

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2020-086

SONJA MAYS

APPELLANT

VS. **FINAL ORDER
SUSTAINING HEARING OFFICER'S
FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER**

**JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF CORRECTIONS**

APPELLEE

*** **

The Board, at its regular June 2022 meeting, having considered the record, including the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated May 3, 2022, and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer are approved, adopted, and incorporated herein by reference as a part of this Order, and the Appellant's appeal is therefore **DISMISSED**.

The parties shall take notice that this Order may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100.

SO ORDERED this 13th day of June, 2022.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

Copies hereof this day sent to:

Hon. Thomas Schulz
Hon. Mark Bizzell
Hon. Rosemary Holbrook (Personnel Cabinet)
Rodney Moore

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JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF CORRECTIONS

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**** * * * * *

This matter came on for evidentiary hearing on March 26, 2021, at approximately 9:30 a.m. (ET), at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before Mark A. Sipek, Hearing Officer. The proceedings, conducted via Amazon Chime, were recorded by audio/video equipment and were authorized by KRS Chapter 18A.

The Appellant, Sonja Mays, was present and represented by the Hon. Thomas Schulz. The Appellee, Justice and Public Safety Cabinet, Department of Corrections, was also present and represented by the Hon. Mark Bizzell. Also present as Agency representative was Deputy Warden Stephen Lyons.

BACKGROUND

1. The Hearing Officer notes this appeal was filed with the Personnel Board on March 11, 2020. On the appeal form and during the pre-hearing conference, the Appellant, a classified employee with status, indicated she was challenging a demotion in addition to advancing a claim of racial discrimination. The Appellant further explained her claims in the narrative portion of the appeal form wherein she states, in full:

I was discriminated against by the Warden and deputy Warden. I was disrespected and humiliated in front of my peers. Racial comments and behavior have been made towards me. On February 5, 2020 and February 6, 2020 I was subjected to verbal abuse. I was demoted in retaliation when I complained to personnel about the verbal abuse although my evaluation up to that point had rated me as highly effective. (sic)

2. At the first pre-hearing conference, the Appellant made clear she was asserting that her demotion was the result of race and/or color discrimination.

3. Following a series of pre-hearing conferences and the exchange of discovery, this appeal was scheduled for an evidentiary hearing.

4. At the outset of the evidentiary hearing, the Hearing Officer corrected the issue to be decided during the evidentiary hearing as stated in previous Interim Orders and which party subsequently had the burden of proof. Counsel for both parties agreed that the Appellant had not, in fact, been demoted, but had actually been reverted to her previous employment position due to failing to successfully complete her promotional probation. Thus, the issue for the evidentiary hearing was whether the Appellant was improperly reverted from her position as a Corrections Training Instructor/Coordinator I at Kentucky Correctional Institute for Women (KCIW) to an Administrative Specialist III for the Department of Corrections Health Services Division as a result of race and/or color discrimination. The burden of proof was upon the Appellant and was to be proven by a preponderance of the evidence. The Appellant was to proceed first in the presentation of evidence.

5. The Appellant called as her first witness, **Stephen Lyons**, the Deputy Warden for Security at KCIW. He has been Deputy Warden since June 2019. He previously served as Human Resource Administrator at KCIW for ten (10) years. When the Appellant was promoted to Corrections Training Instructor/Coordinator I in October 2019, Lyons was her direct supervisor.

6. According to Lyons, the Appellant's performance as Corrections Training Instructor/Coordinator I was "fantastic" from October through December 2019. He stated issues started to "bubble up" in January 2020. Lyons stated that these issues were the reason the Appellant was reverted.

7. Lyons described the "primary" reason for the Appellant's reversion was not being receptive to correction after she had made a mistake. He was talking about his instruction to the Appellant that she should not make any decision about the Crisis Negotiation Team (CNT) until Lyons returned. The Appellant sent an email resigning from CNT. Lyons stated the Appellant did not understand that a directive from him is not a suggestion. When Lyons told this to the Appellant, he stated he was talking sternly but was not yelling.

8. While serving her probationary period as Corrections Training Instructor/Coordinator I, the Appellant was also KCIW's team leader for CNT. CNT is completely voluntary. This was separate duties from the Appellant's duties as Corrections Training Instructor/Coordinator I. She was responsible for training on a number of topics including ethics, use of force, and sexual harassment.

9. Lyons testified that Appellant walked out of his office during the February 6, 2020 meeting and left work without permission.

10. Lyons also stated that earlier he had received a call from Major Rebecca Denham regarding a training class for Sergeants on a Saturday. The Appellant was asked to give a presentation, which had to be cut short because of her erratic behavior. According to Denham, the

Appellant was crying and talking about personal issues. Lyons stated he never got a chance to talk to the Appellant about this issue.

11. Lyons also testified regarding a meeting that took place on February 5, 2020, between the Appellant, Warden Vanessa Kennedy, and Lyons. The purpose of this meeting was to discuss with the Appellant that it was inappropriate that she had contacted Roederer Correctional Complex Warden Jessie Ferguson about the activation of the CNT Team. The Appellant was instructed that only Warden Kennedy should contact another Warden. Lyons described this as the Appellant having jumped the chain-of-command.

12. Following the February 6, 2020 meeting where the Appellant walked out of his office, Lyons recommended reversion. Lyons was aware of the Appellant's 2019 Annual Employee Performance Evaluation, in which he had praised the Appellant's performance. He stated he stood by that evaluation and that the Appellant's problems developed after the first of the year.

13. Next to testify was **Warden Vanessa Kennedy**. She has been the Warden at KCIW since March 2019. In September 2019, the Appellant was promoted as the Corrections Training Instructor/Coordinator I. Warden Kennedy testified that issues developed with the Appellant's work at the end of December 2019 and the beginning of January 2020. Warden Kennedy stated that the Appellant had behavioral issues during a training session, and instead of speaking to Warden Kennedy about the incident, the Appellant contacted the Warden of another facility. Warden Kennedy also testified she had concerns that the Appellant was stealing time at the end of January 2020. She contacted HR representative Ashley Madras and Corrections Training Instructor Jose Rodriguez concerning the Appellant not properly clocking in and out. They conducted a camera review of the times when the Appellant entered and left the facility.

14. Warden Kennedy stated that the investigation regarding the Appellant's time issues stopped when the decision was made to revert her.

15. Warden Kennedy acknowledged that she had an interaction with the Appellant regarding the Appellant's hair. Warden Kennedy denied that she ever touched the Appellant's hair. She stated she simply complimented the Appellant on her hair. She stated this was not uncommon, and that the Appellant had no reaction.

16. Warden Kennedy made the decision to revert the Appellant to her previous position. Warden Kennedy did not recall the Appellant's Annual Employee Performance Evaluation.

17. Warden Kennedy testified that the CNT activation took place on February 3, 2020. She stated that, during a meeting on February 5, 2020, the Appellant, Warden Kennedy, and Lyons discussed this issue. Warden Kennedy informed the Appellant that she had no authority to go to Warden Ferguson and that was Warden Kennedy's role.

18. The Appellant was reverted on February 13, 2020. Warden Kennedy stated that the Appellant was reverted because of her performance during January and February 2020. The

investigation regarding her time and attendance issues had not been completed and no disciplinary action was taken. She stated the Appellant was also reverted due to the issues with the activation and how the Appellant had acted in training.

19. Warden Kennedy acknowledged that the Appellant's position as a CNT was a voluntary position.

20. Warden Kennedy testified that the activation involved the Corrections Emergency Response Team (CERT) as well as the CNT. The CERT would perform cell searches looking for drugs and weapons. The CNT were available to de-escalate any situations with inmates. Warden Kennedy testified that it was important that the activation remain secret so inmates would not know in advance.

21. Warden Kennedy was not aware that the Appellant had contacted Warden Ferguson until she received an email from Warden Ferguson. (Appellee's Exhibit, page 35). Warden Kennedy stated that, when she and Lyons met with the Appellant over this issue, she let the Appellant know that this could not happen in the future. She stated she was not yelling, and she was trying to let the Appellant know that this was not her role. According to Warden Kennedy, the Appellant was upset.

22. Warden Kennedy testified that she told Lyons to document the February 6 meeting Lyons had with the Appellant. (Appellee's Exhibit, page 39).

23. Warden Kennedy stated it was her decision to revert the Appellant. She stated this decision was performance based. The reversion letter was admitted into evidence as Appellee's Exhibit page 34. Warden Kennedy stated that race did not play a role in her decision to revert the Appellant.

24. Next to testify was **Major Rebecca Denham**. She is a Correctional Major at KCIW. She interacted with the Appellant in her duties as a Corrections Training Instructor/Coordinator I and with respect to her duties in CNT.

25. Denham was the assigned lead for the February 3, 2020 activation. She interacted with the CNT, including the Appellant and Jose Rodriguez. They discussed the fact that the Roederer Correctional Complex CERT Team was involved. The Appellant asked, "What about the CNT from RCC?" Denham told her that she would need approval from the Warden.

26. On February 1, 2020, Denham asked the Appellant to address a group of Sergeants regarding crisis negotiation techniques. She testified that the Appellant was thirty (30) to forty (40) minutes late. Denham stated that the Appellant started discussing her personal life, including how she had been in an abusive relationship in the past. The Appellant was hard to follow, so Denham redirected the meeting back to security concerns and the Appellant went to her office. Denham prepared a report regarding this incident, which was admitted in evidence as Appellee's Exhibit, page 1.

27. **Jessica Wallace** was the next witness to testify. She is an Accountant III at KCIW. She has known the Appellant through working with her. They did not have much interaction.

28. Wallace sat in on the February 6, 2020 meeting with the Appellant, at the request of Deputy Warden Lyons. This meeting lasted approximately five (5) minutes. The Appellant thought that Lyons was yelling at her. Lyons stated that he was not. The Appellant left the meeting. Wallace did not think that Lyons was yelling. She described that he had a tone with authority. Wallace was asked to write an Occurrence Report, which she did, and gave to Warden Kennedy. This was introduced as Appellee's Exhibit, page 5, which stated that no one raised their voice in the meeting, including the Appellant.

29. The **Appellant, Sonya Mays**, testified next. She stated she started with the Department of Corrections in 2012 as a Correctional Officer. She has also worked as an Administrative Specialist, Defender Specialist and, lastly, worked as an Administrative Specialist III in Health Services. In the fall of 2019, she was promoted to Corrections Training Instructor/Coordinator I. She was also participating in the Commissioner's Executive Leadership Program. When she was employed at the Roederer Correctional Complex, she started working with the Hostage Negotiation Team, which later became the CNT. Following her reversion, she was employed as an Administrative Specialist III in the Health Services Division in LaGrange, Kentucky, for the Department of Corrections.

30. Deputy Warden Lyons became the Appellant's first-line supervisor when she was promoted to Corrections Training Instructor/Coordinator I. He completed her Annual Employee Performance Evaluation and rated her as Highly Effective. Warden Kennedy was her second-line supervisor and signed off on the Appellant's evaluation on January 16, 2020. The Appellant's evaluation was admitted into evidence as Appellee's Exhibit, pages 24-29. The Appellant stated she was not disciplined while she worked at KCIW.

31. The Appellant met with Major Denham and Jose Rodriguez regarding the activation. When the Appellant heard that Search CERT from RCC was going to help out, she asked Denham if she thought they could get RCC CNT. Denham replied, "If you get permission." As a result, the Appellant requested permission from Warden Ferguson at RCC. She also discussed this matter with Andrew Byrd, who was on RCC CNT.

32. The activation occurred on February 3, 2020. According to the Appellant, the activation went well. She stated that at times, it was not clear what the role was for CNT. The CNT left around 1:00 a.m. the next morning.

33. On February 5, 2020, the Appellant attended a meeting with Deputy Warden Lyons and Warden Kennedy in Deputy Warden Lyons's office. She stated that Warden Kennedy asked her, "Who did you tell about the activation and what did you tell them?" When Warden Kennedy brought up the chain of command, Deputy Lyons stated that the Appellant had too much on her plate. He told her that, regarding her position as team leader for CNT, she should not make a decision until he returned next week.

34. The Appellant testified that she left the meeting and later resigned as team leader for CNT.

35. The Appellant testified that, on February 6, 2020, she met with Lyons in his office. Lyons had Wallace join them for the meeting and slammed the door. She stated that Lyons was yelling at her, and she asked him to lower his voice. She stated that Lyons told her, "You will regret it if you walk out that door." The Appellant stated she left Lyons' office and left the facility.

36. The Appellant testified that she attended training on the morning of February 12. Before training, the Appellant sent an email to Rodney Moore, the Personnel Director for the Department of Corrections, and told him what had happened. On February 13, the Appellant was called into Warden Kennedy's office and was told she was being reverted. According to the Appellant, Warden Kennedy stated, "We are going to rip the band-aid off and send you back to Health Services." The Appellant testified that she was upset and left.

37. The Appellant was asked if she was ever talked to about stealing time. She stated that she was overpaid on one check, and she spoke with Deputy Warden Lyons and straightened that out. The Appellant stated that she did not always clock out if she was going to continue to work on either her leadership program or CNT activities.

38. The Appellant testified that Warden Kennedy touched her hair the first time in November 2019, at the Wendell Ford Training Center. She stated there was a celebration and that Warden Kennedy, Denham, and others were outside taking pictures. She said that Warden Kennedy grabbed her hair and stated she always wanted to touch the Appellant's hair. She stated that it was so perfect. The Appellant stated that this happened again, in late December 2019, at KCIW in one of the secretary's offices. She stated that Warden Kennedy put her hands on the Appellant's head. She stated that Deputy Warden Lyons came in and redirected the conversation. The Appellant stated that on one (1) other occasion, Warden Kennedy commented on how soft and perfect her hair was. She said that Warden Kennedy stated, "Let me stop before I get into sexual harassment."

39. The Appellant identified herself as Black or African American.

40. During the Appellant's testimony, Appellee's Exhibit, page 38 was admitted into evidence, which is Appellant's email resignation as CNT leader. In her email, the Appellant explained why she did not wait until Lyons returned the following Tuesday. She stated that Tuesday was not a good day for her, and she stated she had a chance to pray about her decision to resign from CNT.

41. The Appellant's correspondence to Rodney Moore was admitted into evidence as Appellee's Exhibit, page 20 through 23. The last paragraph reads as follows:

I have talked with several people about this incident with the exception of CNT KCIW Members. They all are wanting me to go talk to them (Warden/DW Lyons), I do not trust anyone at

that institution. I know that he DW Lyons was in personnel for years and others have said he has never talked with them that way. I feel that there is a lot of bullying going on in the office of DW Lyons and Warden Kennedy and everyone is scared to say anything. Because of retaliation. I'm not sure if Jessica Wallace has submitted what happened that day or what. She seemed very intimidated, defeated and scared because I'm sure she is afraid of losing her job. I'm also afraid because I know that my probation is not up until March 1, 2020 but I refuse to be treated that way. It is unreal that either one of them can treat people the way that they do and still hold their positions. It was an embarrassment for me that his secretary had to be a witness to such negative behavior. I'm not sure why he did not call a supervisor to witness, but again his behavior was childlike. I refuse to not speak out against this type of negative, destructive, and bullying behavior. (sic)

42. Following the Appellant's testimony, the Appellant rested.

43. The Appellee recalled **Deputy Warden Stephen Lyons** to the stand. He testified that the Appellant had a change of attitude after she was no longer able to work overtime at KCIW starting in January 2020. He introduced into evidence an email from the Appellant to him and Warden Kennedy regarding the Appellant's time. This email, sent on February 13, discussed her time and was introduced as Appellee's Exhibit, page 43. This document showed that, on Thursday, February 6, the Appellant had 7.5 hours of sick leave.

44. Lyons introduced into evidence Appellee's Exhibit, page 39, which is his Occurrence Report regarding the February 6, 2020 meeting. This report reads as follows:

At approximately 3:20pm I asked ITC Sonya Mays to come over to my office and I asked Administrative Secretary Jessica Wallace to step in. I advised Ms. Mays that "when I give a directive it is a directive and not a suggestion." Ms. Mays stated "are you yelling at me?" I replied "Ms. Mays I am not yelling, however I am speaking sternly to you." At this point she cut me off and said "I won't let you yell at me, I will just clock out and show you how I deal with it." I replied to her, "Ms. Mays take a seat." She replied, "oh no" followed by some things that I could not understand. At this point she walked out of my office and left the institution without permission. End of Report - (sic)

45. The **Appellant, Sonya Mays**, was recalled to the stand. The Appellant stated she had never seen Major Denham's report regarding the training incident until she had filed this appeal.

46. Following the hearing, the parties filed closing briefs, and this matter was submitted to the Hearing Officer for a Recommended Order.

FINDINGS OF FACT

1. The Appellant, Sonja Mays, has been employed with the Department of Corrections since 2012, when she started as a Correctional Officer. Effective September 1, 2019, she was promoted to Corrections Training Instructor/Coordinator I at Kentucky Correctional Institute for Women (KCIW). While serving her promotional probationary period, she was also participating in the Commissioner's Executive Leadership Program. (Testimony of the Appellant)

2. While serving her promotional probation, the Appellant was also the team leader for the Crisis Negotiation Team (CNT) at KCIW. Her service on the CNT was voluntary and separate from her duties as a Corrections Training Instructor/Coordinator I. (Testimony of the Appellant and Lyons)

3. While serving as Corrections Training Instructor/Coordinator I, Deputy Warden Lyons was the Appellant's first-line supervisor. Warden Vanessa Kennedy was her second-line supervisor. The Appellant performed her duties as Corrections Training Instructor/Coordinator I well. She received a rating of "Highly Effective" on her 2019 Annual Employee Performance Evaluation, which was prepared by Lyons (1/13/2020) and approved by Kennedy, (1/16/2020). (Testimony of Lyons and Appellee's Exhibit, pages 24-29).

4. A series of events occurred between January 31, 2020, and February 6, 2020, that changed Lyons' opinion of the Appellant's performance and resulted in his recommendation that the Appellant should be reverted to her previous position. (Testimony of Lyons)

5. On Friday, January 31, 2020, the Appellant attended a briefing regarding an activation scheduled for Monday evening, February 3, 2020. The activation was a joint exercise with KCIW's CNT and Corrections Emergency Response Team (CERT) and Roederer Correctional Complex's (RCC) CERT members. The CERT was scheduled to conduct cell searches and the CNT was on hand to de-escalate any situations with inmates. During the briefing, the Appellant learned from Major Denham that RCC's CERT would also be participating in the event at KCIW. The Appellant asked if Denham if the RCC's CNT should also participate. Denham told her that was possible if she got permission. Denham meant permission from Warden Kennedy. The Appellant thought she was supposed to get permission from RCC Warden Sarah Ferguson. The Appellant discussed the activation with a Deputy Warden and a CNT from RCC and eventually emailed Warden Ferguson asking if RCC's CNT could participate in the activation. Warden Ferguson emailed Warden Kennedy about the event. Warden Kennedy knew nothing of the request and was embarrassed. She felt the Appellant had "jumped the chain-of-command" and had not kept the activation confidential. (Testimony of Major Denham, Warden Kennedy, the Appellant, and Appellee's Exhibits, pages 20 through 23).

6. On Saturday, February 1, 2020, at Denham's request, the Appellant was teaching crisis de-escalation techniques to a group of Correctional Sergeants. The Appellant arrived late to

the meeting. During her presentation, the Appellant became emotional and started talking about being in an abusive relationship. Denham believed that the presentation was going off topic and attempted to redirect the Appellant. Denham ended the Appellant's presentation early. Denham reported this incident to Lyons. (Testimony of Denham, Lyons, the Appellant, and Appellee's Exhibit 1).

7. The joint CERT/CNT activation occurred on Monday, February 3, 2020, without the participation of RCC's CNT. (Testimony of Lyons, Warden Kennedy, and the Appellant).

8. On Wednesday, February 5, 2020, the Appellant was called into a meeting with Warden Kennedy and Lyons. The Warden was upset that the Appellant had contacted RCC about the activation, and that she had heard about this for the first time from Warden Ferguson. Warden Kennedy asked the Appellant, "How would you feel?", and stated it was like a slap in the face. Warden Kennedy left the meeting. Lyons told the Appellant that she had too much on her plate. He suggested that she should concentrate on the Commissioner's Executive Leadership Program. The Appellant offered to give up her CNT leadership post. Lyons stated that he would be out on Friday and Monday and that the Appellant should just wait, and they would talk about it on Tuesday. (Testimony of the Appellant, Warden Kennedy, and Lyons)

9. Following the meeting, the Appellant was upset and confused. She thought further about resigning her position with CNT. After praying regarding her decision, she decided to resign her voluntary position with CNT. She sent out her resignation from this assignment by email on Thursday, February 6, 2020, at 3:16 p.m. (Testimony of the Appellant and the Appellee's Exhibit, page 38).

10. Shortly thereafter, Lyons summoned the Appellant to his office. He asked his secretary, Jessica Wallace, to join them as a witness. Lyons told the Appellant that a directive from him is not a suggestion. Lyons believed he was speaking sternly but not yelling. Wallace described his voice as a voice of authority but not yelling. The Appellant thought that Lyons was yelling at her. After a brief exchange between Lyons and the Appellant, the Appellant left the meeting, clocked out, and left the facility. Because the Appellant would not stay to speak with him, Lyons never discussed any concerns about the reports he received from Denham regarding the Appellant's alleged conduct during the previous Saturday's training session. (Testimony of the Appellant, Lyons, Wallace, and Appellee's Exhibit, pages 5, 20 – 23 and 39)

11. Following the meeting with the Appellant, Lyons recommended to Warden Kennedy that the Appellant should be reverted to her previous position. Lyons stated that walking off the job at a prison cannot be tolerated. He also stated that the Appellant was not receptive to his correction. Lyons had lost confidence in the Appellant's behavior since January 2020. For these reasons, he recommended to Warden Kennedy that the Appellant should be reverted. Lyons testified that race did not play any part in his decision to recommend reversion. (Testimony of Lyons).

12. Warden Kennedy discussed reversion with Lyons based on the Appellant's performance and Warden Kennedy agreed. Inaccurate time keeping was discussed, however, no

disciplinary action was pursued because of the Appellant's reversion. Warden Kennedy stated that the Appellant's behavior and performance were enough to warrant reversion. She stated that issues with the activation and the training incident played the part in her decision. According to the Warden, the Appellant's race played no part in the decision to revert her. (Testimony of Warden Kennedy).

13. The Appellant alleged that Warden Kennedy touched her hair on two (2) occasions. Warden Kennedy denied that she touched the Appellant's hair, however, she admitted that she complimented the Appellant on her hair. The Hearing Officer finds the Appellant's testimony more credible and specifically finds that Warden Kennedy touched the Appellant's hair. Nonetheless, the Hearing Officer finds there is no causal connection between the Warden's inappropriate conduct and her subsequent decision to revert the Appellant. (Testimony of the Appellant, Warden Kennedy, and Lyons)

14. The Hearing Officer finds that the Appellant was reverted due to performance and behavior issues. The Hearing Officer finds Lyons testimony credible as to the reason he recommended the Appellant's reversion. Lyons did not deem the Appellant's mistake with regard to the activation to be significant enough, by itself, to amount to grounds to revert her. He was upset when she resigned her CNT position without first discussing this matter with him. He decided to recommend her reversion when she did not accept criticism regarding the activation and refused to work with him regarding her future with CNT. Most importantly, Lyons recommended reversion because the Appellant left the meeting and the facility without prior approval. Warden Kennedy agreed with Lyons' recommendation and reverted the Appellant for behavior and performance issues. While the Warden's actions directed toward the Appellant (touching the Appellant's hair) were unprofessional, they do not establish that the Appellant's race was a factor in her reversion.

CONCLUSIONS OF LAW

1. As a classified employee serving her promotional probationary period in her Corrections Training Instructor/Coordinator I position, the Appellant could only file an appeal to the Personnel Board pursuant to KRS 18A.095(12). KRS 18A.005(35) defines reversion as follows:

"Reversion" means either the returning of a status employee to his or her last position held in the classified service, if vacant, or the returning of a status employee to a vacant position in the same or similar job classification as his or her last position held in the classified service. Reversion occurs after a career employee is terminated other than for cause from the unclassified service or after a status employee fails to successfully complete promotional probation. Reversion after unsuccessful completion of promotional probation, or in the case of a career employee after termination from the unclassified service, may only be appealed to the Personnel Board under KRS 18A.095(12).

2. KRS 18A.095(12) reads as follows:

Any classified employee may appeal to the board an action alleged to be based on discrimination due to race, color, religion, national origin, sex, disability, or age forty (40) and above. Nothing in this section shall be construed to preclude any classified or unclassified employee from filing with the Kentucky Commission on Human Rights a complaint alleging discrimination on the basis of race, color, religion, national origin, sex, disability, or age in accordance with KRS Chapter 344.
3. The Appellant properly invoked the jurisdiction of the Personnel Board when she filed her appeal from her reversion and alleged it was based on race discrimination.
4. The Appellant presented a *prima facie* case of race discrimination. She introduced evidence that she was a member of her protected class in that she was African American. She introduced evidence that she was meeting the legitimate expectations of her employer as Corrections Training Instructor/Coordinator I. She presented evidence that she suffered an adverse employment action when she was reverted to her prior position. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 93 S.Ct. 1817 (1973).
5. The Hearing Officer concludes that the Appellee articulated a legitimate nondiscriminatory reason for the Appellant's reversion. The Appellant was reverted because of performance and behavior issues. As a result of these issues, Lyons, her first-line supervisor, lost confidence in his ability to supervise her. Warden Kennedy agreed with Lyons' recommendation. The Appellee carried its burden of proof to rebut the presumption of the Appellant's *prima facie* case.
6. The Appellant failed to demonstrate that the Appellee's stated reason for her dismissal was pretextual and the Appellant failed to present persuasive evidence that poor performance and behavior issues were not the real reason she was reverted.
7. The Appellee also refuted part of the Appellant's *prima facie* case. The Appellee established that the Appellant was no longer meeting the legitimate expectations of her employer following the February 6, 2020 meeting with Lyons.
8. Although the Appellant presented evidence of unprofessional conduct by Warden Kennedy, the proof did not establish any connection between this conduct and the Appellant's reversion.
9. The Appellant failed to carry her burden of proof that her reversion was the result of race discrimination. KRS 13B.090(7).

RECOMMENDED ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer recommends to the Personnel Board that the appeal of **SONJA MAYS VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2020-086)**, be **DISMISSED**.

NOTICE OF EXCEPTION AND APPEAL RIGHTS

Pursuant to KRS 13B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are filed by the other party within five (5) days of the date on which the exceptions are filed with the Kentucky Personnel Board. 101 KAR 1:365, Section 8(1). Failure to file exceptions will result in preclusion of judicial review of those issues not specifically excepted to. On appeal a circuit court will consider only the issues a party raised in written exceptions. See *Rapier v. Philpot*, 130 S.W.3d 560 (Ky. 2004).

Any document filed with the Personnel Board shall be served on the opposing party.

The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

Each party has thirty (30) days after the date the Personnel Board issues a Final Order in which to appeal to the Franklin Circuit Court pursuant to KRS 13B.140 and KRS 18A.100.

ISSUED at the direction of **Hearing Officer Mark A. Sipek** this 3 day of May, 2022.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day emailed and mailed to:

Hon. Mark Bizzell
Hon. Thomas Schulz
Hon. Rosemary Holbrook (Personnel Cabinet)