

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2022-120**

BRIAN RICHARDSON

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 January 2024 meeting, having considered the record, including the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer dated December 5, 2023, 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 18th day of January, 2024.

KENTUCKY PERSONNEL BOARD

Mr. A. Singh

MARK A. SIPEK, SECRETARY

Copies hereof this day emailed and mailed to:

Brian Richardson
Hon. Jesse Robbins
Hon. Rosemary Holbrook (Personnel Cabinet)
Rodney Moore

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2022-120

BRIAN RICHARDSON

APPELLANT

V. **FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND RECOMMENDED ORDER**

JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF CORRECTIONS

APPELLEE

** * * * *

This matter came on for an evidentiary hearing on November 9, 2023, at 9:30 a.m. ET, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. Mark A. Sipek, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Brian Richardson, was present and was not represented by legal counsel. The Agency/Appellee, Justice and Public Safety Cabinet, Department of Corrections, was present and represented by the Hon. Jesse Robbins. Also present for the Appellee were Erica Hargis, Appointing Authority, and Deanna Smith, Paralegal Consultant.

BACKGROUND

1. The Hearing Officer notes this appeal was filed with the Personnel Board on August 24, 2022. On the Appeal Form and during the pre-hearing conference, the Appellant, a classified employee with status, indicated he was appealing a demotion. The Appellant further explained his claims in the narrative portion of the Appeal Form wherein he states, in pertinent part:

I do not feel I violated policy & believe I'm being discriminated against for my Religious beliefs & faith in God. Sharing my Bible views on Facebook & sharing church videos is not Ridicule, harassment, or discriminating in anyway – which is why I was demoted per the demotion letter. (sic)

2. Issues for the evidentiary hearing:

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- A. Whether the demotion of the Appellant from Probation and Parole Assistant Supervisor (grade 15) to Probation and Parole Officer II (grade 14) was issued for just cause and whether the penalty was excessive or erroneous. The burden of proof was on the Appellee and was by a preponderance of the evidence.
- B. Whether the Appellant was discriminated against based on his religion. The burden of proof was on the Appellant by a preponderance of the evidence. (Hearing Officer Note: the Appellant included this claim on his Appeal Form. At times during this appeal, the Appellant stated he was withdrawing his religious discrimination claim, however, at the evidentiary hearing he clearly presented this claim. Counsel for the Appellee stated he anticipated this claim and had no objection).

3. Witnesses:

A. Appellee:

- 1. Erica Hargis, Director of the Division of Probation and Parole and Appointing Authority.
- 2. Rodney Moore. Executive Director of the Office of Human Resources for the Justice and Public Safety Cabinet.
- 3. Cookie Crews. Commissioner of the Department of Corrections.
- 4. Appellant, Brian Richardson.

B. Brian Richardson, Appellant

4. Exhibits:

A. Joint Exhibits:

- 1. Kentucky Personnel Cabinet, Position Description, for Probation and Parole Assistant Supervisor.

2. Cabinet for Health and Family Services, Anti Harassment/ Discrimination Summary Acknowledgment Form, signed by the Appellant on 9-4-13.
3. Acknowledgement Appellant signed stating it was his responsibility to review, become familiar with, and adhere the following policies dated 7-1-14:

Code of Ethics – CPP 3.1

Discrimination and Political Activities
Prohibited

E-mail and Internet use Policy

Drug free Workplace Policy

Equal Employment opportunity and
Affirmative Action

Kentucky Employee Assistance program

Sexual Harassment Policy – CPP3.5

Non-Discrimination of the Basis of
Disability

Employee Confidentiality and Security
Agreement

State Employee Handbook

Notice about Special Enrollment Rights

4. Kentucky Division of Probation Parole, Annual Employee Policy & Procedure Review (Administrative Staff), signed by the Appellant on 02-04-2021.

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5. Kentucky Division of Probation Parole, Annual Employee Policy Procedure Review (Hazardous Duty Employees), signed by the Appellant on 02-04-2021.
6. Kentucky Corrections Policies and Procedures, 3.1 effective March 30, 2017. Code Of Ethics/Social Media Use.
7. **“Not Introduced”**
8. New Ransom Church of the Living God, Facebook post, dated June 5, 2022.
9. Appellant’s Facebook post, re: Congrats to our graduates at New Ransom Temple Academy!
10. June 7, 2022 Transcript of the Teams Meeting between Erica Hargis, William Harold, and Brian Richardson.
11. Appellant’s revised Facebook post, re: Congrats to our the graduates at New Ransom Temple Academy, dated June 5.
12. Justice and Public Safety Cabinet, Demotion Letter signed by Director of Division of Probation and Parole, Erica Hargis, to the Appellant dated July 28, 2022.
13. Appellant’s Personnel Board Appeal Form received August 24, 2022.
14. Kentucky Personnel Cabinet, Position Description, for Probation and Parole Officer II

B. Appellee’s Exhibits:

15. Text message from Leslie H.
16. Email chain between Erica Hargis, Rodney Moore, and Lisa Lamb, June 5, 2022, through June 6, 2022.

C. Appellant's Exhibits:

1. New Ransom Way of the Cross Temple Incorporated (New Ransom) Credential of Ministry for the Appellant dated September 2, 2011.
2. **Not Introduced by the Appellant.**
3. Courier Journal news article "Drag Queen Storytime in Louisville relays message of acceptance despite protests" published May 18, 2019, 4:52 pm ET.
4. Handwritten letter from New Ransom Temple student with two (2) pictures attached.
5. Probation and Parole D-16, District Supervisor Tera Reardon Vincent, Facebook post dated May 29.
8. June 1, 2022, photograph of Pride or Die front door decoration of Department of Corrections employee.
10. wfmynews2.com news article re: Guilford County Elementary School could be seeing new 'After-School Satan Club' published April 24, 2022.
11. Kentucky Secretary of State Articles of Amendment (Domestic Nonprofit Corporation) form for New Ransom Church of the Living God, Inc., signed by Wilbert L. Williams, on 1-7-2016.
12. Newspaper article re: Former Anoka Middle School teacher receives max sentence for sex crime charges, published November 17, 2021.

D. Appellant's Exhibits excluded from evidence (objections sustained):

Exhibit 6: WDRB news article, JCPS teacher accused in groping incidents facing 5 new charges in Jefferson County published January 30, 2023, 2:10 pm EST.

Exhibit 9: Copy of a poster for LPAS Rainbow Club meeting.

5. **Joint Stipulations:** The parties submitted forty (40) joint stipulations on October 13, 2023. The Joint Stipulations are incorporated in the Findings of Fact herein.

FINDINGS OF FACT

1. The Appellant, Brian Richardson, was employed as a classified employee with status within the Justice and Public Safety Cabinet, Department of Corrections (DOC), Division of Probation and Parole. He was hired as a Probation and Parole Officer I on July 1, 2014. As of March 16, 2022, the Appellant was reallocated as a Probation and Parole Assistant Supervisor (grade 15). (Joint Stipulations of Fact 1, 2, and 8, and testimony of the Appellant and Hargis.)

2. The Appellant has been a Pastor of New Ransom Church of the Living God. The church also operates a school named The New Ransom Temple Academy. (Joint Stipulations of Fact 3 and 4, and testimony of the Appellant and Hargis.)

3. On June 5, 2022, the New Ransom Church of the Living God posted a Facebook message congratulating the graduates of the New Ransom Temple Academy. (Joint Exhibit 8, Joint Stipulation of Fact 25, and testimony of the Appellant and Hargis.)

4. On the same day, the Appellant copied and pasted the Facebook message from his church and posted it on his own Facebook page. The Appellant's Facebook profile was public and listed him as an employee of the Commonwealth of Kentucky, but not as an employee of the Probation and Parole Office. The profile also listed him as a Pastor at New Ransom Church of the Living God. This Facebook post read as follows:

Congrats to our the graduates at New Ransom Temple Academy!!!

Thank God for our church organization school. Good and holy school environment, where homosexuality and other evil topics are not an issue. Public schools are attempting to shove this down the throats of the parents and students. BUT, New Ransom Temple academy is ran by holy, sanctified and Holy Ghost filled believers to teach the students.

No drag Queens come to have reading time at our library, no discussion of satanism during after school hours, no homosexual teachers looking at our young boys and girls - - these have been issues in the public schools and God is not pleased. (sic)

(Joint exhibit 9, Joint Stipulations of Fact 22 and 26, and testimony of the Appellant and Hargis.)

5. On June 5 and 6, 2022, Erica Hargis, Director of Probation and Parole, received complaints regarding the Appellant's Facebook post. (Joint Stipulation of Fact 27, **Appellee's Exhibit 15**, and the testimony of Hargis.)

6. On June 7, 2022, Hargis, together with District Supervisor Bill Herald, held a Teams meeting with the Appellant to discuss the Facebook post. During this meeting, Hargis informed the Appellant she had received complaints from the Appellant's coworkers, who "identified as homosexual," saying they were offended by his post. Hargis stated this post was found offensive because it was referring to "homosexuality" as "evil." Hargis explained that in his Facebook Post, he alleged that "homosexual teachers" would automatically be looking at young boys and young girls. Hargis pointed out that the policy in question was CPP 3.1, regarding social media use. She asked the Appellant, "Does the post impair the harmony and relationships among coworkers?" She also asked, "Is it discriminatory in nature of a protected class of individuals as defined by federal law?" After a discussion, the Appellant agreed to review the policy and edit the post in an attempt to comply with CPP 3.1. He stated that they would not need several Teams meetings and if anyone continued to say it is offensive, they should not look at the post. (Joint Stipulations of Fact 28 and 29, **Joint Exhibit 10**, and testimony of Hargis.)

7. As a result of the Teams meeting on June 9, 2022, the Appellant revised his Facebook post. The revised Facebook post reads as follows:

Congrats to our the graduates at New Ransom Temple Academy!!!

Thank God for our church organization school. Good and holy school environment, where homosexuality and other sins are not pushed in the face of our students. Public schools are attempting to shove these sinful activities and lifestyles down the throats of the parents and students. BUT, New Ransom Temple academy is ran by holy, sanctified and Holy Ghost filled believers to teach the students.

As we have seen in public schools recently: drag Queens come to have ready time at the library of public schools, in NC satanism has been in the discussion as a after school activity for students, homosexual teachers have taken advantage of and molested same gender students - - these have been issues in the public schools and

God is not pleased. IM PROUD TO SAY NOT AT NEW RANSOM
Temple
Academy. (sic)

(Joint Stipulation of Fact 30, **Joint Exhibit 11**, and testimony of the Appellant and Hargis.)

8. Thereafter, Hargis reviewed the edited post with HR Executive Director Rodney Moore and DOC Commissioner Cookie Crews and determined it was still a violation of CPP 3.1. After discussing this matter, Hargis, Director Moore, and Commissioner Crews came to the decision to demote the Appellant so that he would no longer be in a supervisory position over employees. (Joint Stipulation of Fact 30 and 31, and testimony of Hargis, Director Moore, and Commissioner Crews.)

9. By letter dated July 28, 2022, Hargis, who is also an appointing authority, demoted the Appellant from his position as a Probation and Parole Assistant Supervisor to a position of Probation and Parole Officer II, effective August 1, 2022. (Joint Stipulation of Fact 33, **Joint Exhibit 12**, and testimony of Hargis.) The demotion letter is also attached to this order as **Recommended Order Attachment A**.

10. Kentucky Corrections Policy and Procedures 3.1, Code of Ethics/Social Media Use, reads as follows, with respect to social media use:

F. Social Media

A Kentucky Department of Corrections employee may be subject to personnel action if content on personal social media networking sites, posts/comments on other social media networking sites, or public websites:

1. Adversely affect the department's operations;
2. Interfere with an employee's performance of duties;
3. Impair discipline, harmony or relationships among coworkers;
4. Showcase obscene or sexually explicit content;
5. Ridicule, harass or are discriminatory in nature against an individual or group of people in regards to their race, color, religion, sex, national origin or any

protected class of individuals as defined by federal law;

6. Include content that would reasonably be considered as reckless or irresponsible;
7. Violate the Employee Confidentiality and Security Agreement;
8. Use any image or photograph of images that belong to the Kentucky Department of Corrections that would reflect discredit on the Department or undermine public trust, to include: time, facilities, equipment or supplies of the Commonwealth by an employee for his private purposes, any image of an offender (with or without consent), and any material for which the Kentucky Department of Corrections holds a copyright, trademark, patent or other intellectual property right; or
9. The employee, during duty hours, is engaging in social media activities that are not the official business of the department. Duty hours does not include breaks (i.e. lunch, designated breaks).

Joint Exhibit 6.

11. The Hearing Officer finds that the Appellant's edited Facebook post violated CPP 3.1 because it harassed and was discriminatory in nature against a group of people or protected class of individuals based on their sexual orientation. The Hearing Officer rejects the Appellant's contention that his edited post contained only factual information. The Appellant introduced news articles into evidence attempting to show that his edited post was based on facts. The articles he introduced failed to prove that his post was factual. Further, the Hearing Officer finds the Appellant's edited Facebook post was designed to harass and discriminate against individuals based on their sexual orientation.

12. The Hearing Officer finds the Appellant received training regarding CPP 3.1 and was aware of the Appellee's expectations for Social Media Use. (Testimony of the Appellant and Hargis, Joint Stipulations of Fact 20 and 21, and Joint Exhibits 3, 4, 5, 6, and 10.)

13. The Hearing Officer does not find that the Appellant was discriminated against based on his religion. He argued that other employees had made posts on social media and displayed signs in the workplace that he found offensive. The Appellant never complained about these alleged Facebook Posts and signs and, so, they were never investigated. In addition, he did not point to anything that "ridiculed, harassed, or was discriminatory in nature" against him because of his religion. The Appellant did not point to anything that singled out Christians in particular, or the Appellant himself, because of his religion. He simply pointed out employees who posted things on social media and in the office that he disagreed with. (Testimony of the Appellant and Hargis, and Appellant's Exhibits 3, 4, 5, 8 and 12.)

14. The Appellant stated he did not have an issue with LGBT people. He stated he would alter his Facebook Post to conform with CPP 3.1 and never requested an accommodation from compliance with this policy. (Testimony of the Appellant and Joint Exhibit 10.)

15. The Appellant resigned effective October 9, 2023, to take another job. (Joint Stipulation of Fact 2 and testimony of the Appellant.)

CONCLUSIONS OF LAW

1. Based on the Findings of Fact, the Appellee has carried its burden of proof to establish just cause for the demotion of the Appellant and that the penalty was neither excessive nor erroneous. KRS 18A.095(1) and KRS 13B.090(7).

2. The Appellant failed to carry his burden of proof that he was discriminated against based on his religion. KRS 18A.095(12) and (14)(a) and KRS 13B.090(7). Although the Appellant established that he was Christian and that he suffered an adverse employment action when he was demoted, he failed to establish that he was singled out because of his religion. His Facebook post violated the Social Media portion of CPP 3.1, and he was subject to disciplinary action.

3. The Appellant failed to demonstrate that his sincere religious belief conflicted with CPP 3.1 and insisted he would be able to comply once he amended his Facebook post. In addition, he never asked to be accommodated by being exempt from complying with CPP 3.1. Thus, the Appellant failed to present a *prima facie* case of religious discrimination. *Tepper v Potter*, 505 F.3d 508 (6th Cir. 2007).

4. The Appellant failed to demonstrate that he was treated differently than similarly situated Non-Christians. *Rightnour v Tiffany and Company*, 354 F.Supp.3d 511 (S.D.N.Y. 2019).

5. Counsel for the Appellee stated that CPP 3.1 had been adopted as an Administrative Regulation. 501 KAR 6:020 incorporates an earlier version of CPP 3.1 (Amended 12-10-13) and not the version admitted into evidence as **Joint Exhibit 6**, (Amended March 30, 2017). Nonetheless, the Hearing Officer concludes the Appellant received training regarding the policy, violated it, and was properly held accountable.

6. Because all the events associated with this appeal occurred prior to the passage of Senate Bill 153, all references to KRS Chapter 18A are to the sections in effect at the time of the events associated with this Appeal.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **BRIAN RICHARDSON V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2022-120)** 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 fifteen (15) 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).

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.

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

SO ORDERED at the direction of the Hearing Officer this 5 day of December, 2023.

KENTUCKY PERSONNEL BOARD

Mark A. Sipek
MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day emailed and mailed to:

Hon. Jesse Robbins
Brian Richardson
Hon. Rosemary Holbrook (Personnel Cabinet)



JUSTICE AND PUBLIC SAFETY CABINET

Andy Beshear
Governor

Kerry Harvey
Secretary

Cookie Crews
Commissioner

Department of Corrections
Division of Probation & Parole
P.O. Box 2400
Frankfort, Kentucky 40602
Phone (502) 564-4221
Fax (502) 564-5229
www.Corrections.ky.gov

Lisa Lamb
Deputy Commissioner

Erica L. Hargis
Director

July 28, 2022

Brian Richardson

Dear Mr. Richardson:

Pursuant to KRS 18A.095, you are advised that you will be demoted for cause from your position as Probation and Parole Assistant Supervisor to the position of Probation and Parole Officer II effective beginning of business August 1, 2022. As a result, pursuant to 101 KAR 2:034, your salary will be reduced from \$4,356.68 to \$4,149.22.

You are demoted for violation of Corrections Policy and Procedure

- 3.1 – Code of Ethics/Social Media Use.
 - Section II Policy and Procedure
 - F. Social Media
 - 5. Ridicule, harass or are discriminatory in nature against an individual or group of people in regards to their race, color, religion, sex, national origin, or any protected class of individuals as defined by federal law.

On June 5, 2022, you made a Facebook post stating the following: Congrats to our graduates at New Ransom Temple Academy!!! Thank God for our church organization school. Good and holy school environment, where homosexuality and other evil topics are not an issue. Public schools are attempting to shove this down the throats of the parents and students. BUT, New Ransom Temple academy is ran by holy, sanctified, and Holy Ghost filled believers to teach the students. No drag Queens come to have reading time at our library, no discussion of satanism during after school hours, no homosexual teachers looking at our young boys and girls-these have been issues in the public schools and God is not pleased.

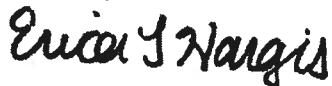
You later amended the post to say the following: Congrats to our graduates at New Ransom Temple Academy!!! Thank God for our church organization school. Good and holy school environment, where homosexuality and other sins are not pushed in the face of our students.

Public schools are attempting to shove these sinful activities and lifestyles down the throats of the parents and students. BUT, New Ransom Temple academy is ran by holy, sanctified and Holy Ghost filled believers to teach the students. As we have seen in public schools recently: drag Queens come to have reading time at the library of public schools, in NC satanism has been in the discussion as a after school activity for students, homosexual teachers have taken advantage of and molested same gender students-these have been issues in the public schools and God is not pleased. I'M PROUD TO SAY NOT AT NEW RANSOM Temple Academy.

For your information, the Kentucky Employee Assistance Program (KEAP) is a voluntary and confidential assessment and referral service for state employees. This service may help you with any personal problems that may be affecting your job performance. KEAP can be reached at (800) 445-5327 or (502) 564-5788.

In accordance with KRS 18A.095, you may appeal this action to the Personnel Board within sixty (60) days after receipt of this notice, excluding the date notification is received. Such appeal must be filed in writing using the attached appeal form and in the manner prescribed on the form.

Sincerely,



Erica Hargis, Director
Division of Probation and Parole

Attachment: Appeal Form

Cc: Cookie Crews, Commissioner – Department of Corrections
 Lisa Lamb, Deputy Commissioner – Department of Corrections
 Rodney Moore, Director – Division of Personnel Services
 Erica Hargis, Director – Division of Probation and Parole
 Personnel File

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Complete items 1, 2, and 3. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece or on the front if space permits. Article Addressed to: AMANDA COKE	
A. Signature 	<input type="checkbox"/> Agent <input type="checkbox"/> Addressee B. Received by (Printed Name) 8/1/12 C. Date of Delivery D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <small>If YES, enter delivery address below.</small>
Article Addressed to: AMANDA COKE	
3. Service Type <input type="checkbox"/> Priority Mail Express <input type="checkbox"/> Registered Mail <input type="checkbox"/> Registered Mail Restricted Delivery <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Insured Mail <input type="checkbox"/> Insured Mail Restricted Delivery <small>Over \$5000</small>	
4. Article Number (Transfer from service label) 019 1120 0002 1133 1547 5 Form 3811, July 2015 PSN 7530-02-000-8053	
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USPS TRACKING  9590 9402 5531 9249 3995 91	
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Attn: Amanda Coke 	