

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2016-058**

ERICK STEINBERGEN

APPELLANT

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

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

APPELLEE

* * * * *

The Board, at its regular November 2016 meeting, having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated October 6, 2016, Appellant's Exceptions, Appellee's Response to Exceptions, oral arguments and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be altered as follows:

A. **Delete** Background paragraphs 8 and 9, and substitute the following:

8. The witness recalled that the alleged mistreatment aspect was initially reported by the inmate involved. As matters moved forward, he learned that the episode was videotaped by use of a handheld recorder. He soon discerned that Appellant, as the Shift Captain on duty upon the shift following the extraction, was made aware of the contents of the video by Lt. Jonathan Clayton, by way of review of at least a portion thereof. Investigation further indicated that, although Warden Smith happened to be in the vicinity or in the Captain's office while Appellant was viewing the tape, neither Appellant nor anyone else disclosed either the existence or contents to him at the time

and, in fact, ceased viewing it when the Warden appeared there. The report was that Appellant returned the camera and tape to the officer who brought it to him and this officer simply left the office with it. The Warden was then made aware of its existence the following day by Deputy Warden Coyne.

9. The witness continued that a portion of his investigation also included an interview of Appellant by three staff members consisting of approximately 30 minutes. He introduced the audio interview in its entirety as part of his testimony, focusing upon approximately seven minutes thereof to depict Appellant's role. Specifically, the audio indicates Appellant met with the three staff members on February 9, 2016. He confirmed he was not present for the cell extraction, but was subsequently supplied a video for review by Lt. Clayton. He acknowledged that he watched a portion thereof and observed "inappropriate" actions taken during the extraction by one or another of the officers involved, namely a form of retaliation wherein the officer kicked the inmate. He further confirmed that while reviewing the tape, Warden Smith entered the Operations office, whereupon he assumed that the Warden or other management was already aware of the events and an investigation was underway. He conceded, during the interview, that he terminated his review of the tape to avoid further repercussions for himself, since there had been inappropriate behavior and he did not desire to be involved or connected thereto.

B. Delete Background paragraph 17 and substitute the following:

17. **Alvin Miller** is a Correctional Officer at KSR and was also a member of the team performing the cell extraction under scrutiny. He insisted that he observed no improper conduct during the exercise by any member with the exception of Sergeant Nation kicking the inmate in response to being kicked. He reported this to his superior officer. Under brief cross-examination, the witness expanded that he prepared his

Incident Report arising from the extraction and therein reported the kicking aspect referenced above. He was also requested to, and did, prepare a longer version of an Incident Report a day or so later.

IT IS FURTHER ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer, as Altered, be and they hereby are, approved, adopted and incorporated herein by reference as a part of this Order, and Appellant's appeal is **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 22nd day of November, 2016.

KENTUCKY PERSONNEL BOARD



MARK A. SIPER
SECRETARY

A copy hereof this day mailed to:

Hon. Catherine Stevens
Mr. Erick Steinbergen
Mr. Rodney E. Moore

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2016-058**

ERICK STEINBERGEN

APPELLANT

VS.

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

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

APPELLEE

** ** ** ** **

This matter came on for evidentiary hearing on August 10, 2016, at 9:35 a.m., at 28 Fountain Place, Frankfort, Kentucky, before the Hon. John C. Ryan, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by KRS Chapter 18A.

Appellant, Erick Steinbergen, was present and was not represented by legal counsel. Appellee, Justice and Public Safety Cabinet, Department of Corrections, was present and was represented by the Hon. Catherine Stevens.

This matter was the subject of at least one pre-hearing conference at which the issues were defined and other procedural matters addressed as needed.

BACKGROUND

1. Until February 29, 2016, Erick Steinbergen held the position of Correctional Captain I with the Agency's Department of Corrections, employed at Kentucky State Reformatory. By letter of that date, over the signature of Aaron Smith, Warden of the facility, he was dismissed from his position for asserted poor work performance, specifically, violation of the relevant regulations and one or more KSR Post Orders and/or Policies. A true copy of the dismissal letter (amended 3/14/16) is appended hereto as **Recommended Order Attachment A**.

2. Mr. Steinbergen took timely appeal of his dismissal on March 18, 2016, under the appropriate category but did not, at that time, enumerate the underlying grounds for his challenge.

3. Upon convening the evidentiary hearing, the Agency offered the testimony of **James Coyne**, who is Deputy Warden of Security at the Kentucky State Reformatory (KSR), a position he has held for approximately five years of his total of 17.5 years with the Agency. His

duties include oversight of all security operations and security staffing, involvement with disciplinary actions as needed, and oversight of maintenance.

4. The Deputy Warden noted that KSR houses just under 2,000 inmates, some of whom suffer psychiatric and emotional issues. These mentally ill individuals are housed in a section known as Correctional Psychiatric Treatment Unit (CPTU), comprising one or more wings of the facility and intended to deal especially with their needs. He expanded upon the necessity for the section and its function for the record. Some of these inmates are particularly unruly, and on February 4, 2016, at approximately 4:15 p.m. staff deemed it necessary to enter the cell of one of them. This individual was previously misbehaving, throwing an unspecified substance, mostly liquid, at staff and the need arose to investigate this and its source. The process involved removing the inmate, restraining him, and inspecting his cell. The procedure is known as "cell extraction," which the witness described, noting that the entire exercise is designed to prevent injury to both the inmate and to the staff team involved with the actual removal. He explained that the action ordinarily requires prior approval from upper management, commencing with the Shift Captain's office who thereupon contacts the Warden or Deputy Warden for permission. In their absence, under certain circumstances, such as wherein matters appear of an emergency nature, the Shift Captain is authorized to approve it. The team assembled to conduct this cell extraction is dressed in what amounts to riot equipment and the inmate is carefully and completely restrained while out of his cell. The sequence is ordinarily videotaped or filmed with a handheld camera.

5. The witness continued that upon his routine tour of the wing the following day, February 5, 2016, the inmate complained to him that he had been assaulted and mistreated during the extraction the previous day. He obtained and reviewed the video, observing enough, approximately one minute 15 seconds thereof, to convince him that excessive force was engaged, including one staff member kicking the inmate. He took the video to Warden Smith for his review and, in the course thereof, the Warden noticed that this was apparently the recording that was being viewed by Appellant and others in Appellant's office when he, the Warden, happened by there late the day before. The Warden recalled that they "hurriedly" turned it off and put it away when he approached. Ultimately, he continued, the officers involved were interviewed and very shortly thereafter, the three actual perpetrators resigned. The matter was referred to local authorities for criminal prosecution and his information was that the three pled guilty to specified charges. He introduced the referenced portion of the video, which he urged substantiated the assault aspects.

6. Under relatively brief cross-and redirect examination, Deputy Warden Coyne noted that according to staff reports the extraction under scrutiny was authorized by the Shift Captain, who is in charge in the absence of upper management, such as the Warden or Deputy Warden. He pointed out, however, that although the timing of this particular sequence, around 4:15 p.m., is near the daily departure time for some staff, ordinarily the Warden is still on-site

and may have been contacted. He noted that the primary purpose of videotaping such extractions is for monitoring and training purposes, as well as to enable administrative staff to review what occurred and undertake to improve procedures as needed.

7. **Michael Williams** has held the position of Captain at KSR for 2.5 years and is Supervisor of Internal Affairs at the facility. He includes among his duties investigation of alleged policy and procedural violations and dealing with any suspicious activity within the institution. He confirmed that Deputy Warden Coyne alerted him concerning a cell extraction event and its aftermath in early February 2016. He thereupon initiated an investigation, which included gathering of all information surrounding the extraction and the handling of the video thereof, commencing with interviews of all personnel involved. The primary focus was to determine whether excessive force was engaged by the officers in the treatment of the inmate at any time during the exercise.

8. The witness recalled that the alleged mistreatment aspect was initially reported by the inmate involved. As matters moved forward, he learned that the episode was videotaped by use of a handheld recorder. He soon discerned that Appellant, as the Senior Captain on duty upon the shift following the extraction, was made aware of the contents of the video by the Lieutenant who conducted the taping, by way of review of at least a portion thereof. Investigation further indicated that, although Warden Smith happened to be in the vicinity or in the Captain's office while Appellant was viewing the tape, neither Appellant nor anyone else disclosed either its existence or contents to him at the time and, in fact, ceased viewing it when the Warden appeared there. The report was that Appellant returned the camera and tape to the officer who brought it to him and this officer simply left the office with it. The Warden was then made aware of its existence the following day by Deputy Warden Coyne.

9. The witness continued that a portion of his investigation also included an interview of Appellant by three staff members consisting of approximately 30 minutes. He introduced the audio interview in its entirety as part of his testimony, focusing upon approximately seven minutes thereof to depict Appellant's role. Specifically, the audio indicates Appellant met with the three staff members on February 9, 2016. He confirmed that he was not present for the cell extraction but was subsequently supplied a video for review by the staff member who recorded it. He acknowledged that he watched a portion thereof and observed "inappropriate" actions taken during the extraction by one or another of the officers involved, namely a form of retaliation wherein the officer kicked the inmate. He further confirmed that while reviewing the tape, Warden Smith entered the Operations office, whereupon he closed up the camera and returned it to the Lieutenant. He also insisted in the interview that he assumed that the Warden or other management was already aware of the events and an investigation was underway. He conceded, during the interview, that he terminated his review of the tape to avoid further repercussions for himself, since there had been inappropriate behavior and he did not desire to be involved or connected thereto.

10. Under very brief cross-examination, the witness acknowledged that Appellant brought another incident of alleged abuse or excessive force to his attention approximately one week prior to the episode under scrutiny.

11. **Aaron Smith** has served as Warden of Kentucky State Reformatory since May 2014, having commenced with the Agency in 1988. He ratified that the cell extraction previously discussed was brought to his attention on February 5, 2016, by Deputy Warden Coyne, who brought the video thereof and the camcorder to his office. He was thereby reminded that the previous day, around 7:00 or 8:00 p.m., he went to the Operations office to confer with a staff member concerning an unrelated matter. Upon entering the office, he immediately observed the staff member he was seeking. He also noticed Appellant and Lieutenant Clayton viewing something on a camcorder, but thought little of it. Upon spotting him, Appellant promptly shut off the machine and slid it over to the Lieutenant, who left with it.

12. His viewing of the video with Deputy Warden Coyne made it clear to him that the extraction team had employed clearly excessive force, and the entire matter was promptly referred to the Internal Affairs Captain, including delivery of the camcorder and its video. As noted, he also promptly made the connection that this is what Appellant and the Lieutenant, who actually did the taping, were watching when he interrupted them the day before.

13. The Warden continued that the Lieutenant who brought the video to Appellant, who was the Shift Captain in charge, followed proper protocol in the circumstance. Appellant, on the other hand, breached protocol and violated several policies by not promptly notifying upper management and/or Internal Affairs upon viewing the excessive force actions. His explanation for his failure to do so, which was that he assumed that the matter was already under investigation by upper management, was not credible, since that could only have occurred if the video had already been turned in on a prior shift and, in such case, Appellant would have been informed of the on-going investigation when he commenced his shift. Further, the camcorder and its contents would already have been in the custody of Internal Affairs rather than being "passed around" for viewing. The witness continued that Appellant's other stated reason, a desire "not to be in it" was also unacceptable since he was the Shift Captain in charge, and, under KSR policy, his only option upon observing the video was to immediately report it to upper management.

14. The Warden explained that Appellant's actions were a serious breach of duty and a violation of policy. He alluded to the various elements of the sequence, including the criminal charges levied against the three staff members who resigned in lieu of their termination. Consequently, termination of Appellant was the penalization viewed to convey the concerns about his behavior. He identified the correspondence directed to Appellant, including the

termination letter, which he offered in connection with his testimony together with copies of the polices cited in the letter.

15. Under cross-examination, the Warden acknowledged that he did not observe Appellant to undertake to conceal the camcorder or alter its video when he entered the Operations office. He ratified that the cell extraction procedure was approved by other officials and did not involve Appellant. The Lieutenant who made the video was not disciplined nor was the officer whom the Warden came to see in the Operations office. Appellant discussed with him the reporting requirements protocol, primarily as might be required by those present for the extraction who did not commit the excessive force, but who may have observed it. The witness was unable to comment thereon since he did not interview those individuals, nor did he personally review all of the written statements gathered by Internal Affairs. He confirmed that the three individuals charged with excessive behavior resigned with prejudice before procedure was initiated to terminate them. He noted that Appellant did not request this option. He ratified that KSR personnel have worked, and continue to work, 12 hour shifts and, had Appellant not been terminated, he would currently be assigned a 60 hour work week.

16. The Agency having completed its proof-in-chief, Appellant offered the testimony of **Hillary Rucker**, who was and is at the time of the hearing, an Information Specialist at KSR. She previously was a Correctional Officer and was among those present during the cell extraction of February 4, 2016. She asserted that she did not personally observe any activity during the extraction that was "out of the ordinary." She briefly discussed her actions during the extraction in response to inquiry by Appellant. The Agency had no questions of her.

17. **Alvin Miller** is a Correctional Officer at KSR and was also a member of the team performing the cell extraction under scrutiny. He insisted that he observed no improper conduct during the exercise by any member with the exception of Sergeant Nation kicking the inmate in response to being kicked. He reported this to his superior officer. Under brief cross-examination, the witness expanded that he prepared an Incident Report arising from the extraction and therein reported the kicking aspect referenced above. He was also requested to, and did, prepare an Extraordinary Occurrence Report, a short version upon the date of the event and a more detailed, longer version a day or so later.

18. **Thomas Noonan** is the day shift Shift Captain at KSR, having permanently attained this position approximately one month prior to the hearing. He was also in that position on February 4, 2016, and it was he who contacted the Senior Captain to secure permission to conduct the subject extraction and to utilize a restraint chair during the procedure. When the exercise was concluded, he spoke with one or more members of the team and was assured that all was in order, with no report of any wrongdoing at that time. He recalled that one or two of the officers sustained "red marks" upon their arms, but no treatable injuries were reported. The Agency conducted no examination of this witness.

19. Appellant, **Eric Steinbergen**, offered his own testimony. He was previously a ten-year employee of KSR and had served as Captain for approximately one year at the time of his termination. He recited that on February 4, 2016, a Thursday, he reported to work at 7:00 p.m. as night shift Captain, and within approximately five minutes a friend, Lieutenant Clayton, came around mentioning "Did you hear what happened on day shift?". Appellant indicated his unawareness thereof and approximately 30 minutes later Lieutenant Clayton brought a camcorder with its video and showed him a portion. Appellant observed the officer on the tape being kicked and returning the kick upon the inmate. He recognized the actions to be clearly excessive force and surmised that the sequence would generate an investigation. Since it occurred on the prior shift he was of the assumption that an investigation was already under way. He insisted that he observed the Warden coming down the hall towards his office and, incidental thereto, concluded that any further viewing of the video might be construed as either inserting himself into, or interfering with, an active investigation. Consequently, he urged, he closed up the video and handed it back to Lieutenant Clayton without further thought as to any ramifications of having been observed viewing it.

20. Appellant continued that he left early that Thursday evening, sick, and did not work again until the following Monday evening when he reported for his regular shift at 7:00 p.m. He recalled that Internal Affairs thereupon sought his input and he assumed initially that he was being summoned concerning an entirely different incident pertaining to sexual harassment. He was startled to learn that it was he whose actions were being reviewed surrounding the handling of the video. He reiterated that, since that the actions occurred upon a prior shift and were initially seen as proper by those in charge, including the day shift Captain, he should have been afforded some latitude toward assuming that the entire matter was already handled during the events rather than being penalized for not coming forward. Appellant also viewed that he should have been provided an opportunity to resign, as were the three staff who departed their positions.

21. Under very brief cross-examination, Appellant acknowledged that ordinarily the Shift Captain is ultimately responsible for whatever occurs during his watch. He also recognized that protocol dictates that, as the officer in charge, all noteworthy reports would and should come to him and be passed on by him to upper management under standing policy. There was thereupon concluded the sworn testimony and, following closing by the parties, the matter stood submitted for recommended order.

22. KRS 18A.095 (1) requires that "A classified employee with status shall not be dismissed, demoted, suspended, or otherwise penalized except for cause." Subsequent provisions of this section detail the steps to be implemented when an Agency seeks to dismiss a status employee. Appellant has not challenged the statutory protocol utilized by Appellee, his complaint focusing, rather, upon the sufficiency of the grounds and whether his dismissal was excessive.

23. 101 KAR 1:345 is the regulation relating to disciplinary actions. Section 1 authorizes appointing authorities to discipline employees for lack of good behavior or the unsatisfactory performance of duties. Section 2 thereof relates to the processing of the notice of dismissal. As noted, Appellant does not challenge the procedure utilized to dismiss him, other than he asserts he was not afforded opportunity to voluntarily resign.

24. The Agency has in place a series of policies and procedures, and Post Orders, which create a platform of required behavior and expected performance of duties by its correctional personnel. The relevant provisions are cited in the dismissal letter appended to and made part of this recommended order.

FINDINGS OF FACT

The Hearing Officer makes the following findings by preponderance of the evidence:

1. Appellant, Erick Steinbergen was a ten-year classified employee with status, holding the position of Captain at Kentucky State Reformatory (KSR), having been promoted to that position approximately one year prior to his dismissal in February 2016. He routinely reported for duty upon second shift on February 4, 2016, and relatively soon thereafter a Lieutenant produced a video from the previous shift depicting removal of an inmate from his cell for purposes of inspection of the quarters. By all accounts, this video revealed use of excessive force in the treatment of the inmate by one or more members of the team performing the procedure, and in due course three of these officers were allowed to resign with prejudice. They were also subjected to criminal sanctions in the appropriate court.

2. Various well established Correctional Policies and Procedures and Post Orders require that all incidents occurring during each shift be reported to the officer in charge. In this instance, the cell extraction generating the improper use of force occurred during the shift prior to that of Appellant. No immediate report of wrongdoing was made; rather, assurances were sent in the prior shift by one or another member of the extraction team that the procedure had been successfully completed without incident. Accordingly, Appellant's somewhat casual review of the relevant portion of the video was the first "report" of the improper behavior coming to the attention of the officer in charge, i.e. Appellant.

3. As Appellant was observing the video, coincidentally KSR Warden Smith came into the Operations office for an entirely different purpose. He casually observed the camcorder, and Appellant immediately shutting it off and returning it to the Lieutenant who made the video and who was showing it. Appellant made no reference to the video or the extraction until interviewed several days later. As a consequence, the Warden did not become aware of the

events until the following day, after the inmate who was the subject of the extraction complained and an investigation ensued, including review of the tape by management.

4. Appellant asserts that, rather than promptly informing the Warden or other superiors concerning what he had observed to be improper behavior in the cell extraction, he assumed that since the events had occurred during the prior shift, an investigation was already under way and that disclosing what he saw might be treated as interference and, secondly, he did not want to be "a part of it".

5. The Hearing Officer finds that the testimony of all witnesses, and that of Appellant, to be credible.

CONCLUSIONS OF LAW

1. In addition to being subject to the relevant portion of 101 KAR 1:345 providing for discipline for unsatisfactory performance of duties, Appellant was also employed at KSR under, and presumably fully aware of in light of his ten-year tenure at the facility, a series of very express policies and Post Orders. The underlining basis for many of these policies is to afford upper management confidence and trust in those personnel placed in charge. The margin for error or lapse in judgment in a correctional facility such as KSR is quite narrow, and the risk upon any occurrence thereof can have grave consequences.

2. As a Shift Captain, Appellant was charged with an express and well-defined array of duties. Some of these were routine and mundane, while others not so much so, including the monitoring of his fellow officers for bad behavior. That aspect extended not only to any circumstance which he personally observed, but to any actions brought to his attention, during his watch, as well. Deliberate failure to act thereon or to otherwise comply with policy, regardless of his reasons, undermines the trust which comes with the position. Once this trust factor is betrayed or destroyed, any decision concerning further reliance upon him must be left to the discretion of those responsible for the welfare of the staff, inmates, and the facility.

3. Dismissal of Appellant for his failure in fulfilling his duties as a Shift Captain was neither erroneous nor excessive in light of the overall circumstances.

RECOMMENDED ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer recommends to the Kentucky Personnel Board that the appeal of **ERICK STEINBERGEN VS.**

JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS
(APPEAL NO. 2016-058) be DISMISSED.

NOTICE OF EXCEPTION AND APPEAL RIGHTS

Pursuant to KRS 13.B.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).

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 John C. Ryan this 6th day of October, 2016.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Catherine Stevens
Mr. Erick Steinbergen



DEPARTMENT OF CORRECTIONS

Rodney Ballard
Commissioner

Kentucky State Reformatory
3001 W. Hwy 146
LaGrange, Kentucky 40032
Telephone: 502/222-9441
www.kentucky.gov

Aaron Smith
Warden

AMENDED

March 14, 2016

Erick Steinbergen

Dear Mr. Steinbergen,

A pre-term hearing was held on February 26, 2016, after meeting with you I have determined there is clear weight of evidence that you committed the charges as outlined in my letter to you dated February 09, 2016.

Therefore, based on the authority of KRS 18A.095, you are hereby notified that you are officially dismissed from duty and pay effective March 01, 2016.

You are being dismissed from your position as Correctional Captain I, for the following reasons.

Poor Work Performance...as reported by Deputy Warden James Coyne, on Thursday, February 4, 2016, you were assigned to the Captain's Office, as the 7:00PM-7:00AM Shift Supervisor, at the Kentucky State Reformatory (KSR). During the shift, Lieutenant Jonathan Clayton, who was the security supervisor in the Correctional Psychiatric Treatment Unit (CPTU) that night, brought a video camera, from CPTU, to the Captain's Office and had you watch a video from earlier in the day, on the 7:00AM-7:00PM Shift.

In the video, you observed staff conducting a cell entry on Inmate James Armour. During the cell entry, you observed Sergeant Matthew Nation kick Inmate Armour in the groin and then punch Inmate Armour three (3) or four (4) times in the head area. You also observed Officer Matthew Neal punch Inmate Armour three (3) or four (4) times in the abdominal area. While watching the video, I entered the Captain's Office and you shut the camera off and handed it to Lieutenant Clayton, who then returned to CPTU.

I remained at the institution until 10:41PM that night. Senior Captain Travis St.Clair was also at the institution until 8:30PM on February 4, 2016. As the senior staff member to observe the criminal action that took place earlier in the day, you had an obligation and responsibility to

**Recommended Order
Attachment A**

report the incident to the administration. You failed to report, at any time, the incident you observed in the video.

Your actions are in direct violation of Corrections Policies and Procedures (CPP) 3.23 Internal Affairs Investigations, Policy and Procedure, G. Reporting of Violations of Policy, Procedure, or Law, 1. All staff, volunteers and contractors shall report violations of policy, procedures, and law. Failure to report such violations shall result in disciplinary action for staff and restriction from department grounds for volunteers and contractors. Criminal prosecution may result in some cases. Additionally, your actions are also in violation of KSR 03-00-14 Prohibited Employee Conduct, Disciplinary Actions, and Appeal Process, Policy and Procedure, I. Prohibited Activities and Conduct, I. Failure to properly discharge the duties of your position to include, but not limited to, making every reasonable effort to prevent the escape of an inmate and O. Engaging in any other activity which shall be deemed detrimental to the proper discharge of duties as an employee of the Department of Corrections, or which comes into conflict with attainment of goals and the mission of the Department of Corrections or KSR.

Your actions are in direct violation of KSR Post Order #1 General Post Order for All Employees, B. Purpose, 3. A staff member shall report any serious misconduct by another staff member such as the introduction of contraband, or an intoxicated staff member, etc.

Your actions are in direct violation of 101 KAR 1:345, Section 1, which states, "General Provision. Appointing authorities may discipline employees for lack of good behavior or the unsatisfactory performance of duties"

A review of your personnel file reveals you received a ten (10) day suspension on July 16, 2014, that was later reduced to a three (3) day suspension, for poor work performance.

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.

Pursuant to 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 use the attached appeal form and in the manner prescribed on the form

Sincerely,


Aaron Smith, Warden

cc: , Commissioner – Department of Corrections
James Erwin, Deputy Commissioner – Department of Corrections
Thomas B. Stephens, Secretary - Personnel Cabinet
Director-Division of Personnel Services
Personnel File