



STATE OF NEW JERSEY

In the Matter of Purvis Ricks  
Burlington County Jail

CSC DKT. NO. 2018-997  
OAL DKT. NO. CSR 15058-17

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

ISSUED: MAY 4, 2018      BW

The appeal of Purvis Ricks, County Correction Officer, Burlington County Jail, removal effective September 26, 2017, on charges, were heard by Administrative Law Judge Mary Ann Bogan, who rendered her initial decision on March 20, 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 May 2, 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 Purvis Ricks.

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 2ND DAY OF MAY, 2018



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**

OAL DKT. NO. CSR 15058-17

**IN THE MATTER OF PURVIS L. RICKS,  
BURLINGTON COUNTY JAIL.**

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**Mark W. Catanzaro, Esq.,** for appellant Purvis L. Ricks (Law Offices of Mark W. Catanzaro, attorneys)

**Andrew C. Rimol, Special County Counsel,** for respondent Burlington County Jail (Capehart Scatchard, attorneys)

Record Closed: March 5, 2018

Decided: March 20, 2018

BEFORE **MARY ANN BOGAN, ALJ:**

**STATEMENT OF THE CASE**

Appellant Purvis Ricks, a county correction officer with respondent Burlington County Jail (County), appeals from disciplinary action removing him for incompetency, inefficiency, or failure to perform duties; conduct unbecoming; neglect of duty; other sufficient cause—violation of Policy and Procedures Manual sections 1009, 1022, 1023, 1038; N.J.A.C. 4A:2-2.5(a)(2), opportunity for hearing before the appointing authority; N.J.A.C. 4A:2-2.7(a)(2), actions involving criminal matters; N.J.A.C. 4A:2-2.7(c), actions involving criminal matters. The allegation relating to these charges is that appellant pled guilty to N.J.S.A. 2C:20-3(a), theft of movable property. Appellant admits that he pled

guilty, but contends that he has not been convicted, the notice does not set forth the underlying conduct, and therefore removal is not the appropriate discipline.

### PROCEDURAL HISTORY

On December 12, 2016, the respondent issued a Preliminary Notice of Disciplinary Action (PNDA) setting forth charges for an incident that allegedly occurred on November 11, 2016. On September 26, 2017, the respondent issued a Final Notice of Disciplinary Action (FNDA), sustaining the charges and removing the appellant.

After issuance of the FNDA the appellant filed a direct appeal of this matter with the Office of Administrative Law (OAL) on October 10, 2017. The hearing was originally scheduled for December 19, 2017, and adjourned at the request of the respondent. The hearing was again scheduled for January 12, 2018, and was adjourned this time at the request of the appellant. The hearing was held on February 6, 2018, although the appellant did not appear. The record remained open for the submission of briefs. After the briefs were filed on March 5, 2018, the record closed. The appellant waived his right to restoration of pay in the event a disposition of this matter under N.J.S.A. 40A:14-201, otherwise known as the 180-day rule, specifically (b)(4), for a period from January 12, 2018, to February 6, 2018. All parties agree that the County is responsible for the corresponding time period from December 19, 2017, to January 12, 2018, due to adjournment of the hearing at the County's request.

### FACTUAL DISCUSSION

#### Testimony

**T.G. Blango** (Blango) is the administrative lieutenant for the County. His responsibilities include conducting background checks and determining appropriate disciplinary action for employee wrongdoing. It is his job to collect and review incident reports and videos, and to conduct investigations. Based upon his investigation and review, Blango makes disciplinary recommendations to the warden with respect to employee conduct.

Blango reviewed the complaint/warrant which sets forth that on November 11, 2016, appellant obtained a credit card from a person without the cardholder's consent when he took and concealed a wallet at Old Navy belonging to a customer in violation of N.J.S.A. 2C:21-6(c)(1), a fourth-degree crime. (R-1.) The Washington Police Department Incident Report indicates that the customer reported she mistakenly left her wallet on the counter at Old Navy. The store camera footage depicts a black male with a sweatshirt taking the wallet off the counter and placing it in his pocket. (R-2.) On December 9, 2017, the appellant issued a voluntary written statement to the police admitting that he noticed a wallet similar to the wallet his daughter carries on the store counter, and then mistakenly picked up the wallet thinking it was his daughter's wallet. (R-3.) On August 9, 2017, appellant pled guilty to N.J.S.A. 2C:20-3(a), theft of movable property, in Washington Township Municipal Court. (R-4.) On December 12, 2016, the County issued a PNDA setting forth charges for the plea of guilty to the theft on November 11, 2016. (R-5.) The FNDA, sustaining the charges and removing the appellant, was issued on September 26, 2017. (R-6.)

On September 27, 2012, appellant certified that he received the County's Standard Operating Policies and Procedures Disk or Manual for Burlington County Detention Facility and Corrections and Work Release Center. (R-7.) Among the charges, the appellant was terminated for violating specifically:

Section 1009, in part:

[A]ll County Correction Officers after having met all requirements shall be qualified as Peace Officers, therefore a bona fide Law Enforcement Officer and expected to uphold the highest standards of professionalism both on duty and off duty.

[R-8.]

Section 1022, in part:

No officer shall violate the laws, statutes or ordinances of the United States . . . . Violation of any law shall subject the officer or employee to prosecution.

[R-9.]

Section 1023, in part:

All officers of the Burlington County Department of Corrections shall be responsible to observe, comply strictly adhere and enforce all rules, regulations and to follow the policies and procedures contained herein and any amendment promulgated and approved by the Warden.

[R-9.]

Section 1038, in part:

No officer shall act or behave, either in an official or private capacity, to the officer's discredit, or to the discredit of the department.

[R-9.]

Appellant's disciplinary history was also made part of the record. (R-10.)

Blango acknowledged that he did not interview the victim, he did not speak to Detective Meyer, who prepared the complaint/warrant, and he did not attend municipal court on August 9, 2017. He did view the footage of the incident on the store camera, and determined that a theft occurred when the appellant took the wallet off the store counter.

Based on the testimonial and documentary evidence presented, I **FIND** the following **FACTS**:

1. Appellant was employed as a correction officer with the Burlington County Jail.
2. On December 6, 2016, appellant was charged with credit-card theft, N.J.S.A. 2C:21-6(c)(1), a fourth-degree crime.
3. Appellant was then charged by the respondent with N.J.A.C. 4A:2-2.3(a)(1), incompetency, inefficiency, or failure to perform duties; N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee; and N.J.A.C. 4A:2-2.3(a)(7), neglect of duty. Appellant was also charged with N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, for violation of Policy and Procedures Manual sections 1009, 1022, 1023, and 1038, for failure to uphold the highest standards of professionalism both on duty and off duty; for violating the laws; and for engaging in conduct that brings discredit to himself and the Department.
4. On August 9, 2017, appellant pled guilty to N.J.S.A. 2C:20-3(a), theft of movable property, before Judge Martin W. Whitcraft, JMC, in the Washington Township Municipal Court.
5. Appellant was then suspended on August 16, 2017, without pay.
6. Appellant was served with an FNDA relating to the charges and ordering his removal as a correction officer with the Burlington County Jail as of September 26, 2017.
7. Appellant was offered entry into the conditional-dismissal program.
8. At no time was appellant convicted of the offense contained in the complaint.

## LEGAL ANALYSIS

The Civil Service Act, N.J.S.A. 11A:1-1 et seq., governs a public employee's rights and duties. The Act is an important inducement to attract qualified personnel to public service and is liberally construed toward attainment of merit appointments and broad tenure protection. Mastrobattista v. Essex Cnty. Park Comm'n, 46 N.J. 138, 147 (1965). The Act sets forth that State policy is to provide appropriate appointment, supervisory, and other personnel authority to public officials so they may execute properly their constitutional and statutory responsibilities. N.J.S.A. 11A:1-2(b). However, consistent with public policy and civil-service law, a public entity should not be burdened with an employee who fails to perform his or her duties satisfactorily or who engages in misconduct related to his or her duties. N.J.S.A. 11A:1-2(a). To carry out this policy, the Act authorizes the discipline (and termination) of public employees. N.J.S.A. 11A:2-6.

A civil-service employee who commits a wrongful act related to his or her duties, or gives other just cause, may be subject to major discipline. N.J.S.A. 11A:2-6; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2. The general causes for such discipline are set forth in N.J.A.C. 4A:2-2.3(a). In appeals concerning major disciplinary actions, the burden of proof is on the appointing authority. N.J.A.C. 4A:2-1.4(a). The standard of proof in administrative proceedings is a preponderance of the credible evidence. In re Polk License Revocation, 90 N.J. 550 (1982); Atkinson v. Parsekian, 37 N.J. 143 (1962). The preponderance may be described as the greater weight of credible evidence in a case, not necessarily dependent on the number of witnesses, but having the greater convincing power. State v. Lewis, 67 N.J. 47 (1975). Both guilt and penalty are redetermined on appeal from a determination by the appointing authority. Henry v. Rahway State Prison, 81 N.J. 571 (1980); W. New York v. Bock, 38 N.J. 500 (1962).

Here, the appellant challenges the sufficiency of the disciplinary notice served upon him because the FNDA does not set forth that he committed a theft. The respondent submits that the specifications provided appellant with "plain notice" of the disciplinary charges filed against him. The respondent, pursuant to N.J.A.C. 4A:2-2.7(b)(1), served a second PNDA after appellant pled guilty to criminal charges in municipal court.



Ultimately, the FNDA was served after the appellant decided not to request a departmental hearing.

In Sabia v. City of Elizabeth, 132 N.J. Super. 6, 14 (App. Div. 1974), the Appellate Division held that a disciplinary proceeding for a public employee is in no way a criminal or quasi-criminal proceeding and, consequently, the employee in such a proceeding does not come within the shield of the various constitutional guarantees accorded persons accused of a crime. Departmental disciplinary proceedings are civil in nature; requirements of due process are satisfied so long as proceedings are conducted with fundamental fairness, including adequate procedural safeguards. See also In re F.P., Dep't of Corr., No. A-1368-13 (June 10, 2015), <https://njlaw.rutgers.edu/collections/courts/>.

Accordingly, I **CONCLUDE** that appellant was served with sufficient notice of the charges against him.

Moreover, even though the appellant does not dispute the fact that he pled guilty to N.J.S.A. 2C:20-3(a), theft of movable property, he submits that the charges cannot be sustained because he was not convicted. The appellant was charged administratively with pleading guilty to an offense in municipal court, but he had not been convicted of anything since he was admitted to the conditional-dismissal program,<sup>1</sup> which is not a conviction. Appellant argues that this procedural nuance, which allows for a later dismissal of the criminal charge, negates his act of pleading guilty to the underlying conduct upon which the administrative charges are based, especially since after appellant's successful completion of the conditional-dismissal program, the charges will be dismissed.

Respondent argues that appellant's participation in the conditional-dismissal program does not preclude the County from seeking the appellant's termination, because he pled guilty to the underlying conduct. Respondent submits that these disciplinary charges apply to the conduct of appellant underlying the criminal charges. (Resp't's Br.,

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<sup>1</sup> N.J.S.A. 2C:43-13.1.

March 2, 2018 (citing Reno v. Dep't of Corr., CSV 9685-00, Initial Decision (December 26, 2002), adopted, MSB (March 5, 2003), <http://njlaw.rutgers.edu/collections/oal/>.)

Here, the respondent brought disciplinary action and seeks removal of the appellant because of the underlying conduct that brought forth his arrest, the charges, the guilty plea, and appellant's subsequent admission into the conditional-dismissal program. The fact that the charges could ultimately be dismissed after he successfully completed the conditional-dismissal program is not relevant. "Where the conduct of a public employee which forms the basis of disciplinary proceedings may also constitute a violation of the criminal law, . . . the absence of a conviction, whether by reason of non-prosecution or even acquittal, bars neither prosecution nor finding of guilt for misconduct in office in the disciplinary proceedings." Sabia, 132 N.J. Super. at 12.

I **CONCLUDE** that the charges against appellant are founded upon the conduct underlying the criminal charges against him. I also **CONCLUDE** that appellant's participation in the conditional-dismissal program does not preclude the respondent from pursuing disciplinary action against the appellant based upon the underlying conduct.

The County seeks to impose major discipline, namely removal, on the appellant for violations of N.J.A.C. 4A:2-2.3(a)(1), incompetency, inefficiency, or failure to perform duties; N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee; and N.J.A.C. 4A:2-2.3(a)(7), neglect of duty. Appellant was also charged with N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, for violation of Policy and Procedures Manual sections 1009, 1022, 1023, 1038, for failure to uphold the highest standards of professionalism both on duty and off duty, for violating the laws, and for engaging in conduct that brings discredit to himself and the County.

As to the charges of incompetency, inefficiency, or failure to perform duties, in violation of N.J.A.C. 4A:2-2.3(a)(1), the Administrative Code does not define these grounds for disciplinary action. However, case law has determined that incompetence is a "lack of the ability or qualifications necessary to perform the duties required of an individual [and] a consistent failure by an individual to perform his/her prescribed duties in a manner that is minimally acceptable for his/her position." Sotomayer v. Plainfield

Police Dep't, CSV 9921-98, Initial Decision (December 6, 1999) (citing Steinel v. City of Jersey City, 7 N.J.A.R. 91 (1983); Clark v. New Jersey Dep't of Agric., 1 N.J.A.R. 315 (1980)), adopted, MSB (January 24, 2000), <http://njlaw.rutgers.edu/collections/oal/>. "Inefficiency" has been defined as the "quality of being incapable or indisposed to do the things required of an officer" in a timely and satisfactory manner." Glenn v. Twp. of Irvington, CSV 5051-03, Initial Decision (February 25, 2005), adopted, MSB (May 23, 2005), <http://njlaw.rutgers.edu/collections/oal/>. Appellant has been inefficient in his duties, as he is no longer capable of performing his duties. It was appellant's duty to observe and obey all laws, rules, and regulations, and orders of the Department. Instead he conducted himself in a manner that caused harm to other citizens, while in public, which resulted in a criminal plea. Accordingly, he can no longer uphold the integrity of the County and he remains inefficient in his duties. I **CONCLUDE** that the respondent has met its burden of proof on this charge.

Conduct unbecoming a public employee has been interpreted broadly as conduct that adversely affects the morale or efficiency of a governmental unit or that has a tendency to destroy public respect for governmental employees and confidence 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, supra, 152 N.J. at 555 (quoting In re Zeber, 156 A.2d 821, 825 (1959)). Such misconduct need not "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." 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)). Appellant pled guilty to theft of movable property, and the conduct he pled guilty to is unbecoming to a public employee. Accordingly, I **CONCLUDE** that the respondent has met its burden of proof on this charge.

Appellant was also charged with neglect of duty, violating N.J.A.C. 4A:2-2.3(a)(7). Neglect of duty can arise from an omission to perform a duty or failure to perform or discharge a duty, and includes official misconduct or misdoing, as well as negligence. Steinel v. City of Jersey City, 7 N.J.A.R. 91, 95 (1983), modified on other grounds, Civ.

Serv. Comm'n, 7 N.J.A.R. 100 (1983), modified on other grounds, 193 N.J. Super. 629 (App. Div. 1984), aff'd, 99 N.J. 1 (1985). Generally, the term neglect connotes a deviation from normal standards of conduct. In re Kerlin, 151 N.J. Super. 179, 186 (App. Div. 1977). Appellant neglected to uphold the policies and procedures of the County when he did not follow the policies and procedures and conduct himself with the highest standards of professionalism, both on duty and off duty. Therefore, respondent has proven that appellant has committed an act of neglect of duty, and I do so **CONCLUDE**.

Appellant has also been charged with violating N.J.A.C. 4A:2-2.3(a)(12), "other sufficient cause." Other sufficient cause is 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. Asbury Park v. Dep't of Civil Serv., 17 N.J. 419 (1955). As to the charge of other sufficient cause, appellant conducted himself in a manner that violated standards of good behavior when he violated Policies and Procedures sections 1009, 1022, 1023, and 1038. As such, I **CONCLUDE** that the respondent has met its burden of proof on this charge.

I also **CONCLUDE** that the charges of violation of N.J.A.C. 4A:2-2.5(a)(2), N.J.A.C. 4A:2-2.7(a)(2), and N.J.A.C. 4A:2-2.7(c) are not conduct charges; these are regulations set forth for purposes of procedural guidelines.

### **PENALTY**

Once a determination is made that an employee has violated a statute, regulation, or rule concerning his employment, the concept of progressive discipline must be considered. W. New York v. Bock, 38 N.J. 500 (1962). However, it is well established that where the underlying conduct is of an egregious nature, the imposition of a penalty up to and including removal is appropriate, regardless of an individual's disciplinary history. Henry v. Rahway State Prison, 81 N.J. 571 (1980). In re Herrmann, 192 N.J. 19, 33-34 (2007). The principal of progressive discipline is not a "fixed and immutable rule to be followed without question." Carter v. Bordentown, 191 N.J. 474, 484 (2007). Rather, it is recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished record. Ibid.

In this case, the appellant's misconduct is serious, as he pled guilty to theft of movable property. The charges are particularly egregious, in that a law-enforcement officer is held to a higher standard of conduct than other employees and, more than other employees, is expected to act in a responsible manner, honestly, and with integrity, fidelity, and good faith. In re Phillips, 117 N.J. 567, 576 (1990); Reinhardt v. E. Jersey State Prison, 97 N.J.A.R.2d (CSV) 166. It is settled that suspension or removal may be justified where the misconduct occurred off-duty; were it otherwise, "the desired goal of upholding the morale and discipline of the force, as well as maintaining public respect for its officers, would be undermined." In re Emmons, 63 N.J. Super. 140.

Furthermore, the policies and procedures that appellant failed to adhere to, as a paramilitary organization, are to be strictly followed. Maintenance of strict discipline is important in military-like settings such as police departments, prisons and correctional facilities. Rivell v. Civil Serv. Comm'n, 115 N.J. Super. 64, 72 (App. Div.), certif. denied, 50 N.J. 269 (1971); City of Newark v. Massey, 93 N.J. Super. 317 (App. Div. 1967). Refusal to obey orders and disrespect of authority are not to be tolerated. Cosme v. Borough of E. Newark Twp. Comm., 304 N.J. Super. 191, 199 (App. Div. 1997).

The County relies principally on the egregiousness of the conduct to support termination. In addition, appellant has a history of thirteen sustained major disciplines beginning in 2003 to present, including a 100-day suspension. (R-10.)

Having considered all of the proofs offered in this matter, and the impact upon the institution of the behavior of the appellant herein, I **CONCLUDE** that appellant's misconduct was so egregious as to warrant removal, and respondent's action of removing the appellant from his position is appropriate. Appellant betrayed his official duties for personal gain, and deprived a fellow citizen of their rights and benefits in direct contradiction to the conduct expected of him.

I **CONCLUDE** that the action of the appointing authority removing appellant for his actions should be affirmed.

**ORDER**

It is **ORDERED** that the charges against the appellant for violations of N.J.A.C. 4A:2-2.3(a)(1), Incompetency, Inefficiency or Failure to perform duties; N.J.A.C. 4A:2-2.3(a)(6), Conduct unbecoming; N.J.A.C. 4A:2-2.3(a)(7), Neglect of Duty and N.J.A.C. 4A:2-2.3(a)(12) Other Sufficient Cause including appellant's failure to perform his duties in accordance with Department Rules and Regulations 1009,1022,1023, and policy 1038 for engaging in conduct which brings disrepute on the Department are **AFFIRMED**. (The charges for N.J.A.C. 4A:2-2.5(a)(2), 4A:2-2.7(a)(2); 4A:2-2.7(c) are regulations set forth for purposes of procedural guidelines, and are not conduct charges).

Accordingly, I **ORDER** that the action taken by the County in removing appellant from his position as a county correction officer is **AFFIRMED**, and the appeal is hereby **DISMISSED**.

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, DIVISION OF APPEALS AND REGULATORY AFFAIRS, 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.

March 20, 2018  
DATE

  
\_\_\_\_\_  
MARY ANN BOGAN, ALJ

Date Received at Agency:

March 20, 2018

Date Mailed to Parties:

March 20, 2018

MAB/cb

**APPENDIX**

**WITNESSES**

**For appellant:**

None

**For respondent:**

T.G. Blango

**EXHIBITS**

**For appellant:**

None

**For respondent:**

- R-1 Complaint/Warrant, dated December 6, 2016
- R-2 Washington Police Department Incident Report, dated November 21, 2016
- R-3 Statement of Purvis Ricks
- R-4 Washington Township Municipal Court Transcript of Docket, dated August 10, 2017
- R-5 Preliminary Notice of Disciplinary Action, dated August 16, 2017
- R-6 Final Notice of Disciplinary Action, dated September 26, 2017
- R-7 Standard Operating Policies and Procedures, dated September 27, 2012
- R-8 Burlington County Department of Corrections Policies and Procedures Section 1007
- R-9 Burlington County Department of Corrections Policies and Procedures Sections 1022, 1023, 1038
- R-10 Ricks, Purvis Disciplinary History
- R-11 Preliminary Notice of Disciplinary Action, dated December 12, 2016