

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE STATE UNIVERSITY SYSTEM
MANKATO STATE UNIVERSITY

In the Matter of the
Suspension of James E.
Cotton from Mankato
State University

FINDINGS OF FACT,
CONCLUSIONS-AND
RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Peter C. Erickson at 11:00 a.m. on Monday, February 22, 1993, in Room 203 of the Centennial Student Union, Mankato State University, Mankato, Minnesota. The record on this matter closed at the conclusion of the hearing.

Carol A. Stallkamp, Director of Legal Services, MSU Box 60, P.O. Box 8400, Mankato, Minnesota 56002-8400, and Malcolm O'Sullivan, Acting Vice-President for Student Affairs, appeared on behalf of Mankato State University (MSU). James E. Cotton, McElroy Center, Room I-417, MSU, Mankato, Minnesota 56002-8400, appeared and testified on his own behalf. In addition, the Student's mother, Sharon Latson, 3526 Western Avenue, Park Forest, Illinois 60466; Ted Flemister, a friend of the family; and Maria Baxter, Assistant Director of African-American Affairs at MSU, appeared and testified on Mr. Cotton's behalf.

Notice is hereby given that, pursuant to Minn. Stat. 14.61, the final decision of the President of Mankato State University shall not be made until this Report has been made available to the parties to the proceeding for at least ten days, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the President of MSU. Exceptions to this Report, if any, shall be filed with Dr. Richard Rush, President, Mankato State University, MSU Box 24, Mankato, Minnesota 56002-8400.

STATEMENT-QF ISSUE

The issue to be determined in this proceeding is whether cause exists to suspend James Cotton from Mankato State University for two academic quarters.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. James Cotton is an 18-year-old African-American student at Mankato State University. Mr. Cotton is in his freshman year and is attending MSU on a football scholarship. Mr. Cotton resides in Room I-417 of McElroy Center at MSU and is the sole occupant of that room. McElroy Center is a dormitory on the campus of MSU.

2 . At approximately midnight on Sunday, September 13, 1992, James Cotton left his dormitory room to use a phone in another part of the building. Mr. Cotton left his room door unlocked because he would be returning shortly. Shortly after he left, an acquaintance of Mr. Cotton's, Tyrone Fagin, came to Cotton's room and entered because the door was unlocked. Mr. Fagin had brought some marijuana with him and he proceeded to smoke a "Joint" in Cotton's absence. When James Cotton returned to his room, he discovered that there was a great deal of marijuana smoke in the room which was emanating into the hallway. Mr. Cotton was upset with Mr. Fagin and told him to leave, pushing him out of the door.

3. Other resident students at McElroy also smelled the marijuana smoke in the hallway and called campus security to investigate. Robert Bute, a campus security guard, came to McElroy Dormitory and smelled marijuana smoke coming out of Room I-417. Mr. Bute knocked on the door and James Cotton answered. Mr. Cotton was the only person in the room at this time. Mr. Fagin was not observed in the area. Mr. Bute questioned Cotton about the smoke and Mr. Cotton denied smoking himself; he stated that someone else in the room had been smoking. Mr. Bute asked if he could enter the room and look around and Mr. Cotton stated that he could. Mr. Bute immediately noticed a bag of marijuana on a desk in the room and Mr. Cotton admitted that it was marijuana but that it was not his. Mr. Bute then notified the police department who came to the dormitory to investigate. James Cotton was very cooperative throughout Mr. Bute's investigation and the subsequent investigation by the police.

4. After the police arrived, they went through the room and found a substantial amount (approximately one pound) of marijuana and assorted smoking paraphernalia. In addition to the bag of marijuana Mr. Bute noticed on top of the desk, the police found a bag of marijuana in clothing belonging to James Cotton and "raw" stalks of marijuana in a clothes closet in the room. There were marijuana seeds scattered all over the room. Mr. Cotton admitted that

the bag of marijuana found in his clothing was his but that all of the rest of the marijuana found did not belong to him.

5. James Cotton was a minor (under 18 years old) at the time this incident occurred. Mr. Cotton informed campus security and the police that another MSU student, Tyrone Fagin, had been smoking in his room and owned most of the marijuana which was found.

6. After receipt of the Incident Report filled out by the security guard, Malcolm O'Sullivan sent James Cotton a letter dated September 15, 1992 which informed Mr. Cotton that he was charged with a violation of the MSU Student Conduct Standards; Standard No. 7 which requires that "individuals are expected to obey federal and state laws". The letter further informed Mr. Cotton that "sanctions which would be forthcoming if you are found to be responsible of [sic] the alleged violation include University disciplinary probation or University disciplinary suspension". The letter scheduled a "preliminary conference" for September 18, 1992 for the purpose of explaining the disciplinary process and scheduling a hearing to consider the alleged violation.

7. On September 18, 1992, James Cotton met with Malcolm O'Sullivan, at which time Mr. Cotton decided that he wanted an informal hearing to be held

before the student "Conduct Coordinator". All of Mr. Cotton's due process rights were explained to him at this preliminary conference.

8. A hearing on the alleged violation was held on October 16 and 19, 1992 and conducted by Malcolm O'Sullivan.

9. Subsequent to the hearing, Mr. O'Sullivan informed James Cotton by letter dated November 3, 1992 that Mr. Cotton would be placed on University disciplinary suspension effective immediately and continuing through the end of spring quarter of the 1992-93 academic year. The sanction further required that Mr. Cotton could not enroll in courses in MSU nor be present on the campus without prior approval from Mr. O'Sullivan. Mr. Cotton was informed that he had the right to appeal Mr. O'Sullivan's decision to Dr. Richard Rush, President of the University. The basis of Mr. O'Sullivan's decision to impose the suspension was stated in his letter as follows:

I considered at great length the information you provided to me during your hearing. Although it may be possible that another individual was involved in placing the marijuana in your room, I must base my decision on the physical evidence identified in the Incident Report and verified by you. No one saw another person in your room on the night or morning in question. Further, there was no concrete information, that you could provide to me, to indicate that the marijuana in your room belonged to someone else. You were eloquent in identifying another individual as the person who was the sole owner of this illegal substance, but without any other evidence, I could not decide the case in the manner you desire. The presence of the illegal substance in your room, a room which you do not share with another student, and the absence of any proof that it belonged to someone else, resulted in my determination that it belonged to you.

10. Subsequent to receiving the November 3, 1992 determination from Mr. O'Sullivan, James Cotton appealed the suspension to MSU President Rush. Mr. Cotton informed President Rush that he was appealing because he "would like to remain at the University for the continuation of the school year to further my educational skills".

11. An appeal hearing was held on November 23, 1992 before the Vice-President for Student Affairs, Richard Fisher. On December 2, 1992, Mr. Fisher issued his determination which affirmed the initial decision by Mr. O'Sullivan to suspend James Cotton for the remainder of the academic year.

Mr. Fisher informed Mr. Cotton that he was to vacate the residence halls by Friday, December 4, 1992 and that his suspension ran through the end of spring quarter of the 1992-93 academic year. Mr. Cotton was allowed to obtain all of the credits earned during fall quarter, however. Additionally, Mr. Cotton was informed that if he wished to appeal the decision, he would be entitled to a hearing before an administrative law judge.

12. On December 7, 1992, James Cotton appealed the decision issued by Vice-President Fisher on December 2, 1992. On December 18, 1992, Mr. Cotton

was informed by Malcolm O'Sullivan that the University would proceed to schedule a hearing before an administrative law judge from the State Office of Administrative Hearings. Subsequently, however, Vice-President Fisher issued a clarification to his decision issued on December 2, 1992 in a memo dated January 28, 1993. In that memo, the Vice-President stated the following:

After hearing the appeal of James Cotton and reviewing the file, it was my finding that James was responsible for the marijuana found in his room. James, under contract to Residential Life for the premises, is ultimately responsible for items in his room. In addition, James stated that one small quantity of marijuana in his possession was a packet which could be sold.

Though James contended that the drugs in his room were the property of another person, it was my finding that this could not be proven.

Based upon the documented file and the comments of James, it was my decision that the penalty of suspension from the University would be upheld but reduced by one term.

13. Throughout the University investigation, University hearings and hearing herein, James Cotton admitted that one bag of marijuana found in his clothing was his. He had intended to sell that marijuana for money to purchase a phone for his room. However, he had changed his mind and not sold the marijuana but rather kept it until it was found in his room. Tyrone Fagin was questioned by Mr. O'Sullivan concerning his presence in Mr. Cotton's room and his possession of marijuana found there. Mr. Fagin denied being present in the room and possessing any of the marijuana found.

14. Earlier this year, Tyrone Fagin was charged with second and fourth degree criminal sexual conduct in connection with an alleged rape. Earlier, Mr. Fagin had been involved in a June 1991 break-in and assault at the home of Mankato City Councilman Mike Kennedy.

15. At Mr. Cotton's mother's request, James Cotton has entered into a contract with Maria Baxter, the Assistant Director of African-American Affairs at MSU concerning his performance at school and daily conduct. Ms. Baxter has been a "surrogate mother" with the approval of James Cotton's mother. Ms. Baxter testified that she wanted to keep James Cotton at MSU under "her eye" on a probationary status. Ms. Baxter testified further that it was difficult for African-American males on a white, rural campus like MSU.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CQONCLUSIONS

1. The Administrative Law Judge and the President of Mankato State University have jurisdiction in this matter pursuant to Minn. Stat. 14.50 and the appeals procedure set forth in the MSU Student Conduct Standards. The Notice of and Order for Hearing issued by MSU was proper in all respects and the University has complied with all procedural and substantive requirements of statute and rule.

2. James Cotton violated Conduct Standard No. 7 when he possessed marijuana in his dormitory room. This violation constitutes sufficient grounds to suspend Mr. Cotton for two academic quarters as already determined by Vice-President Fisher.

3. For the reasons set forth in the Memorandum below, the Judge has concluded that either a one-quarter suspension (spring quarter) or one year of probation pursuant to a written contract under the supervision of Maria Baxter is the appropriate disciplinary action herein.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED that the President of Mankato State University take disciplinary action against James Cotton consistent with the Findings of Fact, and Conclusions set forth above.

Dated this 3rd day of March, 1993.

PETER C. ERICKSON
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. 14.62, subd. 1, the agency is requested to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Taped: No Transcript Prepared.

MEMORANDUM

James Cotton does not contest the fact that he violated the school conduct standard. He admitted to the possession of at least one bag of marijuana in his room and that he had intended to sell that drug to obtain money to buy a phone. However, there is a dispute concerning the rest of the marijuana found in Mr. Cotton's room and who was responsible for the smoke that emanated into the hallway. The Judge believes Mr. Cotton that someone else was in his room smoking marijuana the night it was discovered. However, the Judge has concluded that more of the marijuana than only the bag found in Mr. Cotton's clothing was his. If Mr. Fagin had just brought the rest of the marijuana in to Mr. Cotton's room, it does not seem logical that stalks of marijuana would be found in a clothes closet or that seeds would be scattered

all over the room in addition to a larger bag found on a dresser. If all of that marijuana did belong to Mr. Fagin, the Judge finds it unlikely that Mr. Fagin would leave after being pushed out of Cotton's room without taking the marijuana with him.

In evaluating a case like this, the Judge takes certain factors into consideration: (1) the age and maturity of the person involved; (2) the nature of the offense; (3) whether other "responsible" individuals are willing to vouch for the individual involved; (4) whether the incident is a first, second, third or fourth offense; (5) whether any irreparable harm was done by the offense; (6) the harm that will be done to the individual as a result of certain disciplinary actions; and (7) whether the individual shows contrition and a motivation to change his/her behavior. The record in this case shows that James Cotton was only 17 years old when this incident occurred (DOB 12/13/74); and is an African-American male on a predominantly white college campus. Mr. Cotton came to Mankato from the Chicago area and was relatively alone during this college experience.

Mr. Cotton was found to be in possession of an illegal substance, marijuana, not cocaine, heroin or any other "hard" drug. There is no evidence that Mr. Cotton distributed this drug to anyone else on campus or that any other student was harmed by Mr. Cotton's possession of the drug. The University did not contend that there were any other violations of student conduct standards by Mr. Cotton or that he had misbehaved in any other manner while attending MSU. Mr. Cotton's mother, a male friend, and a female staff member at the University spoke in support of Mr. Cotton's efforts to remain at the University. Ms. Baxter testified that she would work with James Cotton to ensure that his continued attendance at MSU would be successful.

Lastly, it is unsure what course James Cotton would take if he were suspended for a significant length of time from MSU and possibly lost his football scholarship. Although this issue was not addressed at the hearing, the Judge recognizes that it may be difficult for Mr. Cotton to return to MSU after a two-quarter suspension as the suspension will likely result in a lessening of educational motivation. The Judge understands that MSU cannot condone the possession of drugs in dormitory rooms and is required to take appropriate action when violations of student conduct standards are discovered. However, the Judge is of the opinion that the University's purpose can be served by placing James Cotton on a one-year probation under the supervision of Maria Baxter with a written contract to ensure that the conditions of remaining at school are completely understood by Mr. Cotton. The Judge is confident that the Student's mother will also keep more frequent contact with her son and Ms. Baxter to ensure that no misbehavior will be tolerated. In light of all of the circumstances herein and factors discussed above, the Judge has recommended a lesser disciplinary sanction than that proposed by the Vice-President of Student Affairs.

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