

IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA

GARRETT ROLFE,	)	
	)	
Petitioner,	)	CIVIL ACTION NO.
	)	
v.	)	<b><u>2020CV338972</u></b>
	)	
	)	
RODNEY BRYANT,	)	
In his capacity as Interim Chief	)	
of the City of Atlanta Police Department,	)	
	)	
KEISHA LANCE BOTTOMS,	)	
In her capacity as Mayor of the City	)	
Of Atlanta.	)	
	)	
Respondents.	)	

**PETITION FOR WRIT OF MANDAMUS**

COMES NOW Petitioner, Garrett Rolfe (“Petitioner”), and files this Petition for Writ of Mandamus pursuant to O.C.G.A. § 9-6-20 showing that “a defect of legal justice would ensue from a failure to perform or from improper performance” of “official duties.” In support of the instant writ, Petitioner shows this Court the following:

1.

Respondent Rodney Bryant is the Interim Chief of the Atlanta Police Department, a department of the City of Atlanta, a municipal corporation, with its principal address at 226 Peachtree St. SW, Atlanta, Fulton County, Georgia,

30303. Respondent may be served with Summons and a copy of this Petition at that address or wherever he may be found within the State of Georgia.

2.

Respondent Rodney Bryant is subject to the jurisdiction and venue of this Court in his capacity as the Interim Chief of the Atlanta Police Department.

3.

Respondent Keisha Lance Bottoms is the duly elected Mayor of the City of Atlanta, a municipal corporation, with its principal address at 55 Trinity Avenue SW, Suite 2500, Atlanta, Fulton County, Georgia, 30303. Respondent may be served with Summons and a copy of this Petition at that address or wherever she may be found within the State of Georgia.

4.

Respondent Keisha Lance Bottoms is subject to the jurisdiction and venue of this Court in her capacity as the Mayor of the City of Atlanta.

5.

At all times material, Petitioner Garrett Rolfe was employed by the City of Atlanta Police Department, in the position of Police Officer. Such position is sworn and below the rank of Lieutenant.

6.

Petitioner Garrett Rolfe has been so employed since September 4<sup>th</sup>, 2014. As such, Officer Rolfe was a regular, non-probationary employee of the City of

Atlanta. A non-probationary employee is one who has worked for the City of Atlanta for more than six months.<sup>1</sup> See also City of Atlanta Code Ordinances, Part II, Chapter 114, Article IV, Division 9, § 114-331, “Dismissal during probationary period,” and § 114-332, “Probationary Period Reports.”

7.

On June 12, 2020, Petitioner responded to the Wendy’s restaurant located at 125 University Avenue, Atlanta, to assist Officer Devin Brosnan with a DUI suspect identified as Rayshard Brooks (Brooks). Officer Devin Brosnan was also employed by the City of Atlanta Police Department as a Police Officer on this date.

8.

During the course of the incident, the Petitioner, along with Devin Brosnan, lawfully attempted to place Brooks under arrest. Brooks violently resisted arrest, escalating the incident to a violent, physical confrontation. In response to Brooks’ violent, unlawful, aggressive resistance to a lawful arrest, and within the scope and course of his duties, Petitioner utilized force, including deadly force, against Brooks. The incident was captured on video through various sources. Respondents allege that Petitioner’s use of force was improper.

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1. The longest “probationary period” contained in the City of Atlanta ordinances is twelve months. See City of Atlanta, Part II, Chapter 98, Article II., Division 2 “Promotion Policy,” §98-85(a), “Probationary period” which Petitioner exceeds.

9.

The Petitioner denies the Respondents' allegations and contend that his use of force was proper and in compliance with Georgia law, the policies of the Atlanta Police Department, prevailing standards of law enforcement, United States Supreme Court precedent, and the training provided to him through the City of Atlanta Police Department and the State of Georgia.

10.

On June 13, 2020, the Petitioner was summarily dismissed from his employment, on information and belief, by Respondent Bottoms and the former Chief of the Atlanta Police Department, Erika Shields, who was succeeded by Respondent Bryant<sup>2</sup>, without an investigation, without proper notice, without a pre-disciplinary hearing, and in direct violation of the municipal code of the City of Atlanta. Contrary to city policy as well as the policies, procedures, customs, and practices of the City of Atlanta Police Department, Petitioner was never interviewed by the Office of Professional Standards or any individual regarding this incident to provide his statement.

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2. Atlanta Police Chief Rodney Bryant is named as a Respondent in his official capacity as the successor to Atlanta Police Chief Erika Shields (*See* O.C.G.A. 9-11-25(d)).

11.

Petitioner has a property interest in his job. Pursuant to the charter, ordinances, and policies of the City of Atlanta, he can only be disciplined or terminated for cause.

12.

Petitioner has a right to procedural due process prior to and following any disciplinary action pursuant to the charter, ordinances, and policies of the City of Atlanta.

13.

Officer Brosnan, who was involved in the incident and was engaged in substantially similar conduct which was alleged to be improper, has not been dismissed and is, by information and belief, either on paid leave or has been assigned to non-enforcement duties. Many other City of Atlanta Police Officers who have been charged with crimes, including felonies, have remained employed during the investigation and pendency of their criminal charges.

14.

The municipal code of the City of Atlanta, Part II, Chapter 114, Article VI., Division 3 “Disciplinary Action,” §114-528(a), “Cause for action,” states the following (in pertinent part):

“No employee shall be dismissed from employment or otherwise adversely affected as to compensation or employment status **except for cause.**”

(emphasis added).

15.

The municipal code of the City of Atlanta, Part II, Chapter 114, Article VI., Division 1 “Generally,” § 114-502, “Definitions,” Defines Adverse action in the following way (in pertinent part):

*“Adverse action means a **disciplinary action taken for cause** by a department head or designee which results in suspension without pay, demotion or **dismissal** of a regular, non-probationary employee in the classified service of the city **or any regular non-probationary sworn officer of the department of police who holds the rank of lieutenant or below...**”* (emphasis added).

16.

The municipal code of the City of Atlanta, Part II, Chapter 114, Article VI., Division 3., “Disciplinary Action,” §114-530(a), “Procedure for imposing adverse actions,” states in pertinent part the following:

*“Notice required. An employee against whom an adverse action is to be taken shall be given a written notice of proposed adverse action, signed by the appointing authority or designee, **at least ten working days prior to the effective date of the proposed adverse action.** However, **in an emergency situation,** the adverse action may become effective immediately following the employee’s response, if any.”* (Emphasis added).

17.

The municipal code of the City of Atlanta, Part II, Chapter 114, Article VI., Division 3., “Disciplinary Action,” §114-532, “Emergency Situations” defines the term “emergency situation,” and codifies its “conditions of use” as follows:

“(a) *Conditions for use. The appointing authority or designee may immediately suspend an employee with pay* upon the determination that the following circumstances exist:

(1) There is cause to believe that the employee has committed a crime involving moral turpitude or a felony which is job related or deters the employee from effective performance of the employee’s job.

(2) The retention of the employee in active duty status may result in damage to property or may be disruptive, detrimental or injurious to the employee, coworkers, subordinates or the general public or may be disruptive to the daily operation of a city government function.

(b) *Notice of emergency action.* The appointing authority or designee **shall** give the employee against whom the emergency action is taken a notice of emergency action in writing, not later than five working days after the effective date of the emergency action. The notice of emergency action shall include a statement of the emergency situation that caused the action to be taken. ***Should the action be an adverse action, the notice shall meet the requirements of section 114-530.*** A copy of such notice shall be sent to the commissioner of human resources.” (Emphasis added).

18.

The actions of the Petitioner, assuming *arguendo* were improper, do not meet the criteria set forth above and defined as “Emergency Situations.”

19.

Assuming *arguendo* Petitioner's actions were improper and met the criteria set forth above and defined as "Emergency Situations," Respondents failed to follow the procedures set forth in the ordinances relating to "Emergency Situations" in that they failed to provide proper notice and terminated Petitioner's employment without an investigation, proper notice, and a hearing.

20.

Respondent's summary dismissal of the Petitioner violated the Petitioners' clearly established legal rights created by operation of the Municipal Code of Atlanta, Part II, Chapter 114, Article VI., Division 3., "Disciplinary Action," § 114-530, and §114-532.

21.

The Respondents have a clear ministerial duty to comply with the municipal code of the City of Atlanta.

22.

Assuming *arguendo* Respondents had discretion to act, Petitioners assert that Respondents committed a gross abuse of discretion.

Petitioner has been denied both his procedural due process rights and equal protection rights as guaranteed by the Fourteenth Amendment to the United States Constitution as well as Article I, Section I, Paragraph I, and Paragraph II of the Georgia Constitution.<sup>3</sup> He is entitled to the procedural due process protections afforded him through the municipal code of the City of Atlanta, including a statutorily created right of notice in regard to an adverse employment action, and in the case of an emergency action, a statutory right to paid suspension. He is additionally entitled to receive equal treatment under the law as compared to other officers who are similarly situated.

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3. “Under Georgia law, generally, one in public employment has no vested right to such employment. However, a public employee has a property interest in his job if his employment allows dismissal only for cause.” *DeClue v. City of Clayton*, 246 Ga.App 487, 489 (2000). *See also Stidwell v. City of Atlanta*, 2018 WL 4999971, (N.D. Georgia, 2018): “Public employees may have a protectable interest in their jobs such that they may not be terminated without the protection of procedural due process under the Fourteenth Amendment [citing from *Bd. Of Regents v. Roth*, 408 U.S. 564, 577 (1972)]. “This interest is defined as a ‘property interest,’ the dimensions of which are defined by existing rules or mutually explicit understanding that stem from an independent source such as state law...” [citing from *Peterson v. Atlanta Hous. Auth.*, 998 FG.2d 904, 913-14 (11<sup>th</sup> Cir. 1993)].” *See also City of Cleburne, Texas v. Cleburne Living Center*, 105 S.Ct. 3249 (1985): “The Equal Protection Clause of the Fourteenth Amendment commands that no State shall “deny to any person within its jurisdiction the equal protection of the laws,” which is essentially a direction that all persons similarly situated should be treated alike.” *See also Jackson v. Raffensperger*, 2020 WL 2516517, at 5 (Ga. 2020): “We have consistently treated individuals who perform the same work as being similarly situated for equal protection purposes.”

24.

The Petitioner has suffered irreparable injury to his personal and professional reputation as a result of his unlawful dismissal. As a result of the unlawful action of the Respondent, the Petitioner has become a public spectacle and object of ridicule. His unlawful termination was unnecessarily public and has attracted national media attention.

25.

The Petitioner has and is suffering a loss of pay that is affecting him daily through both a continuing violation of his rights, hampering his ability to defend himself in an appeal of his termination. The termination also places his state Peace Officer certification in jeopardy as his termination has triggered an investigation with the Peace Officer Standards and Training Council. See GA POST Rules & Regs 464-3-.05 & 464-3-.06

26.

The Petitioner has a clear legal right to the relief sought and shows that no adequate remedy at law exists to reverse his termination and prevent further denial of his constitutional rights in a timely manner.<sup>4</sup> Respondents should be compelled

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4. While the Ordinances of the City of Atlanta provide appeal procedures for employees, in practice such appeals have routinely exceeded the statutory time requirement. The ordinances of the City of Atlanta, Part II, Sec. 114-550(1), entitled "Hearing Procedures" states, in pertinent part: "Notice of hearing. The hearing shall be held within 60 days after receipt of the notice of appeal by the commissioner of human resources...Any hearing officer/panel shall have the

to immediately reinstate the Petitioner in his employment with back pay, restoration of sick and annual leave, compensatory time, seniority, and any and all other associated benefits of employment. Respondents should likewise be compelled to comply with the procedural framework set forth in the municipal code of the City of Atlanta as it concerns the Petitioner in all future dealings with Petitioner.

27.

Petitioner has a clear legal right to the relief sought, but has no remedy, other than mandamus, to obtain such relief.

WHEREFORE, Petitioners pray:

1. That Respondents be served with a Summons and a copy of the instant Petition for Writ of Mandamus;
2. This Court hold a full hearing regarding the relief sought in the instant petition as soon as practical, directing the Respondents to be and appear before this Court within not less than ten nor more than thirty days, as

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authority to postpone or to continue a hearing upon its own motion or upon the motion of either party.” An article published in June of 2016 in the Atlanta Journal Constitution highlighted the problem indicating that at that time The Board had gone seven months without considering a single case (*see* Dan Klepal, *Atlanta workers wait months for appeal hearings*, Atlanta Journal Constitution, 2016, at <https://www.ajc.com/news/local-govt--politics/atlanta-workers-wait-months-for-appeal-hearings/IxqPmUm7Bv9lo64Lm63jcM/>, last visited July 22, 2020). Attorneys for the petitioner have represented clients in which hearings were delayed two years or more.

required by O.C.G.A. § 9-6-27(a), then and there to be heard, and show cause, if any they have, why a Writ of Mandamus should not be granted;

3. That this Court issue a writ of mandamus compelling Respondents to reinstate the employment of the petitioner immediately, including backpay, restoration of sick and annual leave, compensation time, seniority, and any and all other associated benefits of employment; *instanter*;
4. That this Court issue a writ of mandamus compelling Respondents to fully comply with the procedures set forth by the municipal code of the City of Atlanta in all future dealings with the Petitioner *instanter*.
5. That this Court will award the Petitioner any and all attorney fees and expenses incurred and necessitated by the filing and prosecution of the instant petition; and
6. That this Court award all other relief allowable by law

This 4th day of August, 2020.

LoRusso Law Firm, P.C.

/s/ Lance J. LoRusso

Lance J. LoRusso

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