

IN THE CIRCUIT COURT OF THE
FIRST JUDICIAL CIRCUIT IN AND
FOR ESCAMBIA COUNTY, FLORIDA

DANIEL DECKER,

Petitioner,

vs.

CASE NO.: 17 2012 CA 001480

UNIVERSITY OF WEST FLORIDA,

DIVISION: "K"

Respondent.

Opinion filed this 31st day of March 2014.

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In Decker v. University of West Florida, 85 So.3d 571, (Fla. 1st DCA 2012),
the First District Court of Appeal transferred this case to this Court. The First
District determined that Mr. Decker, who as a student at University of West
Florida (hereafter UWF), timely filed an appeal from a disciplinary decision

rendered by UWF imposing sanctions against Mr. Decker for academic misconduct. However, the District Court also found that UWF is not an “administrative agency” whose decisions should be reviewed by appeal. The First District ruled the proper remedy was to file “a petition for writ of certiorari in the circuit court having territorial jurisdiction over the university.”

As a consequence a “Petition for Writ of Certitori [sic]” was filed with this Court. This Court issued an Order to Show Cause. After a stipulated extension of time to file a response was docketed, a Response to Petition for Certiorari was filed by UWF. Several supplemental filings have been docketed since the Response, and several case management conferences have been set by the parties or the Court.

The nearly eighteen (18) months that have elapsed since the Response was filed was because the court file was returned to the clerk when the first supplemental filing was docketed, and the undersigned failed to ensure the file was returned to this office for appropriate action. The case only popped back up when a case management hearing was scheduled. That is the basis for a significant portion of that delay in rendering this opinion. The parties are extended an apology for the delay.

This Court has jurisdiction as enunciated in the opinion transferring the case

to this Court from the First District Court of Appeal. The standard of review applicable in this case is whether Mr. Decker was accorded procedural due process and whether competent substantial evidence supported the decision of the disciplinary panel. See *Cohen v. School Bd. of Dade County, Fla.*, 450 So.2d 1238 ((Fla. 3d DCA 1984), and *Butler v. Carter*, 123 So.2d 313 (Fla. 1960), Reh. Den. (1960) cited for the standard of review on certiorari from administrative decisions including decisions affecting students such as a university student disciplinary proceeding in *Armesto v. Weidner*, 615 So.2d 707 (Fla. 3rd DCA 1992), Reh. Den. (1993).

Mr. Decker's first combined issue claims the hearing conducted by UWF was procedurally deficient. He asserts he was prevented from having a court reporter present to record and prepare a transcript of the hearing, and his attorney who was present at the hearing was not allowed to participate in the hearing. Mr. Decker acknowledges that he had counsel who assisted with preparation and gathering information for presentation at the hearing, and he had the ability to freely consult with his counsel during the hearing. Both Mr. Decker's assertions are admitted by UWF.

While UWF's Regulation on Academic Misconduct 3.030 does not require recording of academic misconduct hearings, a digital recording was made of Mr.

Decker's and another student's disciplinary hearing. The hearing involved Mr. Decker's obtaining, using, and transferring of test bank materials to the other student which constituted their alleged academic misconduct. The recording of the concluding argument in Mr. Decker's hearing was transcribed by a court reporting firm. That recording and transcript are a part of the record in this case. Under these circumstances, none of the cases cited on behalf of Mr. Decker's position suggest or compel a finding that the process provided in this case was procedurally deficient.

The same UWF regulation specifically authorizes the involvement of Mr. Decker's counsel as was accorded at Mr. Decker's academic misconduct hearing. While counsel for UWF was present, UWF's attorney did not participate in the hearing. Once again, none of the cases cited on behalf of Mr. Decker compel a conclusion that Mr. Decker was not accorded procedural due process in this academic disciplinary setting.

As to the issue of whether substantial, competent evidence was presented to support the decision of the disciplinary panel, it is undisputed that Mr. Decker purchased test banks from an internet private seller. He used them and realized that they contained the exact same questions and answers that appeared on class tests. He provided the materials to the other student who used them as well.

While students in this program were encouraged to conduct research on the internet, there was disputed evidence before the disciplinary panel that, when tests were changed to exclude test bank questions, Mr. Decker and the other student recognized they had been using unauthorized materials and did nothing to alert the faculty, among other disputed facts.

Under these circumstances, the credibility determination was the responsibility of the disciplinary panel. This court is not permitted to substitute its judgement for that of the trier of fact. The disciplinary panel's view of the entire facts presented was applied to the decision of whether Mr. Decker's conduct violated UWF's Academic Misconduct Code and was, thus, a violation of the professional standards and ethics requirements of UWF's nursing program.

Substantial, competent evidence was presented supporting the recommendation of the disciplinary panel's determination that Mr. Decker committed six (6) violations of UWF's Academic Misconduct Conduct Code. The Provost of UWF upheld that decision on appeal.

The Petition for Writ of Certiorari is denied.

/s/ Terry D. Terrell

Terry D. Terrell
Circuit Judge