



**STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION**

In the Matter of Kevin Gonzalez

CSC Docket No. 2020-705
OAL Docket No. CSR 13401-19

Remand to the
Office of Administrative Law

ISSUED: MARCH 12, 2020 (DASV)

The appeal of Kevin Gonzalez, a Senior Correctional Police Officer with Northern State Prison, Department of Corrections, of his removal, effective August 19, 2019, on charges, was before Administrative Law Judge Barry E. Moscovitz (ALJ), who rendered his initial decision on January 30, 2020. Exceptions were filed on behalf of the appointing authority.

Having considered the record and the attached ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting on March 12, 2020, did not adopt the ALJ's recommendation to grant the appointing authority's motion for summary decision in part and modify the appellant's removal to a reprimand. Rather, it ordered that the matter be remanded to the Office of Administrative Law (OAL) for a hearing.

DISCUSSION

The appellant was served with a Final Notice of Disciplinary Action removing him from employment, effective August 19, 2019, on charges of neglect of duty, conduct unbecoming a public employee, other sufficient cause, and violations of departmental rules and regulations. Specifically, the appointing authority asserted that the appellant failed to report an altercation that occurred between the appellant, other custody staff, and an inmate, where the appellant punched the inmate. Upon the appellant's appeal to the Commission, the matter was transmitted to the OAL for a hearing as a contested case.

On November 4, 2019, prior to any hearings being held, the appointing authority filed a motion for summary decision, arguing that no genuine issue of material fact existed and that it should prevail as a matter of law. Upon review of the parties' written submissions, the documentation presented, including certifications of witnesses, and a video recording of the alleged incident, the ALJ agreed that the matter was ripe for summary decision. Specifically, the ALJ found that the appellant did not violate any regulations, policies or procedures regarding the use of force against the inmate. However, the ALJ determined that the appellant should have called a Code 33, a code that must be made when force is used. Additionally, the appellant should have handcuffed the inmate pursuant to policy. Consequently, the ALJ indicated that both the appointing authority and the appellant were entitled to prevail as a matter of law. Thus, the ALJ granted the appointing authority's motion for summary decision in part and recommended that the appellant's removal be modified to a reprimand with back pay, seniority, and counsel fees.

In its exceptions, the appointing authority maintains that the ALJ's initial decision should be rejected and summary decision be granted fully in its favor. In that regard, the appointing authority argues that factual findings are not supported in the record and that the appellant's use of force was not reasonable or necessary. Furthermore, it asserts that the ALJ's interpretation of the reporting policy on the use of force was erroneous.

Upon its *de novo* review, the Commission is unable to adopt the ALJ's recommendation to modify the appellant's removal to a reprimand. The ALJ decided this case based on written submissions and documentation, which were not subject to cross examination. Furthermore, a video of the incident was viewed without the benefit of testimony from witnesses regarding the events that unfolded on the video. It is noted that *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. When a motion for summary decision is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding.

In this case, contrary to the appointing authority's exceptions that summary decision should be granted fully in its favor, the record as it currently exists raises genuine issues of fact. Thus, deciding the matter on summary decision was not appropriate. Accordingly, this matter must be remanded back to the OAL for a full

hearing where the parties can call witnesses regarding the alleged incident and the ALJ can make credibility determinations based on all of the evidence in the record. The Commission emphasizes that in order for it to render a fair determination, it must have a complete hearing record.

ORDER

The Commission orders that this matter be remanded to the OAL for further proceedings as set forth above.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 12TH DAY OF MARCH, 2020



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence:

Christopher S. Myers
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSR 13401-19
2020-705

**IN THE MATTER OF KEVIN GONZALEZ,
NORTHERN STATE PRISON.**

Robert R. Cannan, Esq., for appellant Kevin Gonzalez (Markman & Cannan,
attorneys)

Sean P. Havern, Deputy Attorney General, for respondent Northern State Prison
(Gurbir S. Grewal, Attorney General of New Jersey, attorney)

Record Closed: December 20, 2019

Decided: January 30, 2020

BEFORE BARRY E. MOSCOWITZ, ALJ:

STATEMENT OF THE CASE

Kevin Gonzalez, a senior correctional police officer at Northern State Prison, struck an inmate with his hand to deescalate threatening behavior. The amount of force he used was objectively reasonable under the circumstances. Should Gonzalez be terminated? No. Under the use-of-force policy at the prison, a custody staff member may use the amount of force reasonably necessary, including striking an inmate with his hands, to accomplish the law-enforcement objective.

PROCEDURAL HISTORY

On May 28, 2019, the New Jersey Department of Corrections (Department) issued a Preliminary Notice of Disciplinary Action, charging Gonzalez with numerous violations of the Civil Service Code, N.J.A.C. 4A:1-1.1 et seq., and of the Human Resources Bulletin of the Department, HRB 84-17.

In particular, the Department charged Gonzalez with conduct unbecoming an employee in violation of N.J.A.C. 4A:2-2.3(a)(6); neglect of duty in violation of N.J.A.C. 4A:2-2.3(a)(7); other sufficient cause in violation of N.J.A.C. 4A:2-2.3(a)(12); physical or mental abuse of an inmate in violation of HRB 84-17, as amended, C3; inappropriate physical contact or mistreatment of an inmate in violation of HRB 84-17, as amended, C5; conduct unbecoming an employee in violation of HRB 84-17, as amended, C11; violation of administrative procedures and regulations involving safety and security in violation of HRB 84-17, as amended, D7; and violation of a rule, regulation, policy, procedure, order, or administrative decision in violation of HRB 84-17, as amended, E1.

The Department specified that on October 30, 2018, Gonzalez failed to report an altercation that occurred between Gonzalez (together with other custodial staff) and an inmate in the non-contact visit area. In addition, the Department specified that Gonzalez (together with other custodial staff) used excessive physical force with the inmate when Gonzalez punched the inmate in his body area. Finally, the Department specified that Gonzalez placed other staff members and other inmates at risk by failing to activate a Code 33, report the incident, and document it. As a result, the Department sought his removal.

On August 19, 2019, a departmental hearing was held; on August 26, 2019, the Department issued a Final Notice of Disciplinary Action sustaining all of the charges and specifications; and on that date, Gonzalez was removed from his position as a senior correctional police officer.

On September 18, 2019, Gonzalez appealed the determination to the Office of Administrative Law under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and

the act establishing the office, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6.

On October 11, 2019, the case was assigned to me for hearing. On October 24, 2019, an initial prehearing conference was held, and the case was scheduled for hearing on December 2, December 4, and December 5, 2019. During this initial prehearing conference call, no party contemplated any motion, and no motion was pending.

On November 4, 2019, the Department filed this motion for summary decision, and on November 15, 2019, I convened a telephone conference call to discuss it. During that telephone conference call, I suggested that we hold the motion in abeyance pending the completion of the hearing, so the Department would have the opportunity to cross-examine witnesses and amplify policies. The Department, however, persisted. Therefore, I adjourned the hearing dates over the objection of Gonzalez, and established a briefing schedule for opposition and response.

On December 13, 2019, Gonzalez filed his opposition, and on December 20, 2019, the Department filed its response.

FINDINGS OF FACT

Based on the documents the parties submitted in support of and in opposition to the motion for summary decision, I **FIND** the following as **FACT**:

On October 30, 2018, Gonzalez was working as a general assignment officer at Northern State Prison, which meant that he was not assigned to one housing unit or physical location within Northern State Prison, but was available to be moved from post to post at the discretion of his supervisors. On that particular day, Gonzalez's supervisor, Sergeant Wilkens, instructed Gonzalez to go to the visitation area for an escort. Upon receiving the instruction, Gonzalez walked to the visitation area, only a short distance away, where he met another senior correctional police officer, Duprie Fortune, and another supervisor, Sergeant Waters.

When Gonzalez arrived, Waters asked Gonzalez to help escort an inmate, J.W., whose visit had been terminated because the inmate had touched himself inappropriately during the visit. The inmate, however, protested—and his protest increased in volume as Gonzalez approached the cage in which the inmate had sat for the visit. Parenthetically, the inmate was not handcuffed either before or after he left the cage.

Once J.W. left the cage, he walked alongside the gates that enclosed the other cages in the visiting area, escorted by Fortune, who walked in front of him and to his left, and by Gonzalez, who walked behind him and to his right.

When J.W., Fortune, and Gonzalez reached the last cage at the end of the visiting area, they were greeted by Waters, who halted them because the inmate had been, and was continuing to be, animated, raising his voice in protest and using his hands to argue, all of which was perceived by Waters, Fortune, and Gonzalez as threatening behavior, because J.W. refused to follow their orders and instructions to lower his voice and hands and face the cage. Only some of this can be seen on the video, but all of it was reported by Waters, Fortune, and Gonzalez. And it was also reported by senior correctional police officer Joseph Lewis, who arrived a full minute after this protest and argument, but just before Fortune used physical force to deescalate the situation and gain compliance.

To be clear, Waters had specifically stopped J.W. at the end of the visiting area for the express purpose of deescalating the situation and gaining compliance. Indeed, all of the officers, Waters, Fortune, and Gonzalez, in one way or another, had ordered or instructed the inmate to lower his voice and hands and to face the cage, but J.W. refused, continuing his protest and argument for nearly that full minute. As Gonzalez certified, “The [inmate] became increasingly threatening by moving his arms,” and as can be seen on the video, the inmate had become so animated, and increasingly threatening, that he had attracted the attention of at least two other custody staff members, one of whom can be seen peering in through the doorway, and then Lewis, who entered the visiting area through the doorway to join Waters, Fortune, and Gonzalez.

At this point, Waters is standing directly in front of the inmate, Fortune is standing in front of J.W. and to his right, Gonzalez is standing directly behind J.W. but leaning to his left, and Lewis is standing in front of J.W. between Waters and Fortune.

For his part, Gonzalez explicitly instructed J.W. to keep his hands down and to stop moving them, but J.W. refused to follow his order and instruction. J.W. also refused to face the cage. Again, this carried on for a full minute. As a result, Fortune, who viewed this protracted noncompliance as physical resistance to his authority (as well as the authority of his colleagues), and as an immediate threat to his personal safety (as well as the personal safety of his colleagues), used non-deadly force, that is, delivered a single, isolated strike to the front of J.W.'s midsection with a closed fist, to deescalate the situation and gain compliance.

Gonzalez, who also viewed the noncompliance as physical resistance to their authority, and as an immediate threat to their personal safety, immediately followed suit, and delivered a single, isolated strike to the back of J.W.'s midsection with a closed fist, to deescalate the situation and gain compliance.

By all objective measures, the use of non-deadly force by both Fortune and Gonzalez was reasonable. It was exercised by both Fortune and Gonzalez with restraint, as J.W. merely hunched over from the first strike and barely moved from the second. Plus, J.W. recovered quickly. He quickly stood erect, needed no medical treatment, and walked out of the visiting area under his own power. It appears as if J.W. was just surprised, perhaps winded momentarily, by the first strike. The second strike—the one delivered by Gonzalez—seemed to have no physical effect.

Just as important, the use of non-deadly force by both Fortune and Gonzalez worked, as J.W. immediately deescalated his behavior and became compliant. As the officers reported, the inmate became contrite, exclaiming, "I got it, I got it." As a result, when Waters asked J.W. if he wanted to go to the medical unit or whether he required any assistance, J.W. refused the offers, and J.W., together with the officers, exited the visiting area, again on his own power, walking out the through the doorway without incident, and without any physical restraints.

For his part, Gonzalez only accompanied Waters, Fortune, and Lewis an additional 75 to 90 feet, after which Waters, Fortune, and Lewis continued without him to escort J.W. to his housing unit.

In his certification, Gonzalez captured the moment:

Whereas the I/M remained aggressive and threatening, and in an effort to have control of the situation returned to the officers, I delivered a closed fist strike to the back/mid-section in a measured and moderate amount of force to finally gain compliance. I had considered using my department issued Mace but quickly realized that due to the proximity of the Sgt. and other officers and myself to the I/M, the discharge of MACE would have potentially incapacitated some or all of us. This Punch had the desired effect, and I believe that it was successful in finally de-escalating the situation.

[Certification of Gonzalez, dated December 12, 2019, at 3, para. 17.]

Although Gonzalez acknowledges that he should have called a Code 33 because force was used, he did not and does not believe that he was obligated to fill out a "Use of Force Report," otherwise known as a "Special Custody Report," because he was neither asked to do so nor ordered to do so by any of his supervising officers.

Still, Gonzalez believes, in hindsight, that it would have been a good idea to have called a Code 33 and to have filled out a Use of Force Report:

In hindsight, I think that it would have been a good idea to have filled out a form or reports of the incident and as I said previously, it would have been a good idea for a code to have been called by myself or anyone else.

[Certification of Gonzalez, dated December 12, 2019, at 4, para. 23.]

Regardless, the fact remains that Gonzalez did not call a Code 33 or fill out a Use of Force Report after force was used.

Meanwhile, the Department's characterization of the incident is specifically rejected. Gonzalez did not use excessive force; his conduct was not egregious; and he was not physically abusive. Although Fortune punched J.W., he did not restrain J.W.'s right arm. Before that, Gonzalez was not casually leaning against the gate. He had moved as far as he could to his left to get a better view and to secure a better advantage. Just because J.W. was surrounded by four officers does not mean he was any less of a threat to any of them, and he did not double over when Fortune struck him in the way that the Department suggests. J.W. is a large man, at least as large as any of the officers, and the fact that J.W. did not double over, struggle, or fight back is a testament to both J.W.'s physicality and Fortune's restraint.

The same can be said for Gonzalez and the follow-up blow he struck, for J.W. barely moved, and merely retorted, "I got it, I got it."

Indeed, the argument that J.W. was not aggressive and was compliant throughout this encounter is belied by the very video upon which the Department relies and the only sworn statement in this case, which expressly states that the inmate was in fact being aggressive and non-compliant, so much so that the situation had the potential to get out of control and the officers feared for their safety in that instance.

In short, the officers had attempted to deescalate the situation by having J.W. face the cage—at which time they could have used restraints—but J.W. did not give them that chance.

CONCLUSIONS OF LAW

I.

A party may move for summary decision upon any or all substantive issues in a contested case. N.J.A.C. 1:1-12.5(a). The motion for summary decision shall be served with briefs and may be served with supporting affidavits. Ibid. "The decision sought may be rendered if the papers and discovery [that] 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.” N.J.A.C. 1:1-12.5(b). Having reviewed the briefs with the supporting affidavits, I agree that no genuine issue of any material fact exists, given the record before me, and that this case is ripe for summary decision. Accordingly, the Department is entitled to prevail as a matter of law, in part, and Gonzalez is entitled to prevail as a matter of law, in part, for the reasons set forth below.

II.

Internal Management Procedure NSP.CUS.101, Use of Force and Security Equipment, contains the policy and procedure for the use of force at the Northern State Prison. To begin, the policy and procedure define “physical contact” as “contact that involves routine or procedural contact with an individual necessary to effectively accomplish a legitimate law enforcement objective,” and “physical force” as “contact with and an individual beyond that which is generally utilized to effect a law enforcement objective.” Toward this end, physical force may be used “when necessary to overcome an individual’s physical resistance to the exertion of the custody staff member’s authority or to protect persons or property.” Significantly, examples include “wrestling an individual to the ground, using wrist locks or arm locks, striking with the hands or feet, or similar methods of hand-to-hand confrontation.”

More significantly, NSP.CUS.101 contains the policy and procedure for the use of non-deadly force. Under the policy and procedure, the NJDOC justifies the use of non-deadly force, whether mechanical or physical, to protect self or others against unlawful force. The NJDOC also justifies the use of non-deadly force in situations where a custody staff member believes that an inmate’s failure to comply constitutes an immediate threat to correctional facility security or personal safety. There are other circumstances that also justify the use of non-deadly force—all of which are listed below:

A. Use of Force

1. It is the policy of the NJDOC that on-duty custody staff members will use only that force that is objectively reasonable and necessary. The use of force shall never

be considered routine. When custody staff is justified in using both mechanical and physical force, the utmost restraint will be exercised.

2. Custody staff members, while off-duty, should not become involved with routine law enforcement duties that are under the jurisdiction of local law enforcement agencies.

B. Use of Non-Deadly Force

1. The NJDOC justifies the use of non-deadly force (mechanical force or physical force) against persons only under the following circumstances:
 - a. To protect self or others against the use of unlawful force;
 - b. To protect self or others against death or serious bodily harm;
 - c. To prevent damage to property;
 - d. To prevent escape;
 - e. To prevent or quell a riot or disturbance;
 - f. To prevent suicide or attempted suicide; or
 - g. To enforce NJDOC/correctional facility regulations where expressly permitted by NJDOC regulations or in situations where a custody staff member with the rank of sergeant or above believes that the inmate's failure to comply constitutes an immediate threat to correctional facility security or personal safety.

[DOC 72.]

In this case, Gonzalez used "physical contact" and "physical force," that is, a single strike with a closed fist to an inmate, to effect a legitimate law-enforcement objective, that is, to deescalate a threatening situation and gain compliance from the inmate, who was not restrained and was physically resisting authority by not lowering his voice and hands and facing the cage. This became necessary because the inmate's threatening behavior was persisting, if not escalating, for a full minute, demonstrating a protracted resistance to a custody staff member's authority, and an increasing threat to his personal safety. At least three officers told the inmate on at least three separate occasions during this protracted encounter to lower his voice and hands and to face the cage, but the inmate ignored their orders and instructions and continued with his protest and argument.

A strike with the hand is expressly authorized in this situation. As NSP.CUS.101 states, a custody staff member may strike an inmate with the hands or feet, and a custody

staff member may do so to protect himself or others against unlawful force, or in situations where the custody staff member believes that an inmate's failure to comply constitutes an immediate threat to personal safety. Nevertheless, the Department argues that the use of force was not necessary in this case.

I disagree. Just because physical force was used effectively to deescalate the situation, gain compliance, and protect personal safety, does not mean that those legitimate law-enforcement objectives would have been met without the effective use of such force. That is essentially what the Department argues. Had physical force not been used, it was entirely possible that the inmate could have lost control of himself, and the officers of the inmate and the situation. This is essentially what both Fortune and Gonzalez deduced, and that is why they used physical force—to deescalate the situation, gain compliance, and protect personal safety.

The Department also argues that the inmate was in a compromised situation before Gonzalez delivered the second strike, but I again disagree. In short, the argument is too fine. The Department's argument is too fine because the two strikes must be viewed together, as part of the same transaction, and not piecemeal, because life is not lived piecemeal. Life is lived as a whole, and in this case, the inmate had been noncompliant for a protracted period of time. He had refused to follow orders or directions and his threatening behavior continued. To break the pattern, Fortune delivered a single strike to the midsection, and to deliver the message, Gonzalez delivered a second strike to the midsection—which he delivered with less force than Fortune, as the inmate did not react other than to say he understood. The inmate's response, "I got it, I got it," underscores this point.

Since I found that the Department did not prove by a preponderance of the evidence any of the alleged misconduct specified in the Final Notice of Disciplinary Action regarding this use of force, and that the use of force by Gonzalez in this case was objectively reasonable, necessary, and restrained to overcome J.W.'s resistance to authority, and to protect Gonzalez and his colleagues from an immediate threat to their personal safety, I **CONCLUDE** that Gonzalez did not violate any of the regulations, policies, or procedures with which he was charged in the Final Notice of Disciplinary

Action regarding this use of force against J.W., and that Gonzalez should not be disciplined for this alleged misconduct.

III.

Internal Management Procedure NSP.CUS.114, Special Custody Reports, contains the policy for reporting “unusual incidents” at Northern State Prison. According to the policy, NSP.CUS.114, the use of force is such an incident or event, and under the policy, a staff member who witnessed or was involved in such an incident or event, where physical force was used, must document it. The policy specifies that the staff member must write a “Special Custody Report.”

IV. Procedures

A. Unusual Incidents

A staff member who witnessed or was involved in an unusual incident or event shall document the incident or event via a written Special Custody Report. Unusual incidents include, but are not limited to, emergency codes (fire, medical or disturbance), staff or inmate injuries, deaths, suicide attempts, staff or visitor arrests, visitor bans, close custody placement (PHD, TCC, PC, etc.) use of force, escapes, notification of community release escapes, community release and parole returns, emergency trips, maintenance concerns, minimum status inmates laid-in and reasons for, non-routine searches, weapons drugs, cell phone, STG-related materials and other contrabands found, changes to or delays of daily scheduled activities, work stoppage and/or other incident that may affect or threaten the safety, security or orderly running of the institution.

[DOC 65.]

These Special Custody Reports must be submitted timely—within twenty-four hours following the incident or event—but only as directed by supervisory staff:

IV. Procedures

F. Reporting Timeframes

All reports must be submitted in a timely manner as directed by supervisory staff but shall be within 24 hours following an unusual incident or event. Reports written in reference to on-duty incidents must be submitted as directed, prior to the end of the staff member's tour of duty or shift. Reports written in reference to off-duty incidents must be submitted upon the staff member's return to duty or as directed by the Administrator, a Major or designee. Staff members may be offered an extension of any previously established timeframe at the supervisor's discretion providing that the extension does not violate any department rule or standard or any directive from a higher-ranking authority.

The procedures outlined in this IMP cannot cover every possible situation that may arise. It is paramount that good common sense and sound judgment is used at all times. In the event of uncertainty or doubt you are to contact the Shift Commander for instructions.

[DOC 67.]

That a Code 33 must be called when physical force is used, and that the inmate must be handcuffed when the inmate becomes compliant, is contained in the Certification of Major Bruce Kerner, dated October 30, 2019, but it is also acknowledged by Waters during his interview. It is also tacitly, if not explicitly, acknowledged by Gonzalez. No explication was given, however, how these failures, the failure to call a Code 33 and the failure to handcuff an inmate, put anyone at risk. Regardless, this assertion that a Code 33 must be called when physical force is used, and that the inmate must be handcuffed when the inmate becomes compliant, is unchallenged, so I will accept these assertions as policy and procedure at Northern State Prison, which brings me to the application of the law to the facts of this part of the case.

Gonzalez certified that he believes that he should have called a Code 33 because force was used during the incident, but he also certified that he does not believe that he was obligated to have filled out a Use of Force or Special Custody Report because he was neither asked nor ordered to do so by any of his supervising officers. Similarly, Gonzalez implies that he does not believe that he was obligated to have handcuffed the inmate because he was neither asked nor ordered to do so by any of his supervising

officers. Finally, Gonzalez argues that he could not have handcuffed the inmate anyway because handcuffs are in short supply at Northern State Prison and he was not supplied with any.

First, I do not believe that Gonzalez was necessarily obligated to have called a Code 33 because he was not the senior or supervising officer on the scene. Second, the policy and procedure do not explicitly require him to have filled out a Use of Force or Special Custody Report. More pointedly, Subsection IV-A requires that such a report be written, but Subsection IV-F instructs that it may be submitted only at the direction of a supervising officer. That Gonzalez told investigators during his recorded interview, and then certified, that he believes in hindsight that he should have called a Code 33, and that it would have been a good idea for him to have written a report anyway, is well enough, but what is clearer from a review of the recording is that Gonzalez felt obligated to provide such a statement, believing that is what the investigators, and now this tribunal, wants to hear. Regardless, I **CONCLUDE** that when read together, Subsections IV-A and IV-F, the policy and procedure, can only mean for an inferior officer to write, and then submit, a Special Custody Report at the direction of his or her supervising officer.

And since Gonzalez was neither asked nor ordered to write or submit a Use of Force or Special Custody Report by a supervising officer in this case, I further **CONCLUDE** that Gonzalez did not violate any of the regulations, policies, or procedures with which he was charged in the Final Notice of Disciplinary Action for his not doing so.

Nevertheless, I **CONCLUDE** that Gonzalez should be reprimanded for his failure to call a Code 33 and handcuff the inmate because the policy and procedure require it.

To impose a more stringent penalty for something that was more appropriately the province of his superior or supervising officers would simply be unfair; Gonzalez was the inferior officer on the scene, and he has no prior discipline.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that Gonzalez be reinstated to his position of senior correctional police officer, that he be **REPRIMANDED** for his failure to call a Code 33, and that he be **AWARDED** all back pay, seniority, and costs, including all attorney fees associated with this appeal.

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 case. 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 under 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.

1/30/20
DATE


BARRY E. MOSCOWITZ, ALJ

Date Received at Agency:

1/30/20

Date Mailed to Parties:

1/30/20

dr