STATE OF NEW JERSEY

In the Matter of Daniel Purdy
Camden County Correctional Facility

CSC DKT. NO. 2015-2646
OAL DKT. NO. CSR 04305-15

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

ISSUED: MAY 25, 2018 BW

The appeal of Daniel Purdy, County Correction Officer, Camden County Correctional Facility, removal effective January 19, 2015, on charges, were heard by Administrative Law Judge John S. Kennedy, who rendered his initial decision on April 6, 2018. Exceptions were filed on behalf of the appellant and a reply to exceptions was filed on behalf of the appointing authority.

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 23, 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 Daniel Purdy.

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 23RD 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 04305-15

AGENCY DKT. NO. N/A

2015-2646

IN THE MATTER OF DANIEL PURDY, CAMDEN COUNTY CORRECTIONAL FACILITY,

---

Arthur J. Murray, Esq., for appellant, Daniel Purdy (Alterman & Associates, LLC, attorneys)

Antonieta P. Rinaldi, Assistant County Counsel, for respondent, Camden County Correctional Facility (Christopher A. Orlando, County Counsel)

Record Closed: January 5, 2018 Decided: April 6, 2018

BEFORE **JOHN S. KENNEDY**, ALJ:

STATEMENT OF THE CASE

Appellant Daniel Purdy, a Corrections Officer (CO) at Camden County Correctional Facility (CCCF), appeals his removal for Conduct Unbecoming a Public Employee, Insubordination, Inability to Perform Duties, Neglect of Duty, Discrimination that Affect Equal Employment; Other Sufficient Cause; C.C.C.F. Rules of Conduct: 1.1 Violations in General; 1.2 Conduct Unbecoming; 1.3 Neglect of Duty; 1.4

Insubordination; 2.10 Inattentiveness to Duty; 3.2 Security; 4.1 Curtsey; 4.6 Dissemination of Information; 4.7 Official Correspondence; General Order #73, #74, #203; et al.

PROCEDURAL HISTORY

On January 20, 2015, the respondent issued a Preliminary Notice of Disciplinary Action (PNDA), seeking appellant's immediate suspension. Appellant waived his departmental hearing and respondent issued a Final Notice of Disciplinary Action (FNDA) on March 9, 2015, sustaining the charges and seeking appellant's removal. The appellant requested a hearing and the appeal was filed with the Office of Administrative Law (OAL) on March 26, 2015, pursuant to N.J.S.A. 40A:14-202(d). On October 1, 2015, this tribunal signed an Order under OAL Dkt. No. CSR 03599-2015 consolidating appellant's matter with seven other related matters: Kevin Crossan v. Camden County Correctional Facility, OAL Dkt. No. CSR 3599-2015; William Leister v. Camden County Correctional Facility, OAL Dkt. No. CSR 4306-2015; Lance McCarthy v. Camden County Correctional Facility OAL Dkt. No. CSR 3600-2015; Thomas McNellis v. Camden County Correctional Facility, OAL Dkt. No. CSR 4305-2015; Michael Jacob v. Camden County Correctional Facility, OAL Dkt. No. CSR 8847-2015; Thomas Grosmick v. Camden County Correctional Facility, OAL Dkt. No. CSR 10598-2015; and Albert Daniels v. Camden County Correctional Facility, OAL Dkt. No. CSR 11669-2015. On June 2, 2016, and June 8, 2016, appellants Kevin Crossan, Lance McCarthy and William Leister withdrew their appeals. Hearings were held in this matter on January 19, 2017, April 21, 2017, May 10, 2017, and July 27, 2017. Prior to the January 19, 2017, hearing, appellant Albert Daniels, withdrew his appeal. On April 19, 2017, appellant Michael Jacob, withdrew his appeal and on June 15, 2017, appellants Thomas Grosmick and Thomas McNellis, withdrew their appeals leaving Daniel Purdy as the sole remaining appellant. The parties submitted post-hearing submissions on November 21, 2017, and December 11, 2017, and the record closed on January 5, 2018. An Order was entered in this matter on February 21, 2018, to allow for the extension of time in which to file the Initial Decision.

SUMMARY

Appellant is a CO at the CCCF. The allegations involve highly inflammatory racist, sexist and other discriminatory text messaging between eleven white male corrections officers, including the appellant, which were directed towards colleagues, superiors, inmates and others in general. In addition to the offensive nature of the messages themselves, the messages demonstrate that cell phones were being taken into the CCCF, photographs were being taken of officers and inmates in the jail and photographs were taken of confidential information on the correction center computer. There were no black officers or individuals involved in any of the text messaging. As a result of a shakedown in the facility, the cell phone of CO Michael Jacob was confiscated. The prosecutors retrieved nearly 6,000 text messages from this phone which were part of the group chats between the officers in question. The appellant does not dispute that he received any of the messages in question but argues that he only authored 461 of the messages. Of these 461 messages, just 39 were authored by him while he was on duty and of these 39 messages, 21 of those were sent while appellant was either on break or lunch. The appellant does not deny using his cellular phone while at work. He concedes he never received authorization to bring his personal phone into the facility but asserts that cellular phone use by employees at CCCF was not uncommon.

TESTIMONY

For respondent:

Deputy Warden Christopher Foschini had been a CO for the CCCF for twenty-one years, before his retirement in October of 2014. He was assigned to Internal Affairs (IA) for eighteen years. He completed the investigation of this matter and prepared a report which he submitted to the Warden following his investigation. (RP-2.) He testified that on December 30, 2014, his unit was conducting an investigation into cell phones in the facility, which is strictly prohibited. The investigation followed a shakedown that they conducted in November. They questioned CO King during their investigation and he advised them that CO Jacob was in possession of a phone and was using it in the

facility. When they questioned CO Jacob, it was obvious that he was hiding something, but he denied that he was in possession of a cell phone. He said that his cell phone was in his car and he did not bring the cell phone into the facility. Foschini observed him take something out of his vest and hide it on the shelf in the room where they were questioning him. They caught him when he went to retrieve it as he was leaving the room. CO Jacob had two cellphones because he had a girlfriend who communicated with him on a separate phone than the one he used for his wife and family. The phones were confiscated and turned over to the Camden County Prosecutor's Office. Jacob signed a written consent to search his phone.

Foschini identified a notebook entered into evidence which contained a print out of all the text messages between appellant and the other officers in the CCCF. There were nearly 6,000 messages between the officers from September 30, 2014, to December 28, 2015. The messages contain photographs and videos taken in the jail and thousands of messages between the officers. The photographs demonstrate that several of the officers, including appellant smuggled phones into the facility. Cell phones and photographs are prohibited in the facility. In addition, photographs were taken of inmates and computer screens in the facility which contains highly confidential information. Foschini testified that there were 5,782 text messages retrieved between the periods of September 30, 2014, to December 28, 2014.

All of the 5,782 text messages entered into evidence were broken down into two separate chats. Chat number 4389 (P-1) and chat number 549 (P-2.) Foschini read several of the messages which he deemed to be inappropriate, racist and in violation of the policy prohibiting discrimination in the workplace and constituted conduct unbecoming an employee.

Some of the text messages which came from appellant were as follows:

- "Happy Born day nigga"
- "That one smooth ape over-paid nigga" (referring to Darryl Johnson, the Warden's assistant)

- Appellant posted a picture of a white male wearing a red shirt with an American flag stating "I like shooting cans, Mexican, Africans, um Puerto Ricans"
- "How many years that crazy nig got"
- "sleepy nigga" (referring to his African American boss, Warden Owens)
- "Nah, that spook at home making stuffed shells"
- Appellant posted a picture providing information regarding "White European Pride" with a link to an organization called "The Advanced White Society"
- Appellant posted that he wanted to "curb stomp" one of his supervising officers
- Appellant called then Captain, now Warden, Karen Taylor, who is Hispanic, "Dora the Explorer"
- Appellant made a comment about a female co-worker "They calling her a dusty coon . . . um . . . negress something about her hair . . . It was like a jailhouse mop"

Foschini explained that not all of the Attorney General Guidelines are followed by the I.A. unit of CCFC because they are not mandatory for corrections officers. He also agreed that appellant was never a target of any prior Law Against Discrimination (LAD) or other protected class complaint or investigation throughout his tenure as a CO.

Warden Karen Taylor has been employed as a CO for the CCCF for twenty years. In 2015, she was a Captain but has been Warden of the facility for approximately two years. Taylor reviewed and signed appellants PNDA and FNDA (RP-1.) She considered appellant's actions to be so egregious that his relatively decent disciplinary history did not need to be considered in determining that removal was appropriate. She recommended the discipline to Warden Owens based on several factors: appellant had a duty to inform of the group texting; he disseminated and received information and should have informed the department; he admitted having his cellular phone in the jail and violating policy; he admitted receiving racist, sexist and demeaning texts, pictures and he himself posted some racial texts. Taylor considered appellant a "disgrace to the badge."

For appellant:

CO Daniel Purdy is a thirty-six-year-old white male who is married with three children. He had been employed at CCCF from January 2003, until January 2015. He admitted that he had a cell phone in the secure perimeter of the facility and that he was a party to the chats that had been identified by CO Foschini and entered into evidence. He testified that he and his colleagues sent messages to each other and would send pictures of black people to poke fun at their race. He acknowledged the use of derogatory language, photographs and jokes that were neither appropriate or professional but "mindless banter". Appellant conceded on cross-examination that many of the comments were derogatory, but refused to admit that they were racist. He eventually conceded that he could be viewed as racists based on the content of the chats.

The appellant does not dispute that he received any of the messages in question but argues that he only authored 461 of the messages. Of these 461 messages, just 39 were authored by him while he was on duty and of these 39 messages, 21 of those were sent while appellant was either on break or lunch.

Appellant acknowledged that he deserved discipline for certain infractions he admittedly committed but he does not believe he should have been terminated for those infractions.

FINDINGS OF FACT

In view of the contradictory testimony presented by appellant and the respondent witnesses, the resolution of the charges against appellant requires that I make a credibility determination with regard to the critical facts. The choice of accepting or rejecting the witnesses' testimony or credibility rests with the finder of facts. Freud v. Davis, 64 N.J. Super. 242, 246 (App. Div. 1960). In addition, for testimony to be believed, it must not only come from the mouth of a credible witness, but it also has to be credible in itself. It must elicit evidence that is from such common experiences and observation that it can be approved as proper under the circumstances. See Spagnuolo

v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A credibility determination requires an overall assessment of the witnesses' story in light of its rationality, internal consistency and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718,749 (1963). A fact finder is free to weigh the evidence and to reject the testimony of a witness, even though not directly contradicted, when it is contrary to circumstances given in evidence or contains inherent improbabilities or contradictions which alone or in connection with other circumstances in evidence excite suspicion as to its truth. In re Perrone, 5 N.J. 514. 521-22 (1950). See D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 115 (App. Div. 1997).

Having had an opportunity to carefully observe the demeanor of the witnesses, I deem Foschini was truthful and credible. His testimony was consistent with the evidence and the statements that were taken during his investigation. With respect to appellant, he did not dispute the essential facts in this case. He conceded that he had a personal cell phone in the facility and never obtained permission to have it. He conceded that he was aware that other officers had cell phones in the facility and he never reported this conduct. He was also aware that inappropriate photographs were being taken in the facility and transmitted by text message to other officers, including him, and he never reported this conduct. He also conceded that he was a party to the nearly 6,000 text messages which were moved into evidence in this case.

With respect to the nature of the text messages, I deem appellant's testimony was not credible that he was unaware that the comments and the dialogue of the text messages were derogatory, offensive, racist and a violation of the policy prohibiting discrimination and just a joke and mindless banter. This is particularly true considering appellant eventually conceded that he could be viewed as racists based on the content of the chats.

Accordingly, I **FIND**:

1. Between October 2014, and December 2014, appellant received and sent multiple derogatory, inappropriate and racist text messages.

2. Between October 2014, and December 2014, appellant possessed a personal cell phone in the secure part of the CCCF, which he did not have permission to have.
3. Appellant received various text messages which contained photographs or videos taken in the CCCF of confidential information.
4. Appellant was aware that this conduct was occurring and he was aware that it was a violation of the policies and procedures of the CCCF. He never reported this conduct to anyone.
5. Appellant was a member of a group text chain in which inappropriate text messages containing disparaging and racist comments about his supervisors and other colleagues were sent and received. Appellant authored 461 of these text messages both while on duty and off duty.
6. The messages were inappropriate, derogatory, and racist and violated the policy prohibiting discrimination, harassment or hostile environments the workplace; constituted conduct unbecoming and other sufficient cause.

LEGAL DISCUSSION AND CONCLUSION

The Civil Service employees' rights and duties are governed by the Civil Service Act, N.J.S.A. 11A:1-1 to 12.6. The Act is an important inducement to attract qualified personnel to public service and is to be liberally construed toward attainment of merit appointment and broad tenure protection. See Essex Council Number 1, N.J. Civil Serv. Ass'n v. Gibson, 114 N.J. Super. 576 (Law Div. 1971), rev'd on other grounds, 118 N.J. Super. 583 (App. Div. 1971); Mastrobattista v. Essex County Park Commission, 46 N.J. 138, 147 (1965). The Act also recognizes that the public policy of this State is to provide public officials with appropriate appointment, supervisory and other personnel authority in order that they may execute properly their constitutional and statutory responsibilities. N.J.S.A. 11A:1-2(b).

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 Atlantic City, 152 N.J. 532, 554 (1998); see also In re

Emmons, 63 NJ. 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, 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)).

Unbecoming conduct has also been defined as any conduct which adversely affects the morale or efficiency of the department or which has a tendency to destroy public respect for employees and confidence in the operations of government services. Hartmann v. Police Department of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992). The Merit System Board and its predecessor and now successor, the Civil Service Commission (CSC), and the courts have generally held that law enforcement officers are held to a higher standard than the conduct unbecoming employees because discipline is invoked. Correction officers are law enforcement officers to which this higher standard applies.

The standard of behavior for police and correction officers is set higher than that of other civil service employees, meaning that infractions will lead to major discipline of officers than otherwise may not have warranted severer discipline for some other position. See Moorestown Township v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965). When applied to correction officers, a charge of conduct unbecoming can 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. In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960); Bowden v. Bayside State Prison, 268 N.J. Super. 301 (App. Div. 1993).

This matter involves a major disciplinary action brought by the respondent appointing authority against appellant. An appeal to the CSC requires the OAL to conduct a de novo hearing to determine the employee's guilt or innocence, as well as

the appropriate penalty if the charges are sustained. In re Morrison, 216 N.J. Super. 143 (App. Div. 1987). The appointing authority has the burden of proof and must establish by a fair preponderance of the credible evidence that the employee was guilty of the charges. Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk License Revocation, 90 N.J. 550 (1980). Evidence is found to preponderate if it establishes that the tendered hypothesis, in all human likelihood, is true. See Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959), overruled on other grounds, Dwyer v. Ford Motor Co., 36 N.J. 487 (1962).

Applying the law to the facts in this case, I **CONCLUDE** that the respondent has proven all the charges by a preponderance of the credible evidence. I **CONCLUDE** that appellant engaged in conduct which constituted a violation of the policy prohibiting discrimination, harassment or hostile environment in the workplace and conduct unbecoming an employee. I also **CONCLUDE** that the respondent has proven that appellant had a cell phone in the CCCF, which is prohibited. I also **CONCLUDE** that appellant knew that he and his colleagues were violating the cell phone and no photography rules in the CCCF and failed to report such conduct in violation of the rules of the CCCF. I also **CONCLUDE** that appellant was aware that photographs were taken of confidential computer screens and sent by text messages, a violation of the dissemination and confidentiality rules. I further **CONCLUDE** that this same conduct also constituted a violation of rules regarding Neglect of Duty, Insubordination, Inattentiveness to Duty, Courtesy, Dissemination of Information, Personal and Professional Code of Conduct, Official Correspondence, and General Orders #73, #74, and #203.

Appellant argues that respondent is barred by the Law of the Case Doctrine from claiming that the Initial Decision of the Honorable Sarah G. Crowley, A.L.J. issued in a companion matter is, in any manner, dispositive in this matter. See State v. Reldan, 100 N.J. 187 (1985); State v. Hale, 127 N.J. Super. 407 (App. Div. 1974); Lombardo v. Hoag, 269 N.J.Super. 36 (App. Div. 1993). While I agree that Judge Crowley's Initial Decision in Thomas McNulty v. Camden County Correctional Facility, OAL Dkt. No. CSR 3608-15; creates no legal precedent upon which this tribunal is bound to follow, I do, as can be gleaned from the conclusions made herein, agree with her findings of fact

and conclusions of law insofar as the two cases are similar and derive from the same IA investigation.

Appellant further argues that respondent is required to adopt guidelines consistent with the New Jersey Attorney General Guidelines on Internal Affairs Policies and Procedures as it relates to the operation of its IA Unit. N.J.S.A. 40A:14-181 states that "every law enforcement agency . . . shall adopt and implement guidelines which shall be consistent with the guidelines governing the "Internal Affairs Policy and Procedures" of the Police Management Manual promulgated by the Police Bureau of the Division of Criminal Justice in the Department of Law and Public Safety." However, as stated in In the matter of Nolan Cox, Mercer County Department of Public Safety, 2016 WL 7148390, the relevant guidelines exempt correctional facilities from the requirements of N.J.S.A. 40A:14-181. Correctional facilities are agencies not under the supervision of the Attorney General as set forth in the Criminal Justice Act of 1970 as their primary mission does not include enforcing the criminal laws of the State of New Jersey. Therefore, I **CONCLUDE** that they are under no obligation to implement the provisions of the New Jersey Attorney General Guidelines on Internal Affairs Policies and Procedures.

Appellant next argues that because the text messages at issue were published in various newspapers prior to the hearing, the case should be dismissed as being in violation of the New Jersey Attorney General Guidelines on Internal Affairs Policies and Procedures asserting that appellant has been deprived of procedural and substantive due process. However, no evidence was provided at the hearing in this matter that appellant was in any way prejudiced by the aforementioned publication or that it even occurred. It was not until this tribunal reviewed appellants closing brief that it was discovered that these texts had been previously disseminated in a news publication. Furthermore, N.J.S.A. 1:1-14.1 provides that administrative hearing conducted before the OAL shall be conducted as public hearings. To the extent that the text messages at issue in this case were identical to the text messages previously entered into evidence in the matter of Thomas McNulty v. Camden County Correctional Facility, OAL Dkt. No. CSR 3608-15, I **CONCLUDE** that appellant cannot assert an expectation of privacy in

this matter. Therefore, I further **CONCLUDE** that appellant has not been deprived of procedural and substantive due process.

Appellant next argues that he has a First Amendment right under the Federal Constitution and a right to speak freely under Article 1, Paragraph 6 of the New Jersey Constitution as it relates to his private text messages.

The First Amendment of the Constitution of the United Sates reads:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceable to assemble, and to petition the government for a redress of grievances.

Article 1, Paragraph 6, of the New Jersey Constitution provides:

> Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press.

It is asserted that appellant was not required to waive any constitutional rights to which they were entitled under these provisions and therefore, the texts at issue in this matter are entitled to protection under both the Federal Constitution and the New Jersey Constitution. There are, however, exceptions to free speech. As noted in Karins v. Atlantic City, 152 N.J. 532 (1998), one such exception requires the balancing of the public employees freedom of expression against the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees. The question here, as in Kerins, is whether appellant's speech may be fairly characterized as constituting speech on a matter of public concern. Id. at 549. While it is true that most of the texts sent and received by appellant were done so while he was off-duty, it is undisputed that at least some of these texts were sent and received while he and the other members of the group were on duty. Comments such as those posted to this group by appellant and the other members of the group chats were inappropriate, derogatory, and racist and violated the policy prohibiting

discrimination, harassment or hostile environments the workplace. This is especially true considering appellant worked in a jail and his job description required him to exercise control over and interact with the very individuals targets by the inappropriate, derogatory, and racist chats. Therefore, I **CONCLUDE** that appellant's speech cannot be characterized as constituting speech on a matter of public concern and that the State's interest in promoting the efficiency of the public services it performs through its employees out way appellant's interest in making these racist and derogatory comments. Appellant is responsible for the abuse of his right to free speech afforded him in Article 1, Paragraph 6, of the New Jersey Constitution.

PENALTY

In West New York v. Bock, 38 N.J. 500, 522 (1962), which was decided more than fifty-years ago, our Supreme Court first recognized the concept of progressive discipline, under which "past misconduct can be a factor in the determination of the appropriate penalty for present misconduct." In re Herrmann, 192 N.J. 19, 29 (2007) (citing Bock, 38 N.J. at 522). The Court therein concluded that "consideration of past record is inherently relevant" in a disciplinary proceeding, and held that an employee's "past record" includes "an employee's reasonably recent history of promotions, commendations and the like on the one hand and, on the other, formally adjudicated disciplinary actions as well as instances of misconduct informally adjudicated, so to speak, by having been previously brought to the attention of and admitted by the employee." Bock, supra, 38 N.J. 523-24.

As the Supreme Court explained in In re Herrmann, 192 N.J. at 30, "[s]ince Bock, the concept of progressive discipline has been utilized in two ways when determining the appropriate penalty for present misconduct." According to the Court:

> . . . First, principles of progressive discipline can support the imposition of a more severe penalty for a public employee who engages in habitual misconduct . . .
>
> The second use to which the principle of progressive discipline has been put is to mitigate the penalty for a current offense . . . for an employee who has a substantial record of employment

> that is largely or totally unblemished by significant disciplinary infractions . . .
>
> . . . [T]hat is not to say that incremental discipline is a principle that must be applied in every disciplinary setting. To the contrary, judicial decisions have recognized that progressive discipline is not a necessary consideration when . . . the misconduct is severe, when it 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. at 30-33 (citations omitted).]

In the case of In re Carter, 191 N.J. 474 (2007), the Court decided that the principle of progressive discipline did not apply to the sanction of a police officer for sleeping on duty and, notwithstanding his unblemished record, it reversed the lower court and reinstated a removal imposed by the Board. The Court noted the factor of public-safety concerns in matters involving the discipline of correction officers and police officers, who must uphold the law and "present an image of personal integrity and dependability in order to have the respect of the public." In re Carter, 191 N.J. at 486 (citation omitted).

In the matter of In re Stallworth, 208 N.J. 182 (2011), a Camden County pump-station operator was charged with falsifying records and abusing work hours, and the ALJ imposed removal. The CSC modified the penalty to a four-month suspension and the appellate court reversed. The Court re-examined the principle of progressive discipline. Acknowledging that progressive discipline has been bypassed where the conduct is sufficiently egregious, the Court noted that "there must be fairness and generally proportionate discipline imposed for similar offenses." In re Stallworth, 208 at 193. Finding that the totality of an employee's work history, with emphasis on the "reasonably recent past," should be considered to assure proper progressive discipline, the Court modified and affirmed (as modified) the lower court and remanded the matter to the CSC for reconsideration.

A penalty in this case is unavoidable. The case law setting sworn law enforcement officers apart from other public servants as "special" is consistent. The standard guiding their behavior and informing their discipline is strict:

> A police officer is a special kind of public employee. His primary duty is to enforce and uphold the law . . . He represents law and order to the citizenry and must present an image of personal integrity and dependability in order to have respect of the public.

[Twp. of Moorestown v. Armstrong, 898 N.J. Super. 560, 566, 215 A.2d 775 (App. Div. 1965), certif. denied, 47 N.J. 80, 219 A.2d 417 (1966); See also In re Phillips, 117 N.J. 567, 577 (1990)]

In the case of In re Carter, 191 N.J. 474, 485-486 (2007), affirming removal of a police officer who slept while on duty, the Court held:

> In matters involving discipline of police and corrections officers, public safety concerns may also bear upon the propriety of the dismissal sanction. See, e.g., Henry v. Rahway State Prison, 81 N.J. 571, 580, 410 A.2d 686 (1980) (affirming appellate reversal of Board decision to reduce penalty from dismissal to suspension for prison guard who falsified report because of Board's failure to consider seriousness of charge); In re Hall, 335 N.J. Super. 45, 51, 760 A.2d 1148 (App. Div. 200) (reversing Board's decision to reduce penalty imposed on police officer for attempted theft from dismissal to suspension), certif. denied, 167 N.J. 629, 772 A.2d 931 (2001); Bowden v. Bayside State Prison, 268 N.J. Super. 301, 305-06, 633 A.2d 577 (App. Div. 1993) (holding that it was arbitrary, capricious, or unreasonable to reduce penalty from removal to six months suspension for prison guard who gambled with inmates for cigarettes), certif. denied, 135 N.J. 469, 640 A.2d 850 (1994).

To determine whether a lesser penalty than the respondent's termination of appellant is appropriate, the concept of progressive discipline is generally examined. Our courts uniformly have upheld the concept in a long line of cases, beginning with West New York v. Bock, 38 N.J. 500, 523 (1962): (an employee's past record of both discipline and commendations can be considered). See also In re Hermann, 192 N.J.

19, 21 (2007). However, the judiciary also agrees that progressive punishment can be waived when the offense involved is sufficiently egregious. In re Stallworth, 208 N.J. 182, 196-197 (2011). However, the Court in Hermann also declared that progressive discipline can be used to mitigate the penalty where there is a substantial record of employment that is largely or totally unblemished by significant disciplinary infractions. In re Hermann, 192 N.J. at 32-33.

I am satisfied that appellant's conduct in this case was egregious such that progressive discipline need not be considered. The public who is served, and other employees, deserve to be able to expect that those individuals that exercise control over and interact with them will not make them targets of inappropriate, derogatory, and racist chats. To expect otherwise is to invite disorder and confusion in responding to certain functions within the jail, possibly leading to worse, more dangerous situations, and serves to undermine the confidence the public places in the correctional system. It cannot be tolerated. Accordingly, I **CONCLUDE** that the respondent's action in removing the appellant from his position was justified.

ORDER

I **ORDER** that the action of the appointing authority removing CO Daniel Purdy is **AFFIRMED** and the appeal is **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. 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.

April 6, 2018
DATE

JOHN S. KENNEDY, ALJ

Date Received at Agency: April 6, 2018

Date Mailed to Parties: April 6, 2018.

JSK/dm

APPENDIX

WITNESSES

For appellant:

Corrections Officer Daniel Purdy

For respondent:

Deputy Warden Christopher Foschini

Warden Karen Taylor

EXHIBITS

For appellant:

P-1 Chat Number 4389

P-2 Chat Number 549

For respondent:

R-1 Preliminary Notice of Disciplinary Action of Officer Jacob, dated January 5, 2015; Amended Preliminary Notices of Disciplinary Action of Officer Jacob, dated January 16, 2015, and March 18, 2015; Final Notices of Disciplinary Action of Officer Jacob, dated June 1, 2015

R-2 Internal Affairs Report of Captain Foschini

R-3 Internal Affairs Interview of Officer Jacob, dated December 30, 2014

R-4 Two consent forms to search/seize signed by Officer Michael Jacob, dated December 30, 2014

R-5 Phone Text Chat #549 and #4389 Notebook, Individual Extraction Reports of Officer Jacob (aka "Batman")

R-6 Four videos located on Officer Jacob's cell phone

R-7 Photos from Officer Michael Jacob's cell phone along with chat photos posted

R-8 General chat photos

R-9 Sample photos sent/posted specifically by Officer Michael Jacob

R-10 Phone Chat with Officer Takia Johnson

R-11 Phone Text Chat #3488 with Nicole Wagner

RP-1 Officer Daniel Purdy Preliminary Notice of Disciplinary Action, dated January 20, 2015; Final Notices of Disciplinary Action, dated March 9, 2015

RP-2 Internal Affairs Report by Captain Christopher Foschini

RP-3 Shakedown photo of five officers with "Real Niggas do real things" taken in the jail

RP-4 Video of female metal health inmate in tunnel and general photos from Officer Michael Jacob's cell phone

RP-5 General Chat Photos

RP-6 Phone Text Chat Number 549 and Number 4389 (Notebook), Individual Extraction Reports of Officer Purdy

RP-7 Internal Affairs Interview of Officer Daniel Purdy, dated January 16, 2015

RP-8 Sample photos Officer Purdy admitted to seeing

RP-9 Sample photos sent/posted specifically by Officer Purdy

RP-10 Camden County Department of Corrections Rules of Conduct

RP-11 Camden County Department of Corrections Post Order #032 Lobby Security

RP-12 Camden County Department of Corrections General Order #042 Hospital Transport and Duty

RP-13 Camden County Department of Corrections General Order #073 Personal Conduct of Employees

RP-14 Camden County Department of Corrections General Order # 074 Professional Code of Conduct

RP-15 Camden County Department of Corrections General Order #203 Ethical Use of Technology

RP-16 Officer Daniel Purdy Chronology of Discipline