

COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION

Decision mailed: 7/27/09
Civil Service Commission *CB*

One Ashburton Place: Room 503
Boston, MA 02108
(617) 727-2293

CARL GONSALVES,
Appellant

v.

**DEPARTMENT OF
CORRECTION,**
Respondent

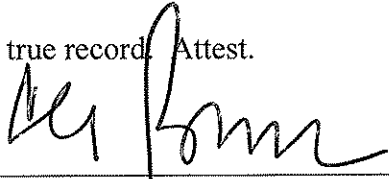
Case No.: D1-07-234

DECISION

After careful review and consideration, the Civil Service Commission voted at an executive session on July 23, 2009 to acknowledge receipt of the report of the Administrative Law Magistrate dated June 5, 2009. No comments were received by the Commission from either party. The Commission voted in 3-2 vote to adopt the findings of fact and the recommended decision of the Magistrate therein. A copy of the Magistrate's report is enclosed herewith. The Appellant's appeal is hereby *denied*.

By vote of the Civil Service Commission (Bowman, Chairman [Yes]; Henderson [No], Marquis [Yes], Stein [Yes] and Taylor [No], Commissioners) on July 23, 2009.

A true record. Attest.



Christopher C. Bowman
Chairman

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

Notice to:

Timothy M. Burke, Esq. (for the Appellant)
Carol A. Colby, Esq. (for the Appointing Authority)
Shelly L. Taylor, Esq. (DALA)

THE COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS
98 NORTH WASHINGTON STREET, 4TH FLOOR
BOSTON, MA 02114

SHELLY L. TAYLOR
Chief Administrative Magistrate

Tel: 617-727-7060
Fax: 617-727-7248

June 5, 2009

Christopher C. Bowman, Chairman
Civil Service Commission
One Ashburton Place, Room 503
Boston, MA 02108

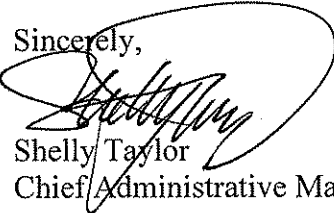
Re: Carl Gonsalves v. Department of Correction
DALA Docket No. CS-08-241

RECEIVED
2009 JUN -8 A 10:33
COMMONWEALTH OF MASS
CIVIL SERVICE COMMISSION

Dear Chairman Bowman:

Enclosed please find the Recommended Decision that is being issued today. The parties are advised that, pursuant to 801 CMR 1.01(11)(c)(1), they have thirty days to file written objections to the decision with the Civil Service Commission. The written objections may be accompanied by supporting briefs.

Sincerely,



Shelly Taylor
Chief Administrative Magistrate

SLT/das

Enclosure

cc: Timothy M. Burke, Esq.
Carol A. Colby, Esq.

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

Carl Gonsalves,
Appellant

v.

Docket No. D1-07-234
DALA No. CS-08-241

Department of Correction,
Appointing Authority

Appearance for Appellant:

Timothy M. Burke, Esq.
160 Gould Street
Needham, MA 02494

**Appearance for Appointing
Authority:**

Carol A. Colby, Esq.
DOC Legal Division
70 Franklin Street, Suite 600
Boston, MA 02202

Administrative Magistrate:

Maria A. Imparato, Esq.

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CIVIL SERVICE COMMISSION

SUMMARY OF RECOMMENDED DECISION

The Department of Correction had just cause to discharge the Appellant as a Correction Officer for violation of institution regulations and policies, and for his involvement in a scheme to deliver contraband jewelry to inmates at MCI Cedar Junction

RECOMMENDED DECISION

INTRODUCTION

Carl Gonsalves has filed a timely appeal under G.L. c. 31, s. 43 of the June 21, 2007 decision of the Department of Correction ("DOC") to terminate him from his position as a Correction Officer ("CO") at MCI Cedar Junction. (Exs. 2, 3)

I held a hearing on April 10, 2008, and held two additional days of hearing on July 22, 2008 and July 31, 2008 at the office of Division of Administrative Law Appeals.

98 North Washington Street, Boston, MA. I declared the hearing private because I received no written request from either party to make the hearing public.

I admitted documents into evidence. (Exs. 1 – 8)¹ and “A” for identification.

The Appointing Authority presented the testimony of Lieutenant Jeffrey Padula; CO Jason Earls; and Captain Patrick Mulvey.

The Appellant, Carl Gonsalves, testified on his own behalf.

On October 14, 2008 the parties filed briefs and proposed decisions.

By letter of December 4, 2008, I requested that DOC counsel supply me and opposing counsel with the missing ex. 23 of Exhibit 7 entitled “III. Supportive Documentation.” On December 10, 2008, DOC counsel provided a DVD disc which is an enhanced version of the videotape marked as Exhibit 7A and comprises the missing ex. 23. The record closed on December 10, 2008.

Mr. Gonsalves was discharged for violation of policies and Rules and Regulations Governing All Employees of the Massachusetts Department of Correction, as follows:

Rule 6(d) which provides in part: “You shall not receive or follow orders of any kind emanating from any person who is not officially connected with the Institution or Department of Correction. Report all infractions of law, rules and orders to a higher authority.”

Rule 8 (c) which provides in part, “You must not associate with, accompany, correspond or consort with any inmate or former inmate except for a chance meeting without specific approval of your Superintendent, DOC Department Head or the Commissioner of Correction. Treat all inmates impartially; do not grant any special

¹ I inadvertently marked as Exhibit 7 both the videotape and the exhibit entitled “III. Supportive Documentation.” After the hearing, I marked the videotape Exhibit 7A.

privileges to any inmate. Your relations with inmates, their relatives or friends shall be such that you should willingly have them known to employees authorized to make inquiries;"

Rule 9(b) which provides in part, "You shall not, nor shall you allow others, to deliver or procure to be delivered, ... any articles or thing with the intent that an inmate shall obtain or receive it ... without the knowledge of the Superintendent or Commissioner of Correction. In addition to the discharge of any employee who introduces contraband to a correctional facility, such person may be subject to subsequent criminal sanctions;"

Rule 10(b) which states in part, "When suspicious behavior is noted you should take steps to satisfy yourself that nothing is being done to jeopardize the good order or safety of the institution;"

Rule 12(a) which provides in part, "Employees shall exercise constant vigilance and caution in the performance of their duties;"

Rule 12(c) which provides in part, "Drugs, narcotics, poisons, alcohol ... shall be stored only in areas which are secure against unauthorized access as approved by the Superintendent;"

Rule 16 which provides in part, "Employees must not bring personal property other than personal effects and car, on or within the precincts and dependencies of the institution without the prior approval of the Superintendent or his/her immediate subordinate;"

Rule 19(c) which provides in part, "Since the sphere of activity within an institution or the Department of Correction may on occasion encompass incidents that

require thorough investigation and inquiry, you must respond fully and promptly to any questions or interrogatories relative to the conduct of an inmate, a visitor, another employee or yourself;"

103 DOC 501 - Institution Security which provides in part, "Personal Cell Phones are prohibited from entering any DOC institution ... and any cell phone, to include Department or Commonwealth of Massachusetts issued, capable of taking pictures or video shall be prohibited from entering the institution;" and

103 DOC 511 – Tool Control Policy which provides in part, "Personal tools are not permitted inside the facility without the approval of the director of security or superintendent's designee and then they must be controlled in the same manner outlined in this policy."

FINDINGS OF FACT

1. Carl Gonsalves, d.o.b. 12/23/1970, worked for the Department of Correction ("DOC") as a Correction Officer ("CO") from in or about 1998 to December 20, 2005 when he was placed on paid administrative leave. By letter of June 21, 2007, Mr. Gonsalves was discharged from his position. (Ex. 7, Personnel Application Form; Ex. 2; Testimony.)
2. Mr. Gonsalves worked at MCI Cedar Junction ("Cedar Junction"). Cedar Junction is known as "The Hill." (Testimony, Padula.)
3. Mr. Gonsalves worked on the day shift from 7 a.m. to 3 p.m., Sunday through Thursday. He was the only day shift officer in the Block 6 housing unit. He began working in Block 6 in 2004. (Testimony, Gonsalves.)

The investigation

4. On November 16, 2005, Cedar Junction Inner Perimeter Security ("IPS") Commander Lt. Patrick Mulvey was told by a confidential informant inmate (who wanted to trade information because he had tried to circumvent his obligation to provide a urine specimen by trying to provide false urine), that he had received a silver chain indirectly through a staff member.
(Testimony, Mulvey; Ex. 7, ex. 1; Ex. 8, p. 1.)
5. On November 18, 2005, the confidential informant called the IPS hotline and reported that Mr. Gonsalves had brought contraband into the institution on numerous occasions and had delivered the contraband to inmate Myles Miranda ("Miranda"). The informant said that Miranda would provide the contraband to other inmates. The informant said that Miranda received the contraband from his uncle, Anthony Rose, who lived at 14 Whispering Pines² in Teaticket, MA.³ The informant said that he, himself, had sent his silver chain and \$100 to Anthony Rose, who gave the package to Mr. Gonsalves who then brought the package to Miranda. (Ex. 7, ex. 1; Ex. 8, p. 1; Testimony, Mulvey.)
6. Mr. Gonsalves lives at 31 Percival Road in Teaticket, MA. The distance between Mr. Gonsalves's address and Anthony Rose's address in Teaticket is 0.7 miles. (Ex. 7, ex. 1; "A" for identification, Mapquest)
7. On November 23, 2005, Lt. Mulvey asked the confidential informant inmate to show him the chain he had allegedly received indirectly from Mr. Gonsalves. The inmate said he did not receive a chain from Mr. Gonsalves;

² The address appears in the DOC records as both 14 Whispering Pines and 14 Whispering Pine.

³ Teaticket is a village in the Town of Falmouth.

he received a watch. The chain was listed on the inmate's property inventory, but the watch was not. The watch was confiscated. (Ex. 7, ex. 2; Testimony, Mulvey.)

8. On December 5, 2005, IPS Sgt. Jeffrey Smith spoke with a different inmate informant who told him that inmates send money to Anthony Rose at 14 Whispering Pines in Teaticket to set up drug and jewelry transactions. The informant said that a CO brought the packages into Cedar Junction. When asked how often the contraband came into the institution, the informant said "it was several weeks because the Officer is out of work and hasn't been in for a while." Sgt. Smith prepared a report of the informant's allegations. (Ex. 7, ex. 3; Testimony, Mulvey.)

9. On December 9, 2005, IPS Sgt. Jeffrey Padula interviewed yet another informant who told him that "A. Rose" at 14 Whispering Pines Drive in East Falmouth was an address that people sent things to in order to get them smuggled into the prison. The informant said that the Block 6 CO who brought in the items was Carl Gonsalves. The informant said that the items were delivered to inmate Miranda. (Ex. 7, ex. 4; Testimony, Mulvey.)

10. Anthony Rose is the uncle of Myles Miranda.

Block 6 surveillance

11. The IPS unit set up surveillance in the Block 6 housing unit by using a hidden video camera, and by placing an officer in the vent behind Miranda's cell to listen through the pipe chase to his conversations. An IPS officer

wrote down conversations he heard between Miranda and other inmates on December 13, 15, 17, 18 and 19, 2005. (Ex. 7, exs. 9, 11.)

12. During the December 13, 2005 conversation between Miranda and another inmate named Frank Robinson, also known as G-Pack, Miranda is heard to say, "My uncle's been by a couple of times and she's the only one home." Miranda indicated that "she" is "his wife" and "he said not to leave it if he's not there." Miranda said, "Because if she finds out she'll tell his parents and all hell will break loose." (Ex. 7, ex. 9.)
13. In the December 15, 2005 conversation between Miranda and Robinson, Miranda told Robinson, "Don't worry, it's only his first week back. It will be here, fact hasn't even been a week yet." When Robinson asked, "Does dude know the chain's for me?" Miranda replied, "Yeah, he asks who everything's for before he brings it but I wouldn't tell him you. I'd say Paul Pierce, Jr." (Ex. 7, ex. 9.)
14. In the December 18, 2005 conversation between Miranda and Mr. Gonsalves, Miranda said, "I know uncle been real fuckin' busy working on the house. He's had no time to stop on by." Video showed that Mr. Gonsalves nodded. (Ex. 7, ex. 11.)
15. In the December 19, 2005 conversation between Miranda and Frank Robinson, Miranda said, "Listen, get a hold of my uncle, find out what's going on with the package. Tell him you're calling for me cause I'm out to an outside hospital for radiology all day. I need to know what's up, you know if it got lost or stolen or some shit. Tell him I'm sweating my safety

cause all these niggas around there are getting restless. Whatever you do don't tell him anything with the package is for you. He freaks over that shit." (Ex. 7, ex. 11.)

16. On December 20, 2005, Sgt. Padula was monitoring the Block 6 housing unit on the IPS cameras when he saw Mr. Gonsalves standing in front of Miranda's cell, gesturing with his hand. (Ex. 7, ex. 23.)
17. While Sgt. Padula watched Mr. Gonsalves speak with Miranda on video, IPS Officer Jason Earls was behind Miranda's cell listening, and writing down the conversation he heard. Officer Earls heard Miranda ask Mr. Gonsalves to buy him a pair of sunglasses online. Officer Earls then heard Mr. Gonsalves say, "Wait until you see it, it's 26" long and has a medallion." (Ex. 7, ex. 13; Testimony, Padula; Testimony, Earls.)
18. On December 20, 2005 at 12:50 p.m. Sgt. Padula was watching the video when he saw Miranda return to the Block 6 housing unit on crutches from the hospital. Sgt. Padula saw Mr. Gonsalves, who was at the unit desk, let Miranda into the unit; Mr. Gonsalves and Miranda spoke for a few minutes. Sgt. Padula saw Mr. Gonsalves reach into the drawer of the officers' desk and hand something to Miranda that appeared to be a white envelope. Sgt. Padula saw Miranda reach for the item, take it, open the left breast pocket of his shirt and put something into the pocket. (Testimony, Padula; Ex. 7, exs. 14, 23.)
19. When Miranda entered the Block 6 housing unit, the video shows that he had a white item in the left breast pocket of his shirt in the shape of a white

triangle. After Miranda is seen putting something into that pocket, the item appears to be a white rectangle. (Ex. 7, ex. 23.)

20. When Miranda returned to his cell in the housing unit, IPS Officer Earls was behind Miranda's cell listening at the pipe chase. Officer Earls heard what sounded like Miranda opening a package. Then Officer Earls heard another inmate stop at Miranda's cell and say, "Oh wow, you got it." Miranda said, "Yes, I do have it. I told those guys to relax." The other inmate said, "The heat was coming from across the hall. I'm gonna call the G-Pack down here." Miranda said, "Screw him, he can stroll his ass on down here. That dude has been sweating me. This goes for about \$3,000 in here. I'm into G-Pack for about \$300." (Testimony, Earls; Ex. 7, ex. 13.)
21. When Officer Earls heard what sounded like Miranda opening a package, he radioed to Sgt. Padula and said, "I think we've got it." (Testimony, Earls.)
22. Within several minutes of Officer Earls's radio call, Sgt. Padula and Lt. Mulvey entered Miranda's cell and performed a search of the cell and a strip search of Miranda. Miranda was wearing a gold chain with a cross medallion on it around his neck. Miranda denied that the chain and medallion belonged to him. (Testimony, Padula; Ex. 7, ex. 15.)
23. On December 20, 2005, IPS Officer Jeffrey Smith reported to the Block 6 housing unit at about 1:30 p.m. and reported to the desk. He was responsible to ensure that no one entered or exited the unit except IPS staff. While he was at the desk, Officer Smith overheard a conversation between two inmates. One inmate said, "It looks like we are locked down for the

day.” The other inmate replied, “Why do you think that?” The first inmate said, “You know, they got him.” The first inmate then reached down and grabbed a cross attached to a chain, smiled and tucked it into his tee shirt.

The second inmate said, “Oh, shit. Yeah.” (Ex. 7, ex. 16.)

24. A few minutes after this exchange, Mr. Gonsalves approached the desk. During his conversation with Officer Smith, Mr. Gonsalves offered the information that he was currently building a new home in Falmouth. (Ex. 7, ex. 16.)

Search and interview of Miranda

25. The search of Miranda’s cell revealed: one Seiko watch; one printout of the Seiko watch; one address book; two Seiko watch box sides; one envelope containing several photographs of assorted jewelry; one gambling slip; and one letter from inmate Frank Robinson, aka G-Pack. (Ex. 7, ex. 20; Ex. 7, p. 1.)
26. After his strip search and search of his cell, Miranda was brought to the IPS office to be interviewed by Sgt. Padula. The chain and medallion were confiscated from Miranda. Miranda stated that the chain and medallion were not his. He said he was a Muslim. Miranda said the chain and medallion were given to him the previous day by someone who owed him money. Miranda refused to identify the person who owed him money. (Testimony, Padula; Ex. 7, ex. 22.)
27. During his IPS interview, Miranda said that he knew Mr. Gonsalves lived in his area (Teaticket) because it is a small town. When asked why Mr.

Gonsalves had Miranda's canteen slip in his lunch bag, Miranda said, "I'm not sure." Miranda also said that Anthony Rose is his uncle; he was not sure whether Mr. Gonsalves knew Anthony Rose; he spoke sometimes with Mr. Gonsalves but "not that much;" he was not sure whether he had conversation with Mr. Gonsalves that day; and Mr. Gonsalves did not pass anything to him that day. (Ex. 7, ex. 22.)

Search and interview of Mr. Gonsalves

28. On December 20, 2005, Sgt. Patrick Barrett conducted a search of Mr. Gonsalves's person, personal vehicle and lunch bag with Mr. Gonsalves's consent. The search of Mr. Gonsalves's person yielded a cell phone. The search of the lunch bag yielded two folded pieces of paper: one was a print out from a watch company for a Seiko Chronograph watch; the second was a ripped portion of Miranda's canteen slip with writing on the back making reference to a "full size Chronograph." There were also 12 Dayquil liquid capsules, a small screwdriver, and 4 vitamin pills. The search of Mr. Gonsalves's car revealed a receipt dated December 19, 2005 for an item of jewelry to be repaired at Hannoush Jewelers located at the Falmouth Mall in the name of Mr. Gonsalves with the instructions to "remove damaged link." There was also a blue and white cardboard jewelry box with no markings. (Ex. 7, exs. 17, 18; Ex. 6; Testimony, Padula; Testimony, Mulvey.)
29. On December 20, 2005, Mr. Gonsalves was interviewed by IPS Officers. Mr. Gonsalves was represented by a union steward. During his interview, Mr. Gonsalves stated that he knew Miranda was from Teaticket; he knew a

Tony Rose who was about 60 years old and lived in Teaticket; he knew Tony Rose through his own parents who live in Teaticket; and he knew that Tony Rose, Jr. was Miranda's co-defendant in a bank robbery. (Ex. 7, ex. 19.)

30. Mr. Gonsalves denied that he had engaged in conversation with Miranda on December 20, 2005 about jewelry. The IPS Officers told Mr. Gonsalves that through video surveillance and surveillance behind Miranda's cell he was observed having a conversation with Miranda about jewelry. The union steward asked for a five minute break to speak with Mr. Gonsalves. After the break, Mr. Gonsalves stated that he did have conversation with Miranda on December 20, 2005, and that Miranda had asked Mr. Gonsalves to bring a gold chain to the institution for him. Mr. Gonsalves said that he "blew off" Miranda's request. (Ex. 7, ex. 19.)
31. During his interview Mr. Gonsalves said that Miranda had asked several times for Mr. Gonsalves to bring contraband into the institution, but that Mr. Gonsalves thought Miranda was joking. Mr. Gonsalves admitted that he had not reported the information, although he knew he should have. (Ex. 7, ex. 19.)
32. During his interview Mr. Gonsalves said that he had no idea how Miranda's canteen slip came to be in his lunch bag. Mr. Gonsalves denied that the handwriting on the back of the canteen slip was his. When shown the chain with the medallion confiscated from Miranda, Mr. Gonsalves denied ever seeing the item before. (Ex. 7, ex. 19.)

Monitoring of Miranda's phone calls

33. During a telephone conversation between Miranda and Anthony Rose on April 29, 2005, Miranda said, "See cousin, right, and get that um chain stuff back from him and then I'm going to send you an address to send that to along with a check for the \$150, all right." Later in the conversation, Miranda said, "My cousin, yeah, he's been on vacation for extension here." (Ex. 7, ex. 7, p. 1.)
34. Mr. Gonsalves was out of work on industrial accident leave from March 9 to August 7, 2005. (Ex. 7, ex. 10, 2005 Attendance Calendar.)
35. During a telephone conversation between Miranda and Anthony Rose on May 9, 2005, Miranda asked Rose whether he sent something off on Wednesday or Thursday. Rose replied that he had sent it off on one of those days. Miranda stated, "All right, good enough then. No, because the guy, every day he wants it. I'm like listen man, when my uncle says he going to do something he does it." (Ex. 7, ex. 7, p. 2.)
36. During a telephone conversation between Miranda and Anthony Rose on August 20, 2005, Miranda told Rose, "I got something coming to the house. Just hold it when it comes. All right?" (Ex. 7, ex. 7, p. 2.)
37. During a telephone conversation between Miranda and Anthony Rose on August 25, 2005, Miranda asked Rose to go to the Mashpee JC Penny to look for a Seiko Chronograph watch in chrome with a blue face on sale for \$159.00. Miranda said, "See if it's still at that price. I should be having

\$150.00 coming to you pretty soon and um Carl just sent me a few dollars.”

(Ex. 7, ex. 7, pp. 2-3.)

38. During a telephone conversation between Miranda and Anthony Rose on September 4, 2005, Miranda told Rose, “Hey, I got about uh you know, it’ll probably be within the week you should uh get a package for me, you know what I mean? It was supposed to had already been out but, uh, people, uh went off and on a little vacation and uh thought they sent it and didn’t send it. It’s going to be \$300.00, right?” Later in the conversation Miranda said, “You should be getting that \$300.00 probably by about the middle of the week if not by the end, no later than the end of the week and then give that to him with the \$240.00, he knows what to do. You know what I mean? ... I’ll have you with probably about another \$250.00 by uh the following week. You know what I mean? Business has been very profitable.” (Ex. 7, ex. 7, pp. 4-5.)

39. During a telephone conversation between Miranda and Anthony Rose on October 1, 2005, Rose reported that “I got a cross and a \$100.00 check.” Later in the conversation Rose asked, “Who’s the cross for?” Miranda replied, “Um, that’ll go up the hill when you get an opportunity, but no rush. You can, uh, wait until you have an opportunity.” (Ex. 7, ex. 7, p. 9.)

40. During a telephone conversation between Miranda and Anthony Rose on October 5, 2005, Miranda said, “Hey, and uh when you get a chance if uh drop that off up the hill for me.” Rose asked, “Just the first package that I got?” Miranda said, “Yup, Yup.” (Ex. 7, ex. 7, pp. 9-10.)

41. During a telephone conversation between Miranda and Anthony Rose on October 22, 2005, Miranda said, "All right, somebody was supposed to have something go to the house for me, all right?" Rose asked, "Where is it going?" Miranda replied, "It's going up the hill when it comes, all right?" (Ex. 7, ex. 7, p. 12.)
42. During a telephone conversation between Miranda and Anthony Rose on October 27, 2005, Rose reported that he had not received a package that Miranda inquired about. Miranda said, "Yeah, but when it comes, let it go up the hill, right? Plus, I got a \$150.00 coming to you. Somebody is going to come from Hyannis with that probably over the weekend." Rose replied, "OK." Miranda said, "And that goes up the hill. Keep the money, though." (Ex. 7, ex. 7, p. 13.)
43. During a telephone conversation between Miranda and Anthony Rose on November 27, 2005, they spoke of packages and money. Miranda said, "All right, and when that comes just hold onto that. That package, I guess I don't know what's up because she fell down and I don't know when she plans on going back to work." Rose said, "Yeah." Miranda said, "You know, so I got to wait on her to see what's up, all right?" Rose said, "I got one little package here like a little (inaudible) cross." Miranda told Rose to "just hold onto that. I just wanted to touch base to see what was at the house and what was not. There was supposed to be some other shit going, but nobody else has sent their money yet, you know. ... So, I'm not harassing them. Like I told them, if they don't do what they're supposed to do, then I'll just

say the hell with them, you know what I'm saying? I don't chase nobody for nothing." (Ex. 7, ex. 7, pp. 15-16.)

44. Mr. Gonsalves was on industrial accident leave from November 13 through November 24, 2005, and on vacation from November 27 through December 1, 2005. He was on in-service training leave from December 4 to December 10, 2005. (Ex. 7, ex. 10, 2005 Attendance Calendar.)

45. During a telephone conversation between Miranda and Anthony Rose on December 3, 2005, Miranda asked, "Have you stopped up the hill at all?" Rose replied, "No, I still got one little package here." Miranda said, "Yeah, just whenever you get a chance, drop that off to him and, you know what I mean, and find out what day, you know what I mean, I might be able to see her again." (Ex. 7, ex. 7, p. 17)

46. During a telephone conversation between Miranda and Anthony Rose on December 11, 2005, Miranda told Rose he should be getting a check for \$250.00. Rose asked, "Just bring it to the hill?" Miranda said, "No, no, the money you always hold that. You always hold that unless I'm deciding that I'm going to get a present or something for the kid. Then I'll send it up the hill." Rose said, "I still got the little package here (inaudible). I keep forgetting." (Ex. 7, ex. 7, p. 18.)

47. During a telephone conversation between Miranda and Anthony Rose on December 14, 2005, Miranda said, "Hey, listen, when you get a chance, can you bring that up there because them spear chuckers are lining up on me." Rose said, "Huh?" Miranda said, "The spear chuckers are lining up on me.

The package, drop it off.” Rose said, “Oh, just drop that thing off?”

Miranda said, “Yeah, please. You know they’re all sharpening their swords.” Rose said, “OK.” (Ex. 7, ex. 7, pp. 18-19.)

48. During a telephone conversation between Miranda and Sharite Jackson on December 14, 2005, Miranda wanted to know if everything went okay with respect to a check. Jackson said that it was all set. Miranda said, “All right, and just send it to Uncle Tony’s and maybe you could introduce yourself and hopefully in the future you can tell him that we get to know one another. He loves his family, all right. That’s why I sent word to your father to make sure he introduces you to Carl. I don’t know if you met him when you went to grandma’s funeral.” Jackson said, “I don’t.” Ex. 7, ex. 7, p. 19.)

49. During a telephone conversation between Miranda and Anthony Rose on December 19, 2005, Rose told Miranda everything is “all set.” Miranda said, “All right, I appreciate it, I know, you know what I mean? I know you had things that you had to do, you know what I mean? These Mannagua’s don’t understand that bullshit, you know what I mean? Like I told them, man, it’s fucking Christmas, people go shopping.” Rose said, “I went there this morning, she says “oh, you got Christmas present for me?” I says, “Well, no.” I played dumb. I says, “Well, no.” Miranda asked whether anything else came in and Rose said nothing else came in. Miranda said, “I figured you would probably went over there this evening.” Rose said, “No, I went this morning because I had stuff I had to do early. So I went over there before she went to school or drop the kid to work or whatever she

usually does. She work?" Miranda said, "Yeah, I think so, yeah a little bit, you know what I mean?" Rose said, "Yeah, because I usually go there at 4 o'clock but I went early because I had to go to school for my little grandson. He had a sing-a-long." At the end of the conversation Miranda said, "Um, you know you're the only person that I can fucking trust to put my money in their hand and know that it'll be there later when I look for it, you know what I mean?" (Ex. 7, ex. 7, pp. 20-21.)

50. During a telephone conversation between Miranda and Anthony Rose on December 29, 2005, Miranda asked Rose if he knows what's going on and Rose said he did. Miranda said, "All right, then good enough because I don't want this kid to, you know, he's making \$60,000.00 damn near, you know what I mean, and building a new house and shit. They don't need to be pulling this shit on him. They overheard him explaining a chain to me. I already had the chain, you know what I'm saying, and then what happened, the cop was behind the wall, behind my shutter listening through. So when Carl was saying, 'Oh yeah, you should see it,' you know what I mean, he didn't understand he was talking about something that was talking about he had. So he was thinking that the chain I already had was something that Carl was going to give to me and then that's when they came bum rushing in my cell man. ... He's saying man we know somebody gave you that and I said yeah somebody paying off a debt, you know what I mean, and they just went off but I heard they had his vehicle impounded while they went through that bullshit and whatnot." Rose said, "You can't say too much

because they listen to everything.” Miranda said, “Yeah, yeah, absolutely, but uh tell him man to fight like a mother fucker man. Don’t let them come and take shit away from him.” (Ex. 7, ex. 7, pp. 22.)

Miranda’s mail

51. In a letter of March 13, 2006 to Commissioner Dennehy, Miranda wrote, “I can only hope the investigation I am under for allegedly bring jewelry into the institution with the aid of a CO Carl Gonsalves, who’s reputation is above reproach. Every one of his family are law enforcement Chief’s Detectives, DEA. I would think of approaching him over anything!! I knew his family before him and only just got to know him in block-6 and his connection to the Gonsalves, I knew, even living in the same time, different age group plus I had to move to Marston Mills.” (Ex. 7, ex. 24)

Institution policies

52. Under the institution’s security policy, “the Superintendent must authorize all medication.” Mr. Gonsalves did not have the authorization of the Superintendent to bring over-the-counter medication into the institution. (Ex. 5, p. 501-15; Testimony, Mulvey; Testimony, Gonsalves.)
53. Under the institution’s security policy, “personal cell phones are prohibited from entering the institution.” (Ex. 5, p. 501-16)
54. Under the institution’s Tool Control Policy, “personal tools are not permitted inside the facility without the approval of the director of security or superintendent’s designee ...” (Ex. 1.)

Procedural history

55. On April 4, 2007, DOC Commissioner Kathleen Dennehy provided Mr. Gonsalves with a notice of contemplated action. (Ex. 1.)
56. The Appointing Authority hearing was held on May 7, 2007. Acting Commissioner James R. Bender notified Mr. Gonsalves by letter of June 21, 2007 that there was substantial evidence presented to support the charges against him, and that there was just cause to terminate his employment. (Ex. 2.)
57. Mr. Gonsalves appealed to the Civil Service Commission on July 2, 2007. (Ex. 3.)

Conclusion and Recommendation

The Appointing Authority, Department of Correction, has demonstrated just cause for the termination of the Appellant, Carl Gonsalves from his position as a Correction Officer at MCI Cedar Junction for violation of numerous regulations and policies.

The Appellant violated **Rule 6(d)** by failing to “report all infractions of law, rules and orders to a higher authority.” The Appellant admitted during his interview on December 20, 2005 that he failed to report to a higher authority the requests of Miranda that the Appellant provide him with contraband, including a gold chain and sunglasses.

The Appellant violated **Rule 8(c)** by failing to disclose his relationship with Miranda to “employees authorized to make inquiries.” Although the Appellant denied at hearing that he actually knew Miranda and members of Miranda’s family, the telephone calls between Miranda and Rose indicate otherwise.

On December 8, 2005, Miranda told the Appellant that his uncle, Anthony Rose, had been too busy to stop on by.

Miranda's phone call to Anthony Rose on December 29, 2005 was clearly about the Appellant, who was building a new house in Falmouth, and was detained and had his car impounded by the IPS officers on December 20, 2005.

Furthermore, on December 20, 2005, IPS Officer Padula saw the Appellant hand an envelope to Miranda, although this is not clearly shown on the video tape.

Miranda's letter to Commissioner Dennehy in March 2006 provides an admission that Miranda knew the Appellant and his family.

The Appellant violated **Rule 9(b)** by delivering a white envelope to Miranda on December 20, 2005. A reasonable inference can be drawn that the envelope contained the gold chain and medallion found on Miranda that day; the transfer of the envelope was witnessed by Officer Padula. An envelope containing pictures of jewelry was found during the search of Miranda's cell. **Rule 9(b)** prohibits the delivery of anything to an inmate without the knowledge of the Superintendent.

The Appellant violated **Rule 10(b)** by "failing to take steps to satisfy himself that nothing is being done to jeopardize the good order or safety of the institution." The Appellant gave Miranda a white envelope, and had a conversation with Miranda in which Miranda asked the Appellant to provide him with contraband in the form of sunglasses. The Appellant therefore jeopardized the good order and safety of the institution.

The Appellant violated **Rule 12(a)** by failing to "exercise constant vigilance and caution in the performance" of his duties by providing contraband to Miranda, and by

bringing a cell phone, a screwdriver and over-the-counter medications into the institution without authorization.

The Appellant violated **Rule 12(c)** by having Dayquil and vitamin pills in his lunchbox without authorization. The rule provides the drugs “shall be stored only in areas which are secure against unauthorized access as approved by the Superintendent.”

The Appellant violated **Rule 16** by bringing his cell phone, screwdriver, and over-the-counter medication into the institution without authorization. **Rule 16** prohibits employees from bringing “personal property ... on or within the precincts and dependencies of the institution without the prior approval” of the Superintendent.

The Appellant violate **Rule 19(c)** by failing to “respond fully and promptly to any questions or interrogatories relative to the conduct of an inmate, a visitor, another employee or yourself” during his interview on December 20, 2005. The Appellant originally denied that he had any conversation with Miranda on that day, but after his union representative asked for a break to speak with the Appellant, the Appellant admitted that he did have conversation with Miranda and Miranda asked him to bring a gold chain into the institution.

Furthermore, the Appellant denied at hearing that he ever said to Miranda, “You should see it, it’s 26” long.” However, during Miranda’s telephone conversation with his uncle on December 29, 2005 he said, “So when Carl was saying, ‘Oh yeah, you should see it’” indicates that the Appellant was not telling the truth at the hearing.

The Appellant violated the institution security policy by bringing his personal cell phone into the institution on December 20, 2005.

The Appellant violated the Tool Control Policy by bringing a small screwdriver into the institution on December 20, 2005.

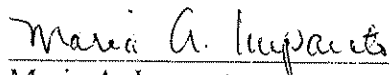
The Appellant's breach of these regulations, and his obvious involvement in a scheme to sell and deliver contraband jewelry to inmates, is so egregious as to warrant termination of the Appellant's employment.

Recommendation

I conclude that there was reasonable justification for the action taken by the Appointing Authority in the circumstances found by the Commission to have existed when the Appointing Authority made its decision. *Watertown v. Arria*, 16 Mass. App. Ct. 331, 334 (1983).

I recommend that the Civil Service Commission affirm the action of the Appointing Authority to discharge Carl Gonsalves from his job as a CO at MCI Cedar Junction.

DIVISION OF ADMINISTRATIVE LAW APPEALS



Maria A. Imparato
Administrative Magistrate

DATED: JUN 05 2009