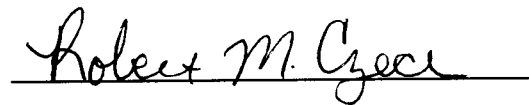


Re: Jimmy West

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
AUGUST 19, 2015

A handwritten signature in cursive script, reading "Robert M. Czech", is written over a horizontal line.

Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Unit H
P. O. Box 312
Trenton, New Jersey 08625-0312

attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSR 07972-13

**IN THE MATTER OF JIMMY WEST,
NORTHERN STATE PRISON.**

Simone A. Mulla, Esq., for appellant Jimmy West
(Rutgers Law Associates Fellowship Program Rothman & Associates)

Christopher Kurek, Deputy Attorney General, for respondent Northern State
Prison (John Jay Hoffman, Attorney General of New Jersey, attorney)

Record Closed: December 11, 2014

Decided: July 20, 2015

BEFORE **JEFFREY A. GERSON**, ALJ:

STATEMENT OF THE CASE

Jimmy West was employed by the New Jersey Department of Corrections as a senior correction officer assigned to Northern State Prison.

On December 4, 2011, West was arrested by the Newark Police Department after what the police report indicates was a domestic violence incident involving West and S.M., his girlfriend.

The arrest resulted in West being charged with domestic violence, simple assault and subsequently with aggravated assault with a firearm, kidnapping, making terroristic threats, and possession of a weapon for an unlawful purpose. On January 18, 2013, West plead guilty to false imprisonment (2C:13-3) and simple assault (2C:12-1a). On April 9, 2013, West was served with a Preliminary Notice of Disciplinary Action, which specified several charges (see A-2 and A-3 in evidence) including several violations of Human Resource Bulletin 84-17 and N.J.A.C. 4A:2-2.3(a)(3), inability to perform duties.

A Departmental hearing was conducted and resulted in the charges being sustained and a Final Notice of Disciplinary Action being issued on May 9, 2013.

West appealed the Final Notice of Disciplinary Action and a hearing was held at the Office of Administrative Law on April 6, 2015.

BACKGROUND

The Department of Corrections contends that West's two disorderly person convictions bar him from "purchasing, owning, possessing or controlling a firearm at any time." N.J.S.A. 2C:25-19. Secondly, the Department of Corrections argues that West has violated the Lautenberg Amendment, 18 U.S.C.A. § 922(g)(9) because he pled guilty to an offense which contained in element of domestic violence.

From a legal standpoint, there is little in dispute. On November 26, 2012, Jimmy West entered his guilty plea to simple assault and false imprisonment with the following allocution.

Ms. Sorrel: Mr. West, drawing your attention to the date, December 4, 2011, over at the apartment complex where you live on North 12th Street in the City of Newark you had a verbal altercation with your then girlfriend [S.M.], correct?

Mr. West: Yes.

Ms. Sorrel: It was a heated verbal altercation and it proceeded into the exterior courtyard of the apartment building, correct?

Mr. West: Yes.

Ms. Sorrel: During the course of the heated verbal altercation, you grabbed [S.M.] by the hair and punched her and dragged her into the building and eventually into your apartment at this North 13th Street location correct?

Mr. West: Yes.

The judgment of conviction (A-1 in evidence) provides for a probation of 1 year . . . no weapons . . . and a requirement that West enroll/complete a batterer's program.

The initial Incident Report dated December 4, 2011, (N-2 in evidence) described the incident as follows:

On this date of December 4, 2011, Unit 216A was dispatched on a simple assault involving a correction officer. Arriving on scene along with two 214A, we were met by the complainant who stated that around the hour of occurrence, the suspect contacted her via email to respond to his home so they could talk. Once she arrived inside the suspect's apartment, he started slapping the victim about the face while she sat on the sofa. He then continued to punch her about the head and body while shouting that he wanted her back. The victim fearing for her life managed to retrieve her car keys when the suspect briefly got on his knees begging he wanted her back. She then quickly ran out of the apartment and down the staircase. The victim quickly screamed for help and tenants came out to observe the assault. The suspect suddenly let her go and quickly she ran out the side door into the driveway.

The only witness to testify at the hearing was Jimmy West. The purpose of his testimony was to refute that S.M. was his "girlfriend." West's explanation was that females who are friends of his are people that he refers to as girlfriends as opposed to signifying a relationship more than of a casual nature. His explanation was unconvincing and undoubtedly pretextual. A review of the documentation submitted and the statements taken from both West and S.M. compel the conclusion that S.M. was Mr.

West's girlfriend, and at the time of the assault, he sought a reconciliation. His testimony at the hearing concerning his contention that S.M. had taken a necklace from him and left the apartment with him seeking to recover the necklace is an unconvincing recitation recently contrived to refute the compelling contention that S.M. was his girlfriend, though at the time of the assault, apparently, an ex-girlfriend. N.J.S.A. 2C:39-7(b)(1) makes it a crime in the second degree for any person convicted of a crime involving domestic violence as defined in N.J.S.A. 2C:25-19 to own, purchase, or control a firearm. Pursuant to N.J.S.A. 2C:25-19(a)(12) and (d), "domestic violence" encompasses an assault and false imprisonment against the spouse, a former spouse or former or present household member, or a person with whom the offender has had a dating relationship.

The preponderance of the evidence in this matter leads to the inescapable conclusion that West had unquestionably been in a dating relationship with S.M. and it was in the pursuit of that relationship that the rather violent domestic dispute ensued.

Aspects of the procedural matter in this case are disturbing from a factual matter, but are not compelling or convincing from a legal matter. I refer here to an apparent misunderstanding West had at the time of his plea, a misunderstanding which led him to believe that his guilty pleas to the disorderly person's offenses would not result in the loss of his employment. The colloquy at the time of his plea could very well have mislead West into believing that his job was not in jeopardy, but the legal advice he obtained from his attorney at the time and subsequent attempt to clarify the situation with the Judge who took the plea, failed to successfully resolve the matter in West's favor. His misunderstanding, assuming there was one, is not enough to overcome the legal aspects of the factual basis of his plea which clearly labeled this matter as a domestic violence assault. A domestic violence assault on a girlfriend results in the prohibition of the offender from obtaining, controlling, or possessing a weapon and as such, precludes the possibility that West could retain his employment as a correction officer. There is also, from a factual standpoint, little doubt that the battering of his girlfriend and the subsequent plea of simple assault and false imprisonment calls for the application of the Lautenberg amendment.

I **FIND** as a matter of **FACT** that Jimmy West committed a simple assault and battery and falsely imprisoned his girlfriend or former girlfriend S.M. and plead guilty to both those offenses with an allocution that leaves little doubt as to the factual circumstances surrounding the incident.

ORDER

It is **ORDERED** that Jimmy West's termination as a senior correction officer is hereby **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. 52:14B-10.

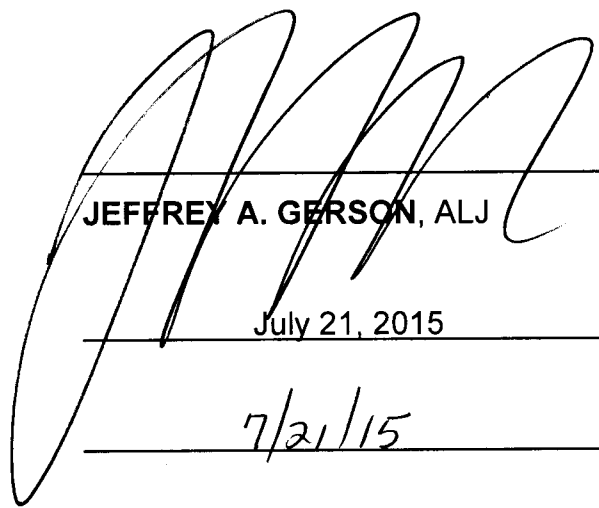
Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, MERIT SYSTEM PRACTICES AND LABOR RELATIONS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, P.O. Box 312, Trenton, New Jersey 08625-0312**,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

July 21, 2015

DATE

Date Received at Agency:

Date Mailed to Parties:
sej



JEFFREY A. GERSON, ALJ

July 21, 2015

7/21/15

APPENDIX

WITNESSES

For Appellant:

Jimmy West

For Respondent:

None

EXHIBITS IN EVIDENCE

For Appellant:

- A-1 Judgment of Conviction dated January 24, 2013
- A-2 Preliminary Notice of Disciplinary Action dated April 9, 2013
- A-3 Decision of Informal Pre-Termination Hearing dated April 19, 2013
- A-4 Appeal of Major Disciplinary Action dated April 19, 2013
- A-5 Letter from Jimmy West dated April 19, 2013
- A-6 Correspondence from Genia C. Phillip, Esq. dated April 29, 2013
- A-7 Correspondence from Susan C. Sautner, Esq. dated April 29, 2013
- A-8 Final Notice of Disciplinary Action dated May 9, 2013
- A-9 Affidavit of Shavyonne Miller
- A-10 Transcript of Proceeding – Guilty Plea/Superior Court of New Jersey
- A-11 Transcript of Oral Argument dated March 21, 2014
- A-12 Memorandum dated May 15, 2013 re: Off Duty Weapons Restricted Personnel
- A-13 Memorandum dated July 16, 2013 re: On Duty Armed Post Restricted Staff

For Respondent:

- R-1
- R-2 Incident Report
- R-3 Arrest Report
- R-4 Superior Court of New Jersey Judgment of Conviction dated January 10, 2013
- R-5 Preliminary Notice of Disciplinary Action dated April 9, 2013

R-6 Final Notice of Disciplinary Action dated ay 9, 2013

R-7 Job Description for Senior Correction Officer