



STATE OF NEW JERSEY

In the Matter of Tyrell Martin  
New Jersey State Prison,  
Department of Corrections

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

CSC DKT. NO. 2021-1445  
OAL DKT. NO. CSR 03705-21

ISSUED: SEPTEMBER 22, 2021 BW

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The appeal of Tyrell Martin, Senior Correctional Police Officer, New Jersey State Prison, Department of Corrections, removal effective April 1, 2020, on charges, was heard by Administrative Law Judge Sarah H. Surgent, who rendered her initial decision on August 30, 2021. 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, at its meeting of September 22, 2021, 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 Tyrell Martin.

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 22<sup>ND</sup> DAY OF SEPTEMBER, 2021

*Deirdre' L. Webster Cobb*

Deirdré L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
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Attachment



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

**INITIAL DECISION**

**SUMMARY DECISION**

OAL DKT. NO. CSR 03705-21

*AGENCY DKT. NO. 2021-1445*

**IN THE MATTER OF TYRELL MARTIN,  
NEW JERSEY STATE PRISON, DEPARTMENT  
OF CORRECTIONS, APPOINTING AUTHORITY**

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Arthur J. Murray, Esq., for appellant Tyrell Martin (Alterman & Associates, attorneys)

Dipti Vaid Dedhia, Deputy Attorney General, for respondent New Jersey State Prison, Appointing Authority (Andrew J. Bruck, Acting Attorney General of New Jersey, attorney)

**BEFORE SARAH H. SURGENT, ALJ:**

Record Closed: July 27, 2021

Decided: August 30, 2021

**STATEMENT OF THE CASE**

Appellant Tyrell Martin (Martin) appeals from respondent New Jersey State Prison's (NJSP's), Department of Corrections' (DOC's) disciplinary action terminating his

employment as a senior correctional police officer<sup>1</sup> (SCPO), effective April 1, 2021.<sup>2</sup> Martin does not dispute his misconduct or guilt, but only the penalty imposed. He seeks reinstatement conditioned upon a six-month suspension without pay and a satisfactory fitness-for-duty psychological evaluation (FFD), so that he may file for an ordinary disability pension. NJSP moves for summary decision. It maintains that due to the egregious nature of Martin's misconduct, removal is the only appropriate penalty, notwithstanding his alleged disabilities.

### PROCEDURAL HISTORY

After his termination, Martin timely requested a fair hearing on April 1, 2021. The Civil Service Commission (CSC) received his direct appeal on April 7, 2021, and confirmed receipt of that appeal on April 13, 2021, at which time it was deemed perfected. However, the direct appeal was not received by the Office of Administrative Law (OAL) until April 20, 2021, where it was filed to be heard as a contested case pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. It was not assigned to this ALJ until May 7, 2021, likely due to the COVID-19 pandemic (pandemic) and consequent short-staffing at the OAL and remote work by OAL employees.

On May 19, 2021, a telephonic status conference was held, and a hearing was set for June 21 and 22, 2021. Discovery was to be obtained and exchanged no later than June 1, 2021. On June 1, 2021, NJSP contacted my Chambers advising that it had just finished reviewing the discovery and would be filing a motion for summary decision. A telephonic status conference was held on that date and briefing, and oral argument schedules were set. On June 17, 2021, NJSP's motion brief and exhibits were received. Martin's opposition brief and exhibits were received on July 9, 2021.

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<sup>1</sup> The title "senior correction officer" was changed to "senior correctional police officer" on May 1, 2018. N.J.S.A. 11A:2-11.1(2).

<sup>2</sup> On June 23, 2021, I placed Martin's appeal from an unrelated disciplinary matter, CSV 04261-21, on the OAL inactive list for six months, at the mutual request of the parties, as my ruling in this matter could moot the other matter, and NJSP had refused to consolidate the cases, according to Martin's attorney.

On July 20, 2021, oral arguments were heard via videoconference due to the pandemic. At the commencement of oral arguments, Martin argued that I must recuse myself because he contended that NJSP's brief blended its procedural history and statement of facts both as to liability and penalty, included past discipline not recognized by the CSC, and included discipline imposed subsequent to the discipline at issue here. (A-B).

I found no issue with NJSP's brief, as it addressed the underlying charges before it addressed the penalty, albeit without separate headings. I assured the parties that as a former judicial law clerk during the first three years of my career, I am quite capable of and accustomed to disregarding what I deem to be irrelevant or otherwise inadmissible, and that as a former criminal defense attorney thereafter, I have a great appreciation for the presumption of innocence and that the fact of an arrest is by no means indicative of wrongdoing. Accordingly, I have disregarded that which I deem to be irrelevant or otherwise inadmissible.

The record was held open until July 27, 2021, to allow for the parties' post-argument submissions, which consisted of the DOC's Human Resources Bulletin 84-17, as amended, (HRB 84-17) and the DOC's policy concerning letters of counseling. The record closed on that date.

### **FACTUAL DISCUSSION AND FINDINGS**

These salient points are not in dispute. I therefore **FIND** the following as **FACT**.

Martin was employed at NJSP as a SCPO from January 16, 2012, until his removal on April 1, 2021. (A-C at 2). On August 27, 2020, Martin's ex-girlfriend notified NJSP's Special Investigations Division (SID) of Martin's neighbors' concern about a potential threat Martin made against his neighbors via a post on his public Instagram social media account. Martin's post stated:

My neighbors are some real cowards. Real cowards. This area period is breeding some hating ass cowards. There's a lot of cowards in Neptune, Asbury, lol especially Red Bank and especially long branch. Ol soulful softie a\*\*mofos!! Show ya face and be a man or woman. I posted this video on purpose because I know one of my handful of IG [Instagram] friends will relay the information.

[(R-A) (emphasis added) (sic passim).]

On August 15, 2020, Martin posted the following on his Instagram page:

My next door neighbors John & Sandra Thompson & their dog Mugsy can handwash my n\*ts. My neighbor gonna tell me I ought to be ashamed of myself as a law enforcement officer because I was playing Ol Dirty Bastard "Rawhide" in front of my own house while wiping down my truck seats. he also said "You just lost the whole neighborhood." I'm the only person living here and I barely make any noise at all. I guess ODB was too much for em. Now we're enemies □ Wu tang is for the children!!!!!! If I lost the whole neighborhood then they can take turns washing my n\*ts

[(R-B) (emphasis added) (sic passim).]

On August 27, 2020, Martin posted on his Instagram page:

Both of the union representatives on my shift can wash my n\*ts. There both pieces of sh\*t and shouldn't be union representatives. Frick n Frack Muthafuckas □□□. Feldman Ol f\*cked up skin. Villain from the Charles Bronson Death Wish movie series looking mofo. Frizzalone Ol Don Delawes, Fat Cinnamon toast crunch guy looking mofo.

[(R-C) (sic passim).]

At some point before August 27, 2020, Martin had posted a video on Instagram which he took of his neighborhood, including the facade of his own home, narrating: "Mother fuckers across the street, [unintelligible] this shit, they won't let the, they won't show they face, they just keep talkin' shit on a daily basis. They want me to lose all of this by killin' one of these mother fuckers. Dead ass." (R-D) (emphasis added) (sic

passim). Another video Martin posted on his Instagram page depicts Martin filming two of his neighbors' homes, and narrating:

Out here watching my son cool off, and you got these people that's behind these bushes over there, it's either them in the back yard, or these Jamaican mother fuckers across the street, or this bitch over here. I really don't understand this shit because it's a female's fucking voice. You a bitch.

[(R-E) (emphasis added) (sic passim).]

A third video Martin posted is of himself, sitting in a motor vehicle, talking to the camera. His written post next to the video states:

I don't care who see this you can repost and share to the world. F\*ck Naim and Malik Williams. F\*ck whichever Stovall running with the bullshit. F\*ck dem Dusty bum ass 10 ave ni\*\*as. F\*ck dat Cyborg bitch and across the street and every other person in her household. Lying lame a\*\* ni\*\*as. # even the female I don't want on my page anymore can repost this. #yall better hope I don't lose my job #yall gonna feel some pain!!!!!!

[(R-F (emphasis added) (sic passim).)]

Martin's narrative to that video states:

I should have did this video a long time ago, but, I really didn't know I should've did some'n about it a long time ago, but, you know, I'm too worried about my job and shit, but to whichever fuckin original whether they be Sterl or fuckin Dusty Ass brother, or this fuckin all on the verge of smoked out fucker [inaudible] Collins from up the hill you niggas can both suck my dick. You niggas can't beat me. I'll fuck both y'all up. Whoever's runnin with the bullshit, whichever one, you can get it.

[(R-F) (emphasis added) (sic passim).]

On November 6, 2020, Martin was served with a Preliminary Notice of Disciplinary Action (PNDA), stating:

On 10/27/2020, an investigative report was received from Special Investigations Division (SID) providing evidence that you had a verbal confrontation with your neighbor. After this confrontation (August 15, 2020) you posted inappropriate comments and apparent threats against Mr. and Mrs. Thompson and other unidentified individuals within your neighborhood. You admit and confirm that the posts on your "Instagram" page were made by you. You made inappropriate comments such as "They can wash my nuts" and reference "losing all I have by killing one of these motherfuckers." Your actions and comments are not conducive of [sic] a Sworn Law Enforcement Officer and considered conduct unbecoming an employee. Based on this investigative report, you are in violation of HRB 84-17 as amended, the Law Enforcement Rules and Regulations and Internal Management Procedure #402, as stated, "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. Officer's [sic] are public servants 24 hrs. a day and will be held to the Law Enforcement higher standard both on and off duty.

[(R-H).]

Martin did not request a departmental hearing. (R-I). On April 1, 2021, a Final Notice of Disciplinary Action (FNDA) was issued removing Martin from his job as a SCPO on that date. The sustained charges were N.J.A.C. 4A:2-2.3(a)6, conduct unbecoming an employee, N.J.A.C. 4A:2-2.3(a)12, other sufficient cause, HRB 84-17 sections C11, conduct unbecoming an employee, and E1, violation of a rule, regulation, policy, procedure, order or administrative decision. (R-I). Martin readily admits his guilt on all charges. (A-C at 2).

Martin's sworn certification and his attached exhibits A through C were uncontested. (A-C). I therefore further **FIND** the following as **FACT**. Martin is physically and mentally disabled. Id. at 2. Prior to his employment with NJSP, he was in the United States Army. Ibid. He was on active duty in Iraq and Kuwait from September 19, 2000



through June 17, 2008, id. at 2-3, and was honorably discharged thereafter, id. at Ex.A. He was in active combat on two occasions during his service. Id. at 3. Upon his discharge, he became a member of the National Guard until September 19, 2016. Id. at 2. In September 2008, he was granted a military disability pension based upon 30% service-related disabilities from a foot injury and acute depressive disorder. Id. at 3.

During his tenure at NJSP, Martin noticed that his physical and mental health continued to deteriorate, but his “pride got in the way of [him] asking for help for a long time.” Ibid. However, before he was served with the PNDA, he “had reached out for additional help from the military.” Ibid. Based upon a re-examination, his military disability pension was adjusted to 90% service-related disabilities, effective December 1, 2020. Ibid. At that time, Martin began exploring the possibility of filing for an ordinary disability pension with the State, having recognized that he might not be able to continue his career as a SCPO. Id. at 3-4. The Pension Board will not process Martin’s application while his disciplinary charges are pending. Id. at 4.

Martin argues that a plenary hearing should be held only as to the appropriate penalty, so that he can acquire proof of his disabilities and provide an expert report and testimony about his disabilities. Ibid. In the alternative, Martin requests that I reduce his termination to a six-month suspension, with a favorable FFD evaluation as a prerequisite to reinstatement. Id. at 4-5.

As to his Instagram posts concerning his neighbors, Martin explains that his son has been diagnosed with autism, and at the time of his posts, he was teaching his son how to ride a bike, which was a challenge, and one of his neighbors yelled “some disparaging, teasing words” in Martin’s and his son’s direction, which “seriously angered” Martin. Id. at 5. Martin had previously had disputes with his neighbors “on a variety of issues,” but none had ever involved his son. Ibid. However, I note that during his September 11, 2020, SID interview, Martin did not mention his son at all, and explained that his Instagram posts were in response to “insulting comments he hears on a daily

basis emanating from across the street pertaining to [him] masturbating at work.” (R-G at 2-3).

Martin acknowledges that he “acted imprudently,” but notes that his posts were made off duty. (A-C at 5). He had never received on-the-job training about the use of social media and, at the time he made the offending posts, the DOC did not have a social media policy. Id. at 6. However, he had had an Instagram page for seven years, and was aware that it was public, and that he could adjust the security settings to make it private, had he chosen to do so. (R-G at 3).

With respect to his Instagram post disparaging his two union representatives, Martin correctly notes that neither officer viewed the post as threatening, that each was still willing to work with Martin on the same shift, and that neither of them would retaliate against Martin. Ibid.

## **LEGAL ANALYSIS AND CONCLUSIONS**

### **I.**

A summary decision “may be rendered 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.” N.J.A.C. 1:1-12.5(b). That rule is substantially similar to the summary judgment rule embodied in the New Jersey Court Rules. See R. 4:46-2; Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67, 74 (1954).

In Brill v. Guardian Life Ins. Co., 142 N.J. 520 (1995), the New Jersey Supreme Court addressed the appropriate test to be employed in determining the motion:

[A] determination whether there exists a “genuine issue” of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential

materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party. The “judge’s function is not . . . to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.”

[Id. at 540 (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986)).]

In evaluating the merits of the motion, “[a]ll inferences of doubt are drawn against the movant and in favor of the opponent of the motion.” Judson, 17 N.J. at 75. However, “[w]hen 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.” N.J.A.C. 1:1-12.5(b).

Having reviewed the parties’ submissions and heard their oral arguments, I **CONCLUDE** that no genuine issues of material fact exist which require a plenary hearing to determine whether Martin is guilty of the FNDA charges, and if so, the appropriate penalty to be imposed. This matter is therefore ripe for summary decision.

## II.

A civil service employee’s rights and duties are governed by the Civil Service Act and regulations promulgated pursuant thereto. N.J.S.A. 11A:1-1 to 11A:12-6; N.J.A.C. 4A:1-1.1 to 4A:10-3.2. The Act is an inducement to attract qualified individuals to public service positions and is to be liberally construed toward attainment of merit appointments and broad tenure protections. Essex Council No. 1, N.J. Civil Serv. Ass’n v. Gibson, 114 N.J. Super. 576, 581 (Law Div. 1971), rev’d on other grounds, 118 N.J. Super. 583, 586 (App. Div. 1972). However, “[t]here is no constitutional or statutory right to a government job.” State-Operated Sch. Dist. of Newark v. Gaines, 309 N.J. Super. 327, 334 (App. Div. 1998).

Indeed, a civil service employee who commits a wrongful act related to their employment may be subject to discipline, which may be a reprimand, suspension, or removal from employment, depending upon the incident. N.J.S.A. 11A:1-2c; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2(a). Public entities should not be burdened with an employee who fails to perform their duties satisfactorily or engages in misconduct related to their duties. N.J.S.A. 11A:1-2c. Thus, a public entity may impose major discipline upon a civil service employee, including termination/removal from their position. N.J.S.A. 11A:1-2c; N.J.A.C. 4A:2-2.2(a).

In appeals concerning major disciplinary action such as termination, the appointing authority bears the burden to prove the FNDA charges by a preponderance of the competent credible evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); Atkinson v Parsekian, 37 N.J. 143, 149 (1962). Evidence is said to preponderate “if it establishes the reasonable probability of the fact.” Jaeger v. Elizabethtown Consol. Gas Co., 124 N.J.L. 420, 423 (Sup. Ct. 1940) (internal quotation marks omitted). The evidence must “be such as to lead a reasonably cautious mind to a given conclusion.” Bornstein v. Metro Bottling Co., 26 N.J. 263, 275 (1958). OAL hearings on civil service removal appeals are de novo, both as to guilt and the penalty to be imposed. Henry v. Rahway State Prison, 81 N.J. 571, 579 (1980); W. New York v. Bock, 38 N.J. 500, 522, n.1, n.3 (1962).

In New Jersey, all correctional police officers are endowed with full police powers, and are, in fact, police officers. N.J.S.A. 2A:154-4. Police officers are held to a higher standard of conduct than ordinary citizens and other public employees. In re Phillips, 117 N.J. 567, 576-77 (1990); In re Emmons, 63 N.J. Super. 136, 141-42 (App. Div. 1960). “An officer cannot complain that he is being held up as a model of proper conduct; it is one of the obligations he undertakes upon voluntary entry into the public service. His obligations are greater if he desires to maintain his position as police officer.” Emmons, 63 N.J. Super. at 141-42.

Law enforcement officers represent “law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of

the public.” Twp. of Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965). An officer may not “act or behave, either in an official or private capacity, to the officer’s discredit, or to the discredit of the Department. Officers are public servants twenty-four hours a day and will be held to the law enforcement higher standard both on and off-duty.” (R-O at 8) (emphasis added).

In military-like settings such as police departments, prisons, and correctional facilities, it is of paramount importance to maintain strict discipline of employees. See Rivell v. Civil Serv. Comm’n, 115 N.J. Super. 64, 72 (App. Div. 1971); Newark v Massey, 93 N.J. Super. 317, 323 (App. Div. 1967). Indeed, “a finding of misconduct by a police official need not be predicated on the violation of any particular department rule or regulation,” as “an ‘implicit standard of good behavior . . . devolves upon one who stands in the public eye as the upholder of that which is morally and legally correct.’” Phillips, 117 N.J. at 576 (quoting Emmons, 63 N.J. Super. at 140).

In this case, Martin does not contest the charges, and admits his guilt as to each. I therefore **CONCLUDE** that NJSP has met its burden to prove by a preponderance of the credible evidence that Martin’s admitted conduct violated N.J.A.C. 4A:2-2.3(a)6, conduct unbecoming an employee, N.J.A.C. 4A:2-2.3(a)12, other sufficient cause, HRB 84-17 sections C11, conduct unbecoming an employee, and E1, violation of a rule, regulation, policy, procedure, order or administrative decision, (R-I), all of which warrant discipline pursuant to N.J.A.C. 4A:2-2.3(a)6 and (a)12.

### III.

Once a determination has been made that an employee violated a statute, rule, or regulation concerning their employment, the concept of progressive discipline requires consideration. In re Stallworth, 208 N.J. 182, 195-96 (2011); Bock, 38 N.J. at 523. When deciding what disciplinary action is an appropriate penalty, the fact finder shall consider the nature of the sustained charges and the appellant’s past record. Bock, 38 N.J. at 523-24. The employee’s past record is said to encompass their reasonably recent history

of promotions or commendations on the one hand, and on the other hand, any “formally adjudicated disciplinary actions as well as instances of misconduct informally adjudicated . . . by having been previously called to the attention of and admitted by the employee.” Ibid. Consideration as to the timing of the most recently adjudicated disciplinary history should also be given. Id. at 524. I agree with Martin that a Letter of Counseling is not an appealable form of discipline recognized by the CSC, (A-D), and I therefore disregard any such letter submitted by NJSP.

The theory of progressive discipline is not a fixed rule to be followed without question. In re Carter, 191 N.J. 474, 484 (2007). “[S]ome disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record.” Ibid. The question for the fact finder is whether the disciplinary action is so disproportionate to the offense, considering all of the circumstances, to shock one’s sense of fairness. Ibid. Removal has been upheld where the acts charged, with or without a prior disciplinary history, have warranted imposition of that sanction. Ibid. Hence an employee may be removed, without regard to progressive discipline, if their conduct was egregious. Ibid.; In re Herrmann, 192 N.J. 19, 33-34 (2007). Indeed, progressive discipline “is not a necessary consideration 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.” Herrmann, 192 N.J. at 33.

Sworn law enforcement officers are recognized as a “special” kind of public employee. Armstrong, 89 N.J. Super. at 566. Their primary duty is to enforce and uphold the law, exercise tact, restraint, and good judgment, and represent law and order to the citizenry. Ibid. Hence, they must present an image of personal integrity and dependability to garner the respect of the public. Ibid.

NJSP maintains that removal is appropriate in this case because Martin’s misconduct was egregious, and because prior progressive discipline has failed to deter him, making the concept of progressive discipline inapplicable to this case. Martin argues

that progressive discipline is appropriate, and that a 180-day suspension with a favorable FFD evaluation as a condition of reinstatement should be imposed. Martin argues that his admission of guilt and his military-service disabilities mitigate against removal. I disagree with both of Martin's sentiments.

I **CONCLUDE** that Martin's misconduct was so egregious as to warrant automatic removal, without regard to progressive discipline. While I have great appreciation for Martin's military service and sympathy for his service-related disabilities, they are not mitigating factors. His foot injury is wholly unrelated to his misconduct, and his mental illness mitigates against him, not in his favor. His explosive anger poses a danger not only to inmates and colleagues, but also to his neighbors and the public at large, as illustrated in this case. I am confident that many law enforcement officers have served in the military, and may have service-related disabilities. However, that does not and cannot be permitted to give law enforcement officers license to abuse others, either on or off duty, and then apply for a State disability pension.

Martin's misconduct undermines the public trust in law enforcement officers and inspires fear of the very people we should be able to turn to in times of trouble. He has brought disrepute to himself and to the DOC. Martin publicly posted his sexually obscene, profanity-laced, gender-biased, racist, and threatening posts on the world-wide internet, for anyone to read. He identified himself as a law enforcement officer and acknowledged in his posts that he could lose his job based upon the nature of the posts. He indicated contemplating killing his neighbors, and even threatened to harm them and others if he lost his job. He encouraged others to repost his Instagram messages. Social media training and policy or not, Martin clearly knew that his posts were improper enough to jeopardize his job. He is unsuitable for continuation in that job and restoring him would be contrary to the public interest.

Martin's reliance on In re Burkholder, South Woods State Prison, Dep't of Corrs, is misplaced. 2021 N.J. AGEN LEXIS 215, adopted, July 2, 2021. (C-2). In that case, Burkholder, a SCPO with the DOC, appealed from his removal from office after he posted

a single offensive and racially discriminatory comment on his Facebook account. Id. at \*7. It was a general racial post, not targeting named individuals, and stated,

I know that I am not the only one sick of seeing black people beating up mostly white men, women and children. Time for this shit to end, if I see anyone getting beat by anyone I for one am not going to stand by and just watch and record. The time has come to start hitting back (muscle emoji)[.]

[ibid. (sic passim).]

Burkholder had three prior minor disciplinary infractions for time and attendance violations and had not previously been a SID investigation target. Id. at \*8. His Facebook account was private, so only his “Facebook friends” could see his post, but one of those “friends” made the post public. Id. at \*16, \*18. When he realized that the post had become public, he edited it and removed all references to race. Id. at \*16. At the time of the post, the DOC did not have a social media policy and Burkholder had never received any training about the use of social media, including personal use. Id. at \*9, \*30-31. Burkholder had also independently posted a picture of himself in uniform, thus identifying himself as a DOC employee, but that did not violate any rules or regulations. Id. at \*9.

In reducing his removal to a progressive discipline penalty of a 180-day suspension without pay, with reinstatement further conditioned upon diversity and tolerance training and a favorable FFD evaluation, the ALJ found that Burkholder’s one social media communication did not warrant removal because Burkholder lacked social media training, lacked any major disciplinary history over his twenty-three-year career, accepted responsibility for his misconduct, and submitted to major discipline. Id. at \*30-31.

As a preliminary matter, I do not consider admitting guilt to be a mitigating factor in social media cases, as social media posts are virtually indisputable. Moreover, Burkholder made his single post to his private Facebook account, not targeting named individuals, whereas Martin deliberately identified himself as a law enforcement officer, posted his seven Instagram posts publicly, targeted specific individuals, and encouraged



others to repost his posts. It is of no moment that Martin did not have social media training – he had been on Instagram for seven years, understood public versus private posts, and well understood that he could lose his job, as he himself stated, because of his incendiary posts. Martin's disciplinary history is also worse than Burkholder's, rendering the application of progressive discipline inappropriate.

However, even if the concept of progressive discipline were applied, I **CONCLUDE** that Martin's misconduct in this case warrants removal. Martin's prior disciplinary history includes:

1. An April 8, 2016 five-day suspension for 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)2, insubordination, N.J.A.C. 4A:2-2.3(a)7, neglect of duty, N.J.A.C. 4A:2-2.3(a)12, other sufficient cause, HRB 84-17 sections B-1, neglect of duty, loafing, idleness or willful failure to devote attention to tasks which would not result in danger to persons or property, B-5, failure or excessive delay in carrying out an order which would not result in danger to persons or property, C-9, insubordination, intentional disobedience or refusal to accept order, assaulting or resisting authority, disrespect or use of insulting or abusive language to a supervisor, and E-1, violation of a rule, regulation, policy, procedure, or administrative decision. (R-K). Specifically, on February 25, 2016, Martin was assigned to SB-2, and during the perimeter inspection he failed to report to the catwalk area and acknowledge a Sergeant's presence on the perimeter. He was ordered to submit a Special Report on the incident, which he did not complete until his next shift, contrary to orders. Ibid.

2. A January 25, 2018 official written reprimand for N.J.A.C. 4A:2-2.3(a)12, other sufficient cause, and HRB 84-17 section E-1, violation of a rule, regulation, policy, procedure, order or administrative decision. (R-L). Specifically, on January 4, 2018, Martin took a sick day on an "event" day, which required him to provide medical documentation of his illness. He was notified of that requirement and failed to provide the documentation. Ibid.

3. An October 16, 2019 official written reprimand for N.J.A.C. 4A:2-2.3(a)6, conduct unbecoming an employee, N.J.A.C. 4A:2-2.3(a)12, other sufficient cause, HRB 84-17 sections C-11, conduct unbecoming an employee, and C-31, violation of the DOC policy prohibiting discrimination, harassment or hostile environments in the workplace. (R-M). Specifically, on August 18, 2019, Martin violated a policy prohibiting discrimination in the workplace by engaging in harassing behavior based on sex/gender when he told a female SCPO and a male SCPO to “suck his d\*ck” and referred to the female officer as “b\*itch” during an exchange in the NJSP parking lot. Martin further violated that policy by calling that female SCPO and another female SCPO on their respective unit telephones and telling them to “eat a d\*ck.” Ibid.

4. An April 5, 2021 twenty-day suspension for N.J.A.C. 4A:2-2.3(a)6, conduct unbecoming a public employee, N.J.A.C. 4A:2-2.3(a)12, other sufficient cause, HRB 84-17 sections B-1, neglect of duty, loafing, idleness, or willful failure to devote attention to tasks which would not result in danger to persons or property, C-11, conduct unbecoming an employee, and E-1, violation of a rule, regulation, policy, procedure, order, or administrative decision. (R-N). Specifically, on May 27, 2020, Martin drove home from work and received a negative text from someone, then drove from Neptune to that person’s residence in Middletown. Martin was wearing his duty uniform slacks with French blue stripes, black combat-style work boots, and a sweatshirt with F\*CK PRISON printed on it. A verbal altercation ensued, and the target called the Middletown Township Police Department. Martin failed to report that negative outside law enforcement contact to the DOC, because he believed that the SID would not find out about it, thereby suggesting that he was aware of his duty to report it. Ibid. Martin did not request a departmental hearing. Ibid. His appeal was filed at the OAL on May 12, 2021.

Martin argues that I must disregard the above April 5, 2021 disciplinary matter which I placed on the inactive list on June 23, 2021 for a six-month period, at the mutual request of the parties. See n.2. I disagree. That appeal is still before me, and I **CONCLUDE** that I am obliged to consider it as part of Martin’s current disciplinary history. See Johnson v. State Dep’t of Corrs., No. A-4382-993T (App. Div. July 3, 2001) (slip op.

at 8-9) (affirming Merit System Board's finding that ALJ erred by not considering corrections officer's two disciplinary actions that were currently on appeal before the Board). (C-1).

Moreover, even without considering the inactive disciplinary matter as part of Martin's disciplinary history, under the totality of the facts and circumstances in this case, and Martin's other disciplinary history, I **CONCLUDE** that termination is the only appropriate penalty, both under the egregious misconduct and progressive discipline standards. Martin's disturbing pattern of escalating misconduct over a four-and-one-half-year period does not bode well for himself, his neighbors, his colleagues, the DOC, its inmates, and the public at large.

### **ORDER**

It is therefore **ORDERED** that NJSP's motion for summary decision is hereby **GRANTED**; and it is further

**ORDERED** that the charges in the April 21, 2021 FNDA are hereby **SUSTAINED**; and it is further

**ORDERED** that Martin be and is hereby removed from his position as a NJSP/DOC SCPO, effective April 1, 2021; and it is further

**ORDERED** that Martin's petition of 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. 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.



August 30, 2021  
DATE

\_\_\_\_\_  
SARAH H. SURGENT, ALJ

Date Received at Agency:

August 30, 2021 (emailed)

Date Mailed to Parties:

\_\_\_\_\_

SHS/mel

APPENDIX

EXHIBITS

For the Judge:

- C-1 Johnson v. State Dep't of Corrs., No. A-4382-993T (App. Div. July 3, 2001)
- C-2 In re Burkholder, South Woods State Prison, Dep't of Corrs.,  
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For Appellant:

- A-A Not in evidence (duplicate of C-2)
- A-B Certification of Arthur J. Murray, Esq., dated July 9, 2021
- A-C Certification of Tyrell Martin dated July 9, 2021
- A-D Post-argument submission from Arthur J. Murray dated July 20, 2021,  
concerning Letters of Counseling

For Respondent:

- R-A Email from Marisol Valentin to Anthony Gadecki dated September 3, 2020
- R-B Martin's August 15, 2020 Instagram post
- R-C Martin's August 27, 2020 Instagram post
- R-D Martin's Instagram video discussing killing his neighbors (on thumb drive)
- R-E Martin's Instagram video calling his neighbor a "bitch" (on thumb drive)
- R-F Martin's Instagram video threatening "pain" if he loses his job (on thumb  
drive)
- R-G DOC SID Investigation Report dated October 27, 2020
- R-H PNDA dated November 6, 2020
- R-I FNDA dated April 1, 2021
- R-J Not in evidence
- R-K Notice of five-day suspension dated April 8, 2016
- R-L Notice of official written reprimand dated January 25, 2018

- R-M Notice of official written reprimand dated October 16, 2019
- R-N FNDA dated April 5, 2021
- R-O NJDOC Law Enforcement Personnel Rules and Regulations
- R-P NJDOC Human Resources Bulletin 84-17, as amended
- R-Q Not in evidence