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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

SALVADOR SALAS, Plaintiff and Appellant, v. LOS ANGELES COUNTY CIVIL SERVICE COMMISSION, Defendant and Respondent, COUNTY OF LOS ANGELES PROBATION DEPARTMENT, Real Party in Interest.	B280104 (Los Angeles County Super. Ct. No. BS157228)

APPEAL from a judgment of the Superior Court of Los Angeles County, Mary H. Strobel, Judge. Affirmed.

Law Office of Esteban Lizardo and Esteban Lizardo, for Plaintiff and Appellant.

Hausman & Sosa, Jeffrey M. Hausman, and Larry D. Stratton, for Defendant and Respondent.

INTRODUCTION

Los Angeles County Deputy Probation Officer Salvador Salas appeals from the judgment entered after the trial court denied his petition for writ of administrative mandamus. Salas's petition challenged the decision by the Los Angeles County Civil Service Commission to suspend him for 20 days for handcuffing a juvenile resident of Camp Mendenhall without authorization. Because we disagree with Salas that the Commission abused its discretion in imposing a 20-day suspension, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Hearing Officer's Decision*

In June 2013 the Probation Department notified Salas it intended to suspend him for 25 days without pay for an incident where Salas, without authorization, used handcuffs to restrain Raheen R., a juvenile detained in Camp Mendenhall. The Department based the suspension on three grounds: "[p]oor judgment," "[i]nappropriate or unnecessary restraint," and "[f]ailure to follow established rules, regulations, policies, and procedures." Salas appealed to the Commission, contending the discipline was excessive.

After a hearing in August 2014, a Commission hearing officer made findings neither party contests. The hearing officer found that, on the occasion in question, Raheen left his assigned wing of the camp, which was not allowed, and entered the wing where Salas was working. Salas and Raheen "had a good relationship," and "[w]hile playing around, [Salas] placed

handcuffs on [Raheen] and began to lead him to his own unit." The handcuffs were Salas's personal property.

When Salas's superior, Deputy Probation Officer Rene Guerra, saw Raheen wearing the handcuffs, Guerra instructed Salas to remove them, but Salas did not have his key. Guerra used the key to his handcuffs to remove the handcuffs from Raheen. The handcuffs were on Raheen "for one to two minutes," and Raheen confirmed he and Salas were "playing around."

The handcuffing, however, did not comply with the Department's "policy regarding the use of mechanical restraints," which provided that, "[a]bsent an emergency, a supervisor's approval is required." The hearing officer also found Salas had a 15-day suspension in 2012 "for an off-duty offense of driving under the influence of alcohol." "Although that offense showed poor judgment, there was no evidence [Salas] had a pattern of poor judgment when performing his work duties." Salas received ratings of "competent" in his performance evaluations from 2009 through 2013.

Based on these findings, the hearing officer concluded the Department met its burden of proving the charges stated in its notice of suspension, but not its burden of proving the 25-day suspension was an appropriate penalty. In her written ruling, the hearing officer acknowledged the 25-day suspension was within Department guidelines for the charges against Salas.[1]

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[1] For a second offense of poor judgment, the guideline range was from a 20-30 day suspension to reduction or discharge; for a first offense of inappropriate or unnecessary restraint, from a 1-30 day suspension to discharge; for a first offense of failure to follow established rules, regulations, policies, and procedures, from a warning to discharge.

She also acknowledged several considerations offered by the Department to justify a 25-day suspension. For example, although Salas and Raheen "were playing around at the time, it would take very little for another person, such as a family member, to perceive [Salas's] conduct in a negative way," and the "potential for liability by the Department . . . is very real." Moreover, "some of the minors under [the Department's] supervision have emotional or mental problems[,] and an unauthorized restraint using handcuffs could result in trauma to the minor." In addition, the Department had "entered into a settlement agreement with the [United States] Department of Justice in 2008 with ongoing scrutiny and quarterly audits of the conduct of all staff," and Salas's "momentary lapse in judgment could be considered a failure to comply with the settlement provisions that would call into question the Department's commitment to improve its practices and procedures." Finally, in light of Salas's previous, 15-day suspension, the Department "considered the current conduct a second offense of poor judgment that required a more severe discipline."

But four "mitigating factors" led the hearing officer to conclude the 25-day suspension was "excessive." First, Salas had "performed his work duties in a competent manner as established by his performance evaluations." Second, although the incident of driving under the influence that resulted in the 15-day suspension "showed poor judgment," it "had no nexus to the performance of his job duties," and there "was no other evidence he used poor judgment in the execution of his work duties." Third, Salas was "remorseful about his conduct" and indicated he "would take steps to avoid future violations of Department policy." And fourth, according to Raheen, he and Salas "had a

good relationship," and Raheen "never considered being placed in handcuffs a punitive measure intended to control negative behavior on his part." The hearing officer recommended a suspension of two days.

B. *The Commission's Final Decision*

The Department filed objections to the hearing officer's conclusion it failed to prove a 25-day suspension was appropriate and to her recommendation of a two-day suspension. Sustaining the objections in part, the Commission rejected the recommended two-day suspension and proposed a 20-day suspension. Salas objected to the proposed decision. He contended the evidence did not support a 20-day suspension and urged the Commission to adopt the two-day suspension.

In May 2015 the Commission overruled Salas's objections and issued its final decision, adopting the hearing officer's findings, rejecting the recommended two-day suspension, and imposing a 20-day suspension. The Commission's final decision did not include any further statement concerning the basis for imposing a 20-day suspension.

C. *The Trial Court's Decision*

In August 2015 Salas filed a petition for writ of administrative mandamus (Code Civ. Proc., § 1094.5), challenging the penalty imposed by the Commission. He did not dispute the Commission's findings, but contended a suspension of 20 days based on those findings was an abuse of discretion. After a hearing on the petition, the trial court denied it. The trial court concluded that, "[c]onsidering all of the factors, including the prior 15-day suspension, [Salas's] poor judgment, and the risks of

unjustified use of handcuffs on probation wards, the 20-day suspension was within the range of reasonable penalties." Salas timely appealed.

DISCUSSION

A. *Standard of Review*

"An appellate court applies the following standards of review to a trial court's denial of a petition for a writ of administrative mandamus. First, if the trial court exercised its independent judgment,[2] we review the record to determine whether the court's factual findings are supported by substantial evidence, resolving all evidentiary conflicts and drawing all legitimate and reasonable inferences in favor of the court's decision. [Citations.] Second, 'to the extent pure questions of law (e.g., jurisdiction) were decided at the trial court upon undisputed facts, a de novo standard will apply at the appellate level.' [Citation.] Third, we review de novo whether the agency's imposition of a particular penalty on the petitioner constituted an abuse of discretion by the agency. [Citations.] But we will not disturb the agency's choice of penalty absent "'an arbitrary, capricious or patently abusive exercise of discretion"' by the

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2 Under the independent judgment standard, "[t]he trial court must not only examine the administrative record for errors of law, but must also conduct an independent review of the entire record to determine whether the weight of the evidence supports the administrative findings." (*Ogundare v. Department of Industrial Relations* (2013) 214 Cal.App.4th 822, 827.) If the administrative decision did not involve or substantially affect a fundamental vested right, however, the trial court reviews the administrative findings for substantial evidence. (*Ibid.*)

administrative agency." (*Cassidy v. California Bd. of Accountancy* (2013) 220 Cal.App.4th 620, 627-628 (*Cassidy*), italics and fn. omitted; see *De La Torre v. California Horse Racing Bd.* (2017) 7 Cal.App.5th 1058, 1065; *Coe v. City of San Diego* (2016) 3 Cal.App.5th 772, 789-790.)

B. *The Trial Court Did Not Err in Denying the Petition*

Salas does not dispute the findings of the Commission, including that he handcuffed Raheen as described by the hearing officer, that his conduct violated Department policies, and that the Department's initial 25-day suspension was within the range of discipline set forth in its guidelines. Indeed, the parties do not appear to dispute any relevant facts. The sole issue is whether the trial court erred in ruling the Commission did not abuse its discretion in imposing a 20-day suspension based on those facts. The trial court did not err.

"'"'Neither an appellate court nor a trial court is free to substitute its discretion for that of the administrative agency concerning the degree of punishment imposed. [Citation.]' [Citation.] [¶] 'In reviewing the exercise of this discretion we bear in mind the principle "courts should let administrative boards and officers work out their problems with as little judicial interference as possible . . . . Such boards are vested with a high discretion and its abuse must appear very clearly before the courts will interfere."'" [Citation.] "The policy consideration underlying such allocation of authority is the expertise of the administrative agency in determining penalty questions."'" (*Coe v. City of San Diego, supra,* 3 Cal.App.5th at p. 790, italics omitted; accord, *Cassidy*, *supra*, 220 Cal.App.4th at p. 633; see *Hanna v. Dental Bd. of California* (2012) 212 Cal.App.4th 759,

764 [we may not disturb an agency's choice of penalty unless the appellant shows "a manifest abuse of discretion"].)

"'In considering whether an abuse of discretion occurred in the discipline of a public employee, the overriding consideration is the extent to which the employee's conduct resulted in, or if repeated is likely to result in, harm to the public service. Other factors include the circumstances surrounding the misconduct and the likelihood of its recurrence.'" (*Cate v. State Personnel Bd.* (2012) 204 Cal.App.4th 270, 284-285 (*Cate*); accord, *County of Siskiyou v. State Personnel Bd.* (2010) 188 Cal.App.4th 1606, 1615; see *Cate*, at p. 285 ["[i]n weighing such factors, the court considers the nature of the employee's profession, 'since some occupations such as law enforcement, carry responsibilities and limitations on personal freedom not imposed on those in other fields'"].) "'[I]f reasonable minds may differ as to the propriety of the penalty, there is no abuse of discretion.'" (*Fisher v. State Personnel Bd.* (2018) 25 Cal.App.5th 1, 21; accord, *Siskiyou,* at p. 1615.)

Salas essentially asks us to reweigh the evidence and put the same weight on the same facts the hearing officer did when she arrived at her recommendation of a two-day suspension. We decline the invitation. Salas has not demonstrated the Commission manifestly abused its discretion when it rejected that recommendation and imposed a 20-day suspension. A suspension of that length is well within the guideline range for the charges the Department proved, and undisputed facts suggest Salas's conduct, if repeated, would result in significant harm to the public service. That harm includes risk of injury to minors in the Department's care and exposing the Department to liability. (See *Siskiyou*, *supra*, 188 Cal.App.4th at p. 1615 ["'[t]he

public is entitled to protection from unprofessional employees whose conduct places people at risk of injury and the government at risk of incurring liability'"].) Salas cites no cases holding a comparable penalty was an abuse of discretion.

Salas argues the 20-day suspension was an abuse of discretion under *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506 (*Topanga*), which held that "implicit in section 1094.5 is a requirement that the agency which renders the challenged decision must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order." (*Id.* at p. 515.) Salas suggests the Commission did not comply with this requirement because it did not "provide a reasoned progression from facts to its resulting conclusion[ ]" that a 20-day suspension was appropriate.

The Commission's findings were sufficient under *Topanga*. As the Supreme Court more recently explained about its holding in *Topanga*: "The findings do not need to be extensive or detailed. '"[W]here reference to the administrative record informs the parties and reviewing courts of the theory upon which an agency has arrived at its ultimate finding and decision it has long been recognized that the decision should be upheld if the agency 'in truth found those facts which as a matter of law are essential to sustain its . . . [decision].'"' [Citation.] On the other hand, mere conclusory findings without reference to the record are inadequate." (*Environmental Protection Information Center v. California Dept. of Forestry & Fire Protection* (2008) 44 Cal.4th 459, 516-517.) The Commission's unchallenged findings were not conclusory and leave little room to wonder about the theory on which the Commission based Salas's suspension.

DISPOSITION

The judgment is affirmed. The County is to recover its costs on appeal.

SEGAL, J.

We concur:

PERLUSS, P. J.

ZELON, J.