



STATE OF NEW JERSEY

In the Matter of Dario Ruiz  
 South Woods State Prison,  
 Department of Corrections

FINAL ADMINISTRATIVE ACTION  
 OF THE  
 CIVIL SERVICE COMMISSION

CSC DKT. NO. 2018-1877  
 OAL DKT. NO. CSR 01913-18

ISSUED: AUGUST 17, 2018 BW

The appeal of Dario Ruiz, Senior Correction Officer, South Woods State Prison, Department of Corrections, removal effective December 7, 2017, on charges, was heard by Administrative Law Judge Jeffery R. Wilson, who rendered his initial decision on July 18, 2018. No exceptions were filed.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting of August 15, 2018, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Dario Ruiz.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 15TH DAY OF AUGUST, 2018

*Deirdre' L. Webster Cobb*

Deirdré L. Webster Cobb  
Chairperson  
Civil Service Commission

---

Inquiries  
and  
Correspondence

Christopher S. Myers  
Director  
Division of Appeals and Regulatory Affairs  
Civil Service Commission  
P. O. Box 312  
Trenton, New Jersey 08625-0312

Attachment

---



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

**SUMMARY DECISION**

OAL DKT. NO. CSR 01913-18

AGENCY DKT. NO. N/A

---

**IN THE MATTER OF DARIO RUIZ,  
SOUTH WOODS STATE PRISON.**

---

**Michael L. Testa, Jr., Esq.,** for appellant, Dario Ruiz (Testa Heck Testa & White,  
PA, attorneys)

---

**Jessica M. Saxon,** Deputy Attorney General, for respondent, South Woods State  
Prison (Gurbir S. Grewal, Attorney General of New Jersey, attorney)

Record Closed: July 18, 2018

Decided Date: July 18, 2018

**BEFORE JEFFREY R. WILSON, ALJ:**

**STATEMENT OF THE CASE**

Appellant, a Senior Corrections Officer, appeals his removal effective December 7, 2017. The respondent, South Woods State Prison (SWSP) alleges that based upon an investigation conducted by the Special Investigation Division (SID), the appellant knowingly provided an electronic communication device to a person or persons who were confined within a state correctional facility. SWP further contends that, through self-

admission, the appellant acknowledged that this occurred on multiple occasions and that it is documented in the SWSP/SID investigation.

### PROCEDURAL HISTORY

The appellant filed a timely appeal of the removal and requested a hearing before the Office of Administrative Law (OAL). The matter was transmitted to the OAL, where it was filed on February 1, 2018, as a contested case. N.J.S.A. 52:14B-1 to 15 and N.J.S.A. 52:14F-1 to 13. The respondent filed the within motion for summary decision on March 9, 2018. (R-1.) The appellant waived the 180-day requirement to complete this matter on March 21, 2018. The appellant filed his response in opposition of the within motion for summary decision on May 16, 2018. (A-1.) A telephonic management conference was held on May 14, 2018.

### FACTUAL DISCUSSION AND FINDINGS

The following facts of this case are not in dispute; therefore, I **FIND** as **FACT**:

1. The appellant was employed as a Senior Corrections Officer at SWSP during all relevant times.
2. In March 2017, the SID received information from a confidential witness that the appellant was introducing contraband into SWSP and receiving haircuts from an inmate.
3. An additional confidential informant provided information that the appellant was seen retrieving several duffle bags from his personal vehicle and bringing them into the property room where the appellant supervised inmates who processed, sorted and loaded all inmate property arriving or departing SWSP. This confidential informant also reported that the duffel bag contained hair clippers that were utilized by inmates to cut the appellant's hair. This confidential informant further reported that they witnessed the appellant on a cell phone while next to inmates and had a conversation on speaker phone.

4. Based upon the forgoing, the SID commenced an investigation that resulted in a formal investigative report that was issued on October 30, 2017. (R-1, Exhibit 2.)
5. The aforementioned investigation included electronic surveillance of the SWSP property room depicting events occurring on March 28, 2017, March 29, 2017, and April 4, 2017. (R-1, Exhibits 3 and 4.) A review of the recorded surveillance showed that the appellant introduced a duffle bag into the property room, received haircuts from an inmate and navigated through a cellphone while inmates viewed the screen's content.

---

6. SID then contacted the Cumberland County Prosecutor's Office and The Honorable Cristen D'Arrigo, J.S.C., issued a search warrant on April 12, 2017, to search anything that was accessible to the appellant. (R-1, Exhibit 5.)
7. The appellant was served with the search warrant and submitted to a pat down search. During the pat down search, it was discovered that the appellant had \$2,514.55 in U.S. currency on his person as well as sixty-four bank statements and several hand-written notes that contained inmates' names and identification numbers.

---

8. During the execution of the search warrant, numerous items were seized from the appellant, his vehicle and his lockers that included:
  - \$2,514.55 cash
  - sixty-four Bank of America receipts
  - seventeen papers containing various names and telephone numbers
  - five hair clippers, six combs and four brushes
  - twenty-one clipper blades, nine screw drivers and three screws
  - eight razor blades
  - one knife
  - five cell phones
  - one loaded Glock 22.40 caliber Smith & Wesson handgun and one handgun holster
  - three loaded Glock .40 caliber hollow point ammunition magazines
  - one pair of handcuffs
  - State issued inmate undergarments

9. On April 13, 2017, the appellant waived his Miranda Rights and provided an audio-video recorded statement. (R-1, Exhibit 6.) The appellant admitted ownership of the duffel bag seen in the videos and photos. (R-1, Exhibits 3, 4 and 8.) He stated he purposely left his loaded, off-duty firearm in his vehicle despite being afforded the opportunity to properly secure the weapon pursuant to departmental policy. The appellant stated that he accessed his personal cell phone while inside SWSP, while inmates were present and “revealed” its contents. He admitted to receiving haircuts from an inmate while in the property room on several occasions using the appellant’s personal hair clippers that he brought into the prison for that specific use. The appellant stated that he obtained the unauthorized possession of the cell phones seized from his vehicle after he removed them from the prison’s property room. He admitted to giving inmates access to food items and to taking possession of DOC issued underwear.

10. On March 13, 2017, the appellant was issued Summons S-2017-000676-0601, charging him with violating N.J.S.A. 2C:29-10(d), a crime of the second degree and N.J.S.A. 29-6(b), a petty disorderly persons offense. (R-1, Exhibit 6.) The Cumberland County Prosecutor’s office administratively dismissed these charges on November 2, 2017, and listed the basis for dismissal as “insufficient evidence.” (R-2 at Exhibit A.)

11. On April 13, 2017, the appellant was issued a Preliminary Notice of Disciplinary Action (R-1 at Exhibit 13), a Departmental Hearing was held on November 30, 2017, and a Final Notice of Disciplinary Action was issued on December 7, 2017, (R-1 at Exhibit 14) that resulted in the appellant being charged with the following violations:

- **N.J.A.C 4A:2-2.3(a)(6)** – Conduct unbecoming a public employee
- **N.J.A.C. 4A:2-2.3(a)(12)** – Other sufficient cause
- **HRB 84-17 (as amended) (D-4)** – Improper or unauthorized contact with inmate – Undue familiarity with inmates, parolees, their families or friends
- **HRB 84-17 (as amended) (D-7)** – Violations of an administrative procedure and/or regulation involving safety and security
- **HRB 84-17 (as amended) (C-11)** – Conduct unbecoming an employee

- **HRB 84-17 (as amended) (E-1)** – Violation of a rule, regulation, policy, procedure, order or administrative decision

### LEGAL ANALYSIS AND CONCLUSIONS

N.J.A.C. 1:1-12.5(b) provides that a motion for summary decision may be granted if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law. See also Brill v. Guardian Life Ins. Co., 142 N.J. 520 (1995). The opposing party must submit responding affidavits showing that there is indeed a genuine issue of material fact, which can only be determined in an evidentiary proceeding, and that the moving party is not entitled to summary decision as a matter of law. Failure to do so, entitled the moving party to summary judgment. Id. at 520. Moreover, even if the non-moving party comes forward with some evidence, the courts must grant summary judgment if the evidence is “so one-sided that [moving party] must prevail as a matter of law.” Id. at 536. If the non-moving party’s evidence is merely colorable, or is not significantly probative, summary judgment should not be denied. See Bowles v. City of Camden, 993 F. Supp. 255, 261 (D.N.J. 1998). However, “the court must grant all the favorable inferences to the non-movant.” Brill v. Guardian Life Ins. Co., 142 N.J. at 536.

Here, the appellant is charged with conduct unbecoming a public employee pursuant to N.J.A.C 4A:2-2.3(a)(6). “Conduct unbecoming a public employee” is an elastic phrase, which encompasses conduct that adversely affects the morale or efficiency of a governmental unit or that has a tendency to destroy public respect in the delivery of governmental services. Karins v. City of Atl. City, 152 N.J. 532, 554 (1998); see also In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). It is sufficient that the complained-of conduct and its attending circumstances “be such as to offend publicly accepted standards of decency.” Karins v. City of Atl. City, 152 N.J. at 555 (quoting In re Zeber, 156 A.2d 821, 825 (1959)). Such misconduct need not necessarily “be predicated upon the violation of any particular rule or regulation, but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct.” Hartmann

v. Police Dep't of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) (quoting Asbury Park v. Dep't of Civil Serv., 17 N.J. 419, 429 (1955)).

The basis for the charge of conduct unbecoming a public employee was the appellant's unduly familiar relationship with inmates. At all relevant times, the appellant was assigned to the property room at SWSP. On April 13, 2017, the appellant provided an audio-video recorded statement during which he admitted to receiving haircuts from an inmate while in the property room, on several occasions, using the appellant's personal hair clippers that he brought into the prison for that specific use. The appellant admitted that he accessed his personal cell phone while inside SWSP, while inmates were present and "revealed" its screen contents to the inmates. He also admitted to giving inmates access to food items. During his interview, the appellant was evasive and untruthful until confronted with the video surveillance and photographs.

Here, the appellant admittedly introduced items into the prison that included hair clippers, clipper blades and razor blades. These items were then entrusted to inmates who in turn provided personal grooming services to the appellant. Such objects could easily be utilized as deadly weapons against the appellant, other corrections staff or inmates. ~~The appellant admitted that he scrolled through his personal cell phone and~~ then share its screen's contents with inmates. Furthermore, the video surveillance confirmed that the appellant would share food items with inmates by opening the packaged food and pouring into their hands.

As a corrections officer, appellant was held to a higher standard of conduct. The public respects officers for discovering, reporting, and championing the truth in circumstances of wrongdoing and while they are satisfying their duties. Appellant's conduct in these unduly familiar relationships and his evasiveness to investigators adversely affected the morale or efficiency of a governmental unit and would tend to destroy public respect in the delivery of governmental services. Appellant's actions were violative of his obligations in a position of public trust. It offended publicly accepted standards of respect and decency. No circumstances existed to warrant or justify appellant's conduct. Moreover, no circumstances existed justifying his relationship with



inmates under his charge. Those unduly familiar relationships existed while the inmates were incarcerated in SWPS.

Therefore, I **CONCLUDE** that appellant's behavior did rise to a level of conduct unbecoming a public employee, in violation of N.J.A.C. 4A:2-2.3(a)(6). I **CONCLUDE** that respondent has met its burden of proof on this issue.

HRB 84-17, as amended, provides in pertinent part as follows:

---

In any disciplinary matter, reference must always be made to the collective bargaining agreement covering the disciplined employee, relevant Department of Personnel Rules, appropriate Department bulletins or memoranda, the Handbook of Information and Rules for Employees of New Jersey Department of Corrections, and/or the Law Enforcement Personnel Rules and Regulations.

General Principles, Subsection C of the Handbook of Information and Rules for Employees of the New Jersey DOC provides that employees are prevented from, "becoming unduly familiar with any inmate or group of inmates or permit[ting] himself to become obligated in any way to an inmate or his family; a parolee or his family." General Rules and Regulations, Subsection K provides that "employees must not give or receive from any inmate or parolee or any inmate or parolee's friend, relative, or representative anything in the nature of a gift or promise or favor, however trivial."

---

Correction officers are also subject to the DOC Law Enforcement Personnel Rules and Regulations. Article I, Section 2 states in pertinent part:

No officer shall knowingly act in any way that might reasonably be expected to create an impression of suspension among the public that an officer may be engaged in conduct violative of the public trust as an officer.

Article II, Section 3 states in pertinent part:

Officers shall be held responsible for the proper performance of duty and for strict adherence to these rules and regulations.

The Law Enforcement Personnel Rules and Regulations provides in pertinent part, at Article III, Section 4 that "no officer shall become unduly familiar with inmates who are incarcerated, on community release, or on parole status..." Appellant was required to follow both the Handbook Rules and the Law Enforcement Rules. The two policies must be read together and supplement each other. The purpose of the policies is consistent. It is to prevent officers from being compromised or becoming obligated to inmates, their friends, or families. These unduly familiar relationships compromise officers, the facility, inmates, and the public. They are an avenue to corruption.

The appellant admittedly maintained relationships with the SWSP inmates under his charge. He admitted to receiving haircuts from an inmate while in the property room, on several occasions, using the appellant's personal hair clippers that he brought into the prison for that specific use. The appellant also admitted that he accessed his personal cell phone while inside SWSP, while inmates were present and "revealed" its screen contents to the inmates. Furthermore, he admitted to giving inmates access to food items. This was an unduly familiar relationship. Such behavior is unbecoming a corrections officer and violates the public trust.

Therefore, I **CONCLUDE** that the appellant's conduct violated HRB 84-17 (as amended), D-4, improper or unauthorized contact with an inmate and undue familiarity with inmates, parolees, their family or friends by engaging in a relationship with SWSP inmates under his charge. Furthermore, I **CONCLUDE** that the appellant's actions violated HRB 84-17 (as amended), C-11, conduct unbecoming and employee by engaging in an unduly familiar relationship with SWSP inmates under his charge.

Next, the appellant admitted that he purposely left his loaded, off-duty firearm in his vehicle while at work, despite being afforded the opportunity to properly secure the weapon pursuant to departmental policy. The Law Enforcement Personnel Rules and Regulations, Article V, Subsection 7 states in pertinent part:

(a) An employee entering a correctional facility grounds while armed with an off-duty firearm must proceed directly to the weapons collection station of the correctional facility. The off-duty firearm shall be turned in fully loaded, in its holster,

attached to the State of New Jersey, Firearms Unit Weapons Card. One extra loaded magazine or one extra speedloader in a carrier may be turned into the weapons collection station of the correctional facility with the firearm. No other loose or additional ammunition shall be brought into the correctional facility or carried onto Department property.

(c) Employees are prohibited from storing off-duty weapons or ammunition in their personal vehicles while on Department property.

Therefore, I **CONCLUDE** that the appellant's conduct violated HRB 84-17 (as amended), D-7, violation of an administrative procedure and/or regulation involving safety and security by admittedly purposely leaving his off-duty firearm in his personal vehicle while on-duty as SWSP.

Furthermore, the appellant admitted that he obtained the unauthorized possession of the cell phones seized from his vehicle after he removed them from the prison's property room and that he took possession of DOC issued underwear. The Law Enforcement Personnel Rules and Regulations, Article V, Subsection 3 states in pertinent part:

---

~~Officers shall not willfully, carelessly or negligently lose, destroy, spoil, damage, wrongfully dispose of or convert for personal use or for unauthorized use of another:~~

- (a) Any property belonging to, or assigned by the Department
- (b) Any property belonging to, or assigned to, any inmate or parolee under the custody and care of the Department.

Therefore, I **CONCLUDE** that the appellant's conduct violated HRB 84-17 (as amended), E-1, violation of a rule regulation, policy, procedure, order or administrative decision by obtaining the unauthorized possession of the cell phones seized from his vehicle after he removed them from the prison's property room and by taking possession of DOC issued underwear.

Finally, appellant has also been charged with violating N.J.A.C. 4A:2-2.3(a)(12), "Other sufficient cause." Other sufficient cause is an offense for conduct that violates the implicit standard of good behavior that devolves upon one who stands in the public eye

as an upholder of that which is morally and legally correct. As detailed above, the appellant's conduct was such that he violated this standard of good behavior. As such, I **CONCLUDE** that the respondent has met its burden of proof on this issue. I **CONCLUDE** that appellant's actions violated N.J.A.C. 4A:2-2.3(a)(12).

### PENALTY

"The New Jersey Department of Corrections, Human Resources Bulletin 84-17, As Amended, Disciplinary Action Policy" provides that a range of penalty, from three days suspension to removal, may be issued for the sustained charges of conduct unbecoming a public employee. The DOC in this manner has determined that the appropriate penalty is removal. The appellant has been employed by the DOC for over twenty-seven years. He contends that during his employment he has had an exemplary disciplinary record and he argues that a lesser penalty is appropriate under the circumstances and with taking into consideration the principal of progressive discipline.

However, the principle of incremental, or progressive, discipline does not need to be applied in every disciplinary setting, particularly when the misconduct "is unbecoming to the employee's position or renders the employee unsuitable for continuation in the position, or when application of the principle would be contrary to the public interest." In re Hermann, 192 N.J. 19, 33 (2007). New Jersey courts have repeatedly concluded that, even in the absence of a prior disciplinary record, removal may be imposed if the charges are serious enough in nature. Ibid.; Henry v. Rahway State Prison, 81 N.J. 571 (1980). While one error, even a serious one, does not necessarily require the ultimate penalty of removal, in cases involving correctional facilities, the evaluation of the seriousness of the offenses and the degree to which such offenses subvert discipline are matters peculiarly within the expertise of the corrections facilities. Bryant v. Cumberland County Welfare Agency, 94 N.J.A.R.2d (CSV) 369.

I have reviewed the appellant's Work History and I am aware of his length of employment with the DOC. (A-1, Exhibit B.) However, based upon all the facts detailed above, I **CONCLUDE** that the appropriate penalty is removal.

**ORDER**

It is hereby **ORDERED** that the respondent's motion for summary decision is **GRANTED**.

It is hereby **ORDERED** that the following charges are **SUSTAINED**:

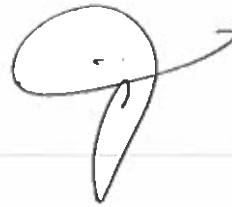
- **N.J.A.C 4A:2-2.3(a)(6)** – Conduct unbecoming a public employee
- **N.J.A.C. 4A:2-2.3(a)(12)** – Other sufficient cause
- **HRB 84-17 (as amended)(D-4)** – Improper or unauthorized contact with inmate – Undue familiarity with inmates, parolees, their families or friends
- **HRB 84-17 (as amended)(D-7)** – Violations of an administrative procedure and/or regulation involving safety and security
- **HRB 84-17 (as amended)(C-11)** – Conduct unbecoming an employee
- **HRB 84-17 (as amended)(E-1)** – Violation of a rule, regulation, policy, procedure, order or administrative decision

It is hereby **ORDERED** that the penalty of removal is **AFFIRMED**.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 40A:14-204.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



July 18, 2018  
DATE

JEFFREY R. WILSON, ALJ

Date Received at Agency:

July 18, 2018

Date Mailed to Parties:

July 18, 2018

JRW/dm

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

7-18-18  
DATE

  
\_\_\_\_\_  
JEFFREY R. WILSON, ALJ

Date Received at Agency: July 18, 2018

Date Mailed to Parties: July 18, 2018

JRW/dm

**WITNESSES**

**For Appellant:**

None

**For Respondent:**

None

---

**EXHIBITS**

**For Appellant:**

A-1 Appellant's submission in opposition to respondent's Motion for Summary Decision, filed May 16, 2018

**For Respondent:**

---

R-1 Respondent's Motion for Summary Decision, filed March 9, 2018