COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION

SUFFOLK, ss.

CHRISTOPHER PERRY,
Appellant

v. D-05-320

DEPARTMENT OF CORRECTION,
Respondent

Appellant's Attorney:	Regina Ryan, Esq. Merrick, Louison & Costello, LLP 67 Batterymarch Street Boston, MA 02110
Respondent's Representative:	Kerry A. Rice P.O. Box 946 Industries Drive Norfolk, MA 02056
Commissioner:	John J. Guerin, Jr.

DECISION

Pursuant to the provisions of G.L c. 31, § 43, the Appellant, Christopher Perry (hereafter "Appellant") is appealing the decision of the Respondent, Massachusetts Department of Correction (hereafter "DOC"), as Appointing Authority to suspend him via written notice dated August 12, 2005 for ten (10) working days, without pay, from his employment as a Correction Officer I. The Appellant received the notice of suspension on August 24, 2005 and this appeal was timely filed. A hearing was held on July 24, 2007 at the offices of the Civil Service Commission (hereafter "Commission"). One tape was made of the hearing. Witnesses were ordered to be sequestered. As no notice was received from either party, the hearing was declared private. Proposed Decisions were submitted by the parties thereafter, as instructed.

FINDINGS OF FACT:

Based on the documents entered into evidence (Joint Exhibits 1 - 9 and Respondent's Exhibits 1 - 4) and the testimony of Captain John Ginnetty (formerly Director of Security), Sergeant Sean Quinn, Sergeant/Investigator Harold Wilkes and the Appellant**,** I make the following findings of fact:

1. The Appellant has been employed by the DOC in the position of Correction Officer I since May 24, 1998. At the time of this hearing, he was assigned to the DOC Boston Pre-Release Center. On September 6, 2000, the Appellant was a tenured civil service employee. (Stipulated Facts).
2. The Appellant was assigned to the Massachusetts Correctional Institution at Plymouth (hereafter "MCI-Plymouth") from November 21, 1999 until April 18, 2004 when he was transferred to the Bridgewater State Hospital. In September 2000, he owned a custom-made, 1998 Mitsubishi convertible Eclipse (hereafter "Eclipse") which he drove to and from work. The Eclipse is a one-of-a-kind motor vehicle and was very distinctive and well-known to both staff and inmates at MCI-Plymouth. (Testimony of Appellant and Respondent's Exhibit 4)
3. In November 2004, while Sergeant Sean Quinn was supervising an MCI-Plymouth work crew, Inmate John Doe[1] informed him that, in September 2000, the Appellant went to the inmate's home in Fall River to receive a tattoo. The inmate further stated that they (he and the Appellant) were in a car accident together while driving in the Appellant's Eclipse to a "strip club." On December 22, 2004, approximately one month after receiving this information from Inmate Doe, Sgt. Quinn reported this conversation to Director of Security (DOS), Captain John Ginnetty (hereafter "Capt. Ginnetty" or "DOS"). (Testimony of Quinn and Respondent's Exhibit 4)
4. Inmate Doe had been incarcerated at MCI-Plymouth from April 4, 2000 until released on

[1] The inmate in question throughout this decision will be referred to as "John Doe" to protect his privacy rights.

parole on July 28, 2000. He was again incarcerated at MCI-Plymouth in November 2004. (Respondent's Exhibit 2)

5. At the Commission hearing, Sgt. Quinn appeared ill-at-ease and was somewhat vague when recalling why he did not report the information that he received from Inmate Doe to Capt. Ginnetty for a month. He responded under cross-examination by the Appellant's counsel that he waited until he saw the DOS to report the conversation. He also stated that he was aware that Inmate Doe was about to receive a Disciplinary Report from the DOS for smoking but that didn't necessarily prompt him to report the information he had regarding the inmate. He denied withholding the information because he believed that Inmate Doe was not credible and was making up the story. However, when asked his opinion of the inmate's credibility, Sgt. Quinn answered, "Well, he's an inmate!", leaving the distinct impression that he found the inmate's credibility to be lacking. Also under cross-examination at the Commission hearing, Capt. Ginnetty testified that he did not ask Sgt. Quinn why it took the Sergeant a month to report the information. (Testimony of Sgt. Quinn and Capt. Ginnetty)

6. On January 13, 2005, Sergeant Harold K. Wilkes, an investigator with the DOC's Office of Investigative Services (OIS), interviewed Sgt. Quinn relative to the information he had received from Inmate Doe. In his investigative report on the interview with Sgt. Quinn (DOC-PLY-04-236), Sgt. Wilkes wrote the following:

> "Sgt. Quinn was asked why he did not report this information at the time it took place to which he stated 'I thought that the inmate was making things up.' Officer Quinn stated when he heard that inmate [Doe] was going to receive a disciplinary report from DOS Ginnetty for smoking he thought that he would inform the DOS of the information he had heard."
> (Respondent's Exhibit 4)

7. I find that Sgt. Quinn's testimony at the Commission hearing was not as informative or credible as it could and should have been in order to substantiate the information that he received from Inmate Doe. However, I do find that when Sgt. Quinn finally reported Inmate Doe's story, he (Sgt. Quinn) at least served as a viable conduit for information

that was investigated and, some of which, was later corroborated by the Appellant, himself.

8. Capt. Ginnetty's testimony at the Commission hearing was consistent with his report to MCI-Plymouth Superintendent Paul Blaney and his (Ginnetty's) interview on January 13, 2005 with Sgt. Wilkes. Specifically, Capt. Ginnetty related that, upon Sgt. Quinn's verbal report of Inmate Doe's story, he immediately summoned Inmate Doe to his office for an interview and directed an Inner Perimeter Security (IPS) officer to search the inmate's cell. The DOS reported to the Superintendent that the inmate told him that in September 2000 the Appellant received a tattoo from the inmate, that the inmate was a passenger in the Appellant's vehicle and that the vehicle they were riding in was involved in a car accident. The inmate further stated to him that the Appellant was aware that he (the inmate) knew how to make tattoos and that the Appellant asked if he would give him a tattoo. The inmate also claimed that, after he was paroled, he and the Appellant saw each other at a concert and arranged for the Appellant to go to the inmate's home for the tattoo. After receiving the tattoo, the Appellant and the inmate were en route to a strip club (the "King's Inn") when they were involved in a car accident. The Fall River Police responded to the scene and an accident report was completed. (Testimony of Ginnetty and Joint Exhibits 7 & 8)
9. The inmate described the tattoo that he allegedly made for the Appellant as a tribal band with the names of the Appellant's children in Chinese. Capt. Ginnetty stated that the IPS officer searched the inmate's cell during his interview with the inmate. The officer discovered the Appellant's cell phone number included in the inmate's personal phone book that was recovered in the search. Along with the Appellant's phone number, the phone book lists the Appellant's name and the letters "C.O." under the name. Capt. Ginnetty then contacted the Office of Investigative Services (OIS) and asked if he could contact the Fall River Police to obtain information regarding the accident. Additionally,

Capt. Ginnetty filed an Investigative Intake Form. DOS Ginnetty then sent an e-mailed report to Superintendent Paul Blaney detailing what he had done. (Testimony of Ginnetty and Respondent's Exhibits 1, 2, 3 & 4)

10. I found Capt. Ginnetty to be a credible witness with a professional demeanor. His answers were unhesitant and appropriate. He exhibited good recall of details and his testimony was consistent with his prior written reports.

11. On March 21, 2005, Sgt. Wilkes interviewed the Appellant regarding Inmate Doe's allegations. In his investigative report on the interview with the Appellant (DOC-PLY-04-236), Sgt. Wilkes wrote the following, in pertinent part:

> "During this interview Officer Perry stated that he did recall inmate [Doe] being housed at MCI-Plymouth when he was assigned there. When asked, Officer Perry admitted that he had contact with inmate [Doe] once during 2000 after inmate [Doe] was released on parole. Officer Perry stated that he could not recall the exact date or time he came in contact with inmate [Doe] but that it occurred in the Fall River or New Bedford area. Officer Perry stated while driving his vehicle inmate [Doe] who was walking on the street (could not recall which street) "flagged him down" at which time he asked [Doe] how he was doing while on parole. Officer Perry admitted that he subsequently gave inmate [Doe] a ride in his personal vehicle and while driving they were involved in a motor vehicle accident. Officer Perry explained that on the day he was flagged down by inmate [Doe] he asked him if he (Perry) could give him a ride to an ATM (location unknown) which he agreed to do. Officer Perry stated while en route to the ATM as he drove through a four way intersection, he was hit by another vehicle. Officer Perry stated neither he nor inmate [Doe] received injuries as a result of the accident. Officer Perry stated he then drove to the ATM at which time he dropped inmate [Doe] off and left the area which was the last time he ever saw him. Officer Perry stated at that time he was not aware that inmate [Doe] was on parole thinking he was 'free and clear.' . . . Officer Perry stated that this was the only time that he had seen or come in contact with inmate [Doe] while on the streets. . . . Officer Perry denied that he attended a concert in which he had seen or come in contact with inmate [Doe] at the Tweeter Center in Mansfield, MA in 2000. Officer Perry also denied providing inmate [Doe] with his telephone number or having a conversation about contacting [Doe] to receive a tattoo when he was released to the streets. Officer Perry was shown a copy of inmate [Doe's] telephone book which contained his name 'Chris Perry C.O.' and a telephone number '000-000-0000'[2] handwritten in it. Officer Perry identified the telephone number as being his 'listed' cellular number. Officer Perry denied that he had given inmate [Doe] his telephone number stating that [Doe] could have obtained it from someone

[2] Officer Perry's cellular phone number is not listed here to preserve his privacy rights.

> else that had been given his (Perry's) business card. Officer Perry indicated that he does 'personal training' as a side business and gives out his business cards to a lot of people in the Fall River and New Bedford area and that he is unaware of how inmate [Doe] has ever called him at that telephone number or any other number. Officer Perry denied meeting inmate [Doe] at a friend's house in Rhode Island or receiving a tattoo from inmate [Doe]. Officer Perry stated he does have a 'tribal tattoo' on his arm but that he does not have the names of his children written in Chinese. Officer Perry also denied that he had given inmate [Doe] a ride to strip club."
> (Respondent's Exhibit 4)

12. Sgt. Wilkes was an excellent witness with good recall of events and details. He provided a clear and easily understandable explanation of his investigation of the incident in question. I found him to be a professional and seasoned investigator as both his report (Respondent's Exhibit 4) and his testimony that he had previously investigated "hundreds" of "chance meeting" allegations indicated a thorough and experienced effort on his part. He testified that he had only sustained 5 – 7 of the many chance meeting allegations, further demonstrating the thoughtfulness and reason with which he investigated the claims. I found that Sgt. Wilkes was acting in an independent capacity and exhibited no bias against the Appellant as he only sustained the few allegations of Inmate Doe that could be substantiated. (Testimony of Wilkes)
13. Based upon his investigation of all of Inmate Doe's allegations, Sgt. Wilkes concluded only that, ". . . Officer Perry did admit to giving inmate [Doe] a ride in his vehicle to an ATM located in the Fall River or New Bedford area and while en route they were involved in a motor vehicle accident while driving Officer Perry's black Mitsubishi vehicle. Furthermore, Officer Perry failed to report this incident to Superintendent Blaney." Sgt. Wilkes did <u>not</u> sustain the allegations regarding any telephone contact between the Appellant and Inmate Doe, the two men attending a concert together, the two men driving to a strip club together, the inmate and the Appellant meeting in Rhode Island or the inmate providing the Appellant with a tattoo. (Respondent's Exhibit 4)
14. The Appellant's testimony at the Commission hearing was consistent with his statements

contained in Sgt. Wilkes' report. It was believable, based on the testimony of both Sgt. Wilkes and the Appellant, that the inmate could have learned of the Appellant's tattoo by seeing it on the Appellant's arm (as it was visible when wearing short-sleeves) and could have acquired the Appellant's cell phone number by seeing it on the Appellant's personal business cards which he distributed freely and some of which he kept in the center console of his Eclipse in plain view of any passenger. As for the charge of giving a ride to an inmate to an ATM, subsequently being involved in a motor vehicle accident during that ride and not reporting the meeting to his supervisors being more than a "chance meeting", the Appellant testified that it was such a quick and minor meeting that he didn't feel obligated to report it. (Testimony of Appellant and Respondent's Exhibit 4)

15. The Department's Rules and Regulations (Blue Book) Rule 8(c) states:

> "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. Any other outside inmate contact must be reported to your Superintendent, DOC Department head or Commissioner of Correction."
> (Joint Exhibit 9)

16. Sgt. Wilkes found that the Appellant violated Rule 8(c) because the Appellant admitted that he recognized the inmate before the inmate entered his vehicle, but nevertheless made the choice to continue associating with the inmate. Therefore, the Appellant's conduct went beyond the standard for a "chance meeting." When questioned as to his findings regarding a chance meeting, Sgt. Wilkes stated that a chance meeting was bumping into someone on the street, a market, or other location, exchanging greetings and walking away. This was not the case here. The Appellant saw the inmate, recognized him and proceeded to take him to an ATM machine. The time involved and the type of behavior does not signify a chance meeting. (Testimony of Wilkes)

17. On August 12, 2005, as a result of Sgt. Wilkes' investigative report and after a hearing pursuant to G.L. c. 31, § 41, the DOC notified the Appellant that he was suspended for ten (10) days for the following conduct, which was in violation of the General Policy and

Rule 8(c) of the Blue Book: giving an inmate a ride to an ATM and failing to report this inmate contact despite the fact that he was involved in a car accident (with the inmate in his car) while en route to the ATM. Further, the police responded to the car accident, yet the Appellant still failed to report the incident. (Joint Exhibit 2)

18. The Appellant subsequently and timely filed this appeal of his suspension. (Joint Exhibit 1)

CONCLUSION:

The role of the Civil Service Commission is to determine "whether the appointing authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority." City of Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300,304 (1997). *See* Town of Watertown v. Arria, 16 Mass. App. Ct. 331 (1983); McIsaac v. Civil Service Commission, 38 Mass. App. Ct. 473, 477 (1995); Police Department of Boston v. Collins, 48 Mass. App. Ct. 411 (2000); City of Leominster v. Stratton, 58 Mass. App. Ct. 726, 728 (2003). An action is "justified" when it is done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind; guided by common sense and by correct rules of law." Id. at 304, quoting Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928); Commissioners of Civil Service v. Municipal Ct. of the City of Boston, 359 Mass. 211, 214 (1971). The Commission determines justification for discipline by inquiring, "whether the employee has been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of public service." Murray v. Second Dist. Ct. of E. Middlesex, 389 Mass. 508, 514 (1983); School Committee of Brockton v. Civil Service Commission, 43 Mass. App. Ct. 486, 488 (1997). The Appointing Authority's burden of proof is one of a preponderance of the evidence which is established "if it is made to appear more likely or probable in the sense that actual belief in its truth, derived from the evidence, exists in the mind or minds of the tribunal notwithstanding any doubts that may still linger there." Tucker v. Pearlstein, 334 Mass. 33, 35-36 (1956). In

reviewing an appeal under G.L. c. 31, § 43, if the Commission finds by a preponderance of the evidence that there was just cause for an action taken against an Appellant, the Commission shall affirm the action of the Appointing Authority. Town of Falmouth v. Civil Service Commission, 61 Mass. App. Ct. 796, 800 (2004). The issue for the Commission is "not whether it would have acted as the appointing authority had acted, but whether, on the facts found by the commission, 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). *See* Commissioners of Civil Serv. v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975) and Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-728 (2003).

The Respondent has shown by a preponderance of the evidence that it had just cause to suspend the Appellant from employment for a period of ten (10) work-days, without pay. There is no dispute of certain essential facts. The Appellant admits that he saw the inmate, recognized the inmate, had a conversation with the inmate, allowed the inmate into his vehicle, drove with the inmate, got into a motor vehicle accident with the inmate, continued to drive with the inmate after the accident and finally dropped him off at an ATM. The only question that remains is if this was a "chance meeting" and the answer to that would have to be no. The issue of the two men having a chance meeting evaporated when, after the Appellant recognized the inmate he allowed him into his vehicle.

The inmate was not in any visible physical distress or any kind of imminent danger which would have compelled the Appellant to assist him with a ride in the Appellant's personal vehicle. It would certainly be understandable to stop and aid a fellow human being who appeared to be in peril – regardless of whom he was - but that is not what occurred here. A preponderance of the credible evidence demonstrates that the Appellant recognized Doe as a former inmate and invited him into his personal vehicle after the inmate flagged him down and requested a ride of him.

Because of this contact with the Appellant, the inmate later attempted to impugn the Appellant's integrity and to compromise his service in an adverse way by possessing his cell phone number and weaving his tale of enjoying a concert, tattoo and excursion to a strip club with the Appellant. The Commission views the DOC's prohibition of outside inmate contact as a reasonable, preventative measure against exactly this sort of behavior. Moreover, Sgt. Wilkes, who as an investigator is qualified to testify regarding the DOC's rules and regulations governing employee conduct, confirmed that the Appellant's inmate contact was in fact more than a "chance meeting." Moreover, the Appellant failed to present any evidence of disparate treatment in this case which could have indicated that the DOC employed impermissible reasons to suspend him. Considering the totality of the circumstances of this incident, this meeting did not constitute a chance meeting and the Respondent was justified in imposing the stated discipline.

For all of the above stated, findings of fact and conclusion, the Commission determines that, by a preponderance of the credible evidence presented at hearing, the DOC had just cause for suspending the Appellant for ten (10) days without pay and there was no evidence of inappropriate motivations or objectives that would warrant the Commission reducing or overturning the Appellant's suspension. Therefore, the Appellant's appeal on Docket No. D-05-320 is hereby ***dismissed***.

Civil Service Commission

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John J. Guerin, Jr.
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman, Henderson, Taylor, Guerin and Marquis Commissioners) on January 17, 2008.

A true record. Attest:

_____
Commissioner

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:
Kerry A. Rice, DOC
Regina Ryan, Esq.