable to send a message to other police officers that certain conduct will not be tolerated. Members of the service must know that the penalty for this type of misconduct will be significant personally, professionally, and financially.

Seriousness of the Misconduct

The seriousness of the misconduct is of, of course, the primary consideration. In this particular case, the actions of Police Constable Ahmad Hafizi were clearly inappropriate and an embarrassment to the Ottawa Police Service. As police officers and members of society, we must be particularly concerned about this type of conduct. It is fortunate indeed that this unsecured/loaded firearm did not fall into the wrong hands.

The service firearm is the ultimate symbol of the authority of a police officer. It is the police officer that bears the burden of privilege and the onerous responsibility of securing/carrying this instrument, which can so easily take a life.

The public must be confident that police officers will strive to set an example for those in the community. Anything short of this will be seen as a contradiction and serve no other purpose but to undermine the efforts of all police officers and the explicit goals of the service. This was a clear misuse of the power invested in him, and in direct contravention of the rules respecting the safe handling and storage of firearms, the necessity to uphold the image of the police service, and indeed common sense.

Recognition of the Transgression

This is important for several reasons; it speaks to the acceptance of responsibility by the officer for his actions and recognition of his accountability to society, notwithstanding he would be aware of his misconduct.

Clearly Police Constable Hafizi's plea of guilty at the first opportunity before this Tribunal, demonstrates he recognizes the mistakes he has made and accepts full responsibility.

One can only hope Constable Hafizi will use this experience as an opportunity for learning and personal growth.

In the Criminal proceedings before the Honourable Justice A.G. Letourneau date December 4th, 2017, on pages 2 and 3 of the sentence he stated when addressing sentence, and I quote:

"In short, it is evident that this conduct that finds you before me today is completely out of character. It is also evident that your prospects of rehabilitation are excellent..."

Unquote.

I believe this officer has learned a great deal from this entire process and must consider this in my disposition considerations.

Disposition:

To reflect the seriousness of this offence, and as a general deterrent, it is the decision of this Tribunal bearing in mind all the evidence before me, that **Police Constable Ahmad Hafizi, badge #1930 for the finding of guilt on two counts of Discreditable Conduct and one count of Insubordination he will be demoted from 1st Class Constable to 3rd Class Constable for a period of one year. With the successful completion of his annual performance appraisal and meeting standards in all of his job competencies, he will progress to 2nd Class constable for a subsequent period of one year. He will then progress to 1st Class Constable with the successful completion of his annual appraisal and meeting standards in all his job competencies, all in accordance with section 85 (1)(c) of the *Police Services Act*.**

The above penalty is submitted pursuant to the following term/condition.

- (a) Constable Hafizi will be expected to participate, and successfully complete the following training. i. Firearm Storage Training.

Terence Kelly, Deputy Chief (Retired)

York Regional Police

Hearing Officer

November 15th, 2018 (sent electronically)