

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2019-279**

KENYA WADE

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 2022 meeting, having considered the record, including the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated November 30, 2021, Appellee's Exception, 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 19th day of January, 2022.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Nick Mudd
Hon. Jesse Robbins
Hon. Rosemary Holbrook (Personnel Cabinet)
Rodney Moore

COMMONWEALTH OF KENTUCKY
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DEPARTMENT OF CORRECTIONS

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** ** * ** * ** *

This matter came on for hearing on June 24, 2021, at the hour of 9:30 a.m. ET, via Amazon Chime video conferencing software (by agreement of the parties), before Brenda Allen, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS 18A.

The Appellant was present and represented by the Honorable Nick Mudd. The Appellee was present and was represented by the Honorable Jesse Robbins. Also present was Agency representative, Warden Anna Valentine. As a preliminary matter, the parties stipulated in writing that the exhibits listed in each of their exhibit lists were admissible and waived any objections thereto. Both parties then waived opening arguments.

At issue in the evidentiary hearing was the Appellee's probationary dismissal of the Appellant, in addition to the Appellant's claims of race and color discrimination and her claim that she was denied, abridged or impeded in her right to inspect records. The Appellant had the burden of proof as to all issues by a preponderance of the evidence.

BACKGROUND

1. The Appellant, Kenya Wade was hired by the Justice and Public Safety Cabinet, Department of Corrections, Kentucky State Reformatory, as a Social Service Clinician on August 12, 2019, and began serving a six (6) - month probationary period.

2. By letter dated December 9, 2019, the Appellant was terminated from her position by Warden Anna Valentine. The dismissal letter advised that there was no right to appeal the probationary termination. However, it did provide that the Appellant could file a claim of discrimination if she believed the action was based upon unlawful discrimination.

3. On December 10, 2019, the Appellant filed an appeal with the Personnel Board appealing her termination, claiming that she was denied, abridged or impeded the right to inspect or copy records, and claiming that she was discriminated against based upon her race and color. After discovery and a series of prehearing conferences, the matter was set for a hearing.

4. On the first day of the two-day hearing, the first witness to testify for the Appellant was **Markeisha Mayweather**. After being sworn, she testified that she met the Appellant at the Academy for the Department of Corrections in 2019, when the witness was in training to become a Correctional Officer. The witness testified that, during the five (5) – week training session, staff encouraged the training attendees to have sexual relationships with one another and bragged about the number of coworkers with whom they had sexual relations. She testified that she was unable to recall which instructor advised them to engage in that behavior, and that she felt no pressure.

5. Ms. Mayweather testified to an incident in which the Appellant was accused of not being within the dress code as it related to her shoes (that she then changed) and her blouse, which she wore underneath her blazer. The witness also testified that, when she and the Appellant were at the gun range, the Appellant remarked that she had never shot a gun before and the instructor responded, “A black girl that has never shot a gun?”

6. On cross examination, the witness admitted that she and the Appellant were friends and socialized outside of their work. However, she contended that she did not discuss the case with the Appellant, except when the Appellant asked if the witness would be willing to speak with the Appellant’s counsel and testify.

7. The next witness to testify was **Shawan Allen**. After being sworn, Ms. Allen testified that she is currently a Correctional Sergeant who also went to the Academy in the fall of 2019 when the Appellant attended as a new hire. She testified that Instructor Tim Gordon spoke about dating a coworker and indicated it did not go well for him. She testified that he never encouraged anyone to engage in sexual or romantic relationships and that she never heard any racial comments while at the gun range. She stated she did notice tension between the Appellant and the instructors and saw the Appellant frustrated on the day that she was learning how to do restraints, which was a physical activity. Ms. Allen testified that the Appellant often wore dresses, which were not conducive to the physical, hands-on training required during the Academy.

8. As it pertains to relationships with inmates, Ms. Allen testified that, from day one, it was “drilled into their heads not to have personal relationships or sexual talk with inmates.” She testified that if inmates get personal, the staff is to go to the Warden to report it. She testified that she believes this protocol is outlined in policy.

9. The next witness was **Melissa Hall**. After being sworn, Ms. Hall testified that she is a Unit Administrator I and, in the fall of 2019, she occasionally spoke to the Appellant about some issues when she came to Ms. Hall's office. She testified that the Appellant dressed professionally and sometimes wore dresses. One day, while they were in the yard with prisoners present and a gusty wind, she suggested to the Appellant that she wear leggings or shorts under her dress because, if it was windy, the wind could blow the skirt up in the presence of the male prisoners.

10. She stated that she does not recall the Appellant raising any concerns about her being targeted because she was African American. She did recall the Appellant stating that she was stressed, so the witness referred the Appellant to the Kentucky Employee Assistance Program (KEAP). The witness testified that, as a Corrections employee, she knows there should never be sexually intimate talks with an inmate, communication with an inmate, or personal phone calls with an inmate.

11. The final witness for the Appellant's case-in-chief was the **Appellant, Kenya Wade**. After being sworn, she testified upon questioning from her counsel, opposing counsel, and the Hearing Officer that she was hired as a Social Service Clinician on August 12, 2019; she then spent six weeks in the Academy and was assigned a caseload. She testified that she has Associate's, Bachelor's, and Master's Degrees in Social Work.

12. She stated that, throughout her initial training during the six weeks of the Academy, Instructor Tim Gordon discussed staff members in the Kentucky State Reformatory that entered into relationships with inmates. She testified that he said he was in a relationship with a coworker who left him for an inmate who was a rapist. She testified that, during the several weeks of the Academy, he discussed and encouraged coworkers to have relationships with one another and that he pressured the new hires to do so throughout the entire six weeks of the training.

13. The Appellant testified that, for reasons that were unknown to her, she was the only individual who was not a Correctional Officer to attend the Academy the full six weeks and that, like the Correctional Officers, she was required to engage in physical activities like the gun range and the obstacle course. She testified that, one day while at the gun range, one instructor remarked that he could not believe a black girl like her had never shot a gun before.

14. The Appellant testified that there were often comments made about the way she dressed and that, while visiting another institution, a Sergeant she encountered alleged that her shoes and her shirt violated the institutional dress code. She testified that she changed her shoes, but asserted that her shirt, which was worn under a blazer, was compliant. The Appellant testified that, during the encounter, she was cursed at by the Sergeant and the Deputy Warden was called.

She testified that, once the Deputy Warden came, the Appellant was allowed to leave, and the Warden called her later to apologize for incident. The Appellant testified that she believes she was targeted during this encounter because she was black but admitted that she received no discipline. The witness testified to a second dress code incident in which she also received no discipline.

15. The Appellant identified **Appellant's Exhibit 1**, the Kentucky State Reformatory Institutional Employee Handbook. She stated that she does not recall ever reading it. During her testimony, she read aloud from page 6 of the exhibit, which outlined the availability of policies and procedures of the Institution.

16. The Appellant testified that she was subjected to a hostile work environment, specifically because there were meetings about her and the "dos and don'ts" of interacting with inmates. The witness testified that she was harassed daily by staff who began questioning her about her interactions with the African American inmates. She stated the inmates would catch her walking and would walk with her to the door. She testified that she never received an appropriate protocol on how to deal with this, and she was blamed for having inmate Cedric Thompson come to the office when, in fact, her coworker, Mr. Billings, had made an appointment for inmate Thompson to visit with him, and then Mr. Billings was not there. She testified that inmate Thompson was not on her caseload. The Appellant testified that the Deputy Warden had told her it was good, even therapeutic, for her to have small conversations with inmates, which she did have with inmate Thompson, but she contended that she was blamed for calling the inmate over.

17. The Appellant acknowledged that, after she left her employment with the Phoenix Program at Corrections, she had phone conversations with inmate Thompson, which included sexually explicit talk between them, but stated that he was never on her caseload, was not a client, and that she never had sex or was physical with him. She testified that her interaction with the inmate did violate the policy, but she did not do so intentionally.

18. On cross examination, the Appellant admitted to having sexually explicit conversations with the inmate by phone and discussing sexual activities that she wanted to engage in with the inmate. The witness identified **Appellee's Exhibit 18**, which were a series of photos sent via the J-Pay messaging system to inmate Thompson. She identified the photo of inmate Thompson and two photos of herself, a photo of "I (heart) you" written in sand on the beach, the photo of the words "I need you. I miss you. I love you!" and various other communication between inmate Thompson and a "Dakota Thompson." The witness admitted that the photos were of her but denied sending them or any of the messages to the inmate or having anyone do so on her behalf. When asked by the Hearing Officer how anyone else could have obtained these photos of her and sent them to inmate Thompson and the reason anyone would do so, she suggested that the photos

may have been taken from her Facebook page by an unknown person. She was unable to explain why any such person would have sent them to this inmate.

19. The Appellant identified **Appellee's Exhibit 9**, which is the Department of Corrections' Prison Rape Elimination Act (PREA) Acknowledgment Form signed by her and dated August 21, 2019. She admitted to signing the document and admitted to understanding that as a Social Service Clinician and a Department of Corrections' employee that she was not permitted to have a relationship with a client. She contended, however, that she did this unintentionally because she was "failed by her superiors," and that engaging in this conduct was her way of advocating for herself. She testified she was harassed daily because of her race because she was asked about her interactions with the African American inmates. She admitted that no racial slurs were ever used in her presence.

20. The Appellant testified to starting work on August 12, 2019, and to being terminated on approximately December 9, 2019. She stated that she filed her appeal on December 10, 2019. She identified **Appellee Exhibit 20**, the appeal form, and stated that she checked all boxes including the one that says she was denied or abridged the right to access to records. When questioned regarding why, the Appellant indicated she must have had a reason for doing so but was unable to provide any testimony as to what records she was denied access.

21. The Appellant identified **Appellee's Exhibit 21**, which were her Answers to Interrogatories. The Appellant testified to assisting her attorney in completing them. When asked by Appellee to review her responses to interrogatories and to locate the incident she testified to about a statement made by an instructor at a gun range regarding Black people and guns, she was unable to do so and admitted that the allegation was not present in her responses.

22. The Appellant was then questioned regarding the specifics of what she contended created a hostile work environment. She testified that meetings about her interaction with the inmate and what she should and should not be doing were the basis of her hostile work environment claim. She contended that Sagan Simons (a/k/a Sagan Ladd), her supervisor, had discriminated against her together with a coworker, Adam Aranda, because they met regarding the Appellant. As it relates to the two incidents of an alleged dress code violation, she admitted that one happened in early September 2019 and the other around the first of October, and that she was not terminated until December 2019, while on probation.

23. The Appellant reviewed **Appellant's Exhibit 37**, an incident report prepared by Sagan Simon, which outlined Ms. Simon's observations of the Appellant meeting with inmate Thompson for an extended period of time (30 minutes) off camera, her counseling of the Appellant

regarding this meeting, and her follow-up review of job requirements and expectations with the Appellant.

24. Upon questioning by the Hearing Officer, the Appellant identified herself in various recordings of phone calls between herself and inmate Thompson, which were on CDs marked as **Appellee's Exhibits 1 and 2**. She identified herself in the recorded interview with Internal Affairs, **Appellee's Exhibit 3**. With regard to **Appellee's Exhibit 4**, which were several photos of various bulletin boards throughout the Appellant's workplace that depict reference to PREA and a Zero Tolerance for all forms of sexual conduct between offenders and staff, volunteers, contractors and visitors, the Appellant denied ever seeing these bulletin boards or their clear prohibition against sexual conduct with inmates. She did admit to knowing there was a zero-tolerance policy for sexual contact between inmates and staff.

25. Upon questioning from the Hearing Officer and on re-cross, the Appellant identified **Appellant's Exhibits 9, 10, 11, 12, 13, 14, 22, 24, 25, 27, 30, 31, 33, 35, and 36**. The Appellant admitted to using inmate Thompson's sister in order to have phone calls with him. The Appellant stated that she met the sister at the hair salon and gave inmate Thompson's sister her phone number. The Appellant denied identifying herself to the sister as a member of the correctional staff where inmate Thompson was incarcerated.

26. The Appellant was questioned regarding **Appellee's Exhibit 18**, certain J-Pay messages, including photos of the Appellant and inmate Thompson sent to and from inmate Thompson by an individual utilizing the name "Dakota Thompson." The Appellant testified she did not send the messages, nor did she have anyone send them on her behalf. She stated she did not use her debit or credit card to get this J-Pay account and testified that "Dakota Thompson" was not her assumed name. She testified that she does have a J-Pay account in her own name that she utilizes to communicate with a family member incarcerated in the Department of Corrections.

27. The Hearing Officer, in order to give context to the exhibits entered into the record by stipulation, questioned the Appellant regarding the Exhibits. The Appellant denied ever seeing and offered no context regarding **Appellee's Exhibits 4, 6, 7, 8, 23, 28, 29, and Appellant's Exhibit 12**.

28. The Appellant rested.

29. The first witness to testify for the Appellee was **Deputy Warden Philip Campbell**, who, after being sworn, testified that the Phoenix Program was a substance abuse treatment program for incarcerated individuals who have substance abuse issues and mental illness. The witness testified that there are two clinicians assigned to the program, who each had a caseload.

The witness testified that there were issues with the Appellant having contact with inmates on other people's caseload. He testified that he sent an email to both the Appellant and her supervisor, Ms. Sagan Simon, advising that the Appellant should not have personal conversations with the inmates. He identified, reviewed, and testified regarding **Appellant's Exhibit 12**.

30. The Deputy Warden testified that, ultimately, there was an investigation of the Appellant having an inappropriate relationship with an inmate, and a decision was made by the Warden to terminate her. He testified that the Appellant never made any complaints of discrimination or a hostile work environment during her employment and that allegations of her being out of dress code were never a basis for disciplining her.

31. As it relates to training staff in the policies and procedures of the Department of Corrections, the Deputy Warden testified that all new staff are trained on the polices upon hiring and then trained again each year thereafter. He stated that staff are also trained on the federal law, PREA, and there are notices prohibiting sexual interactions with inmates throughout the facility on placards, bulletin boards, "all over the place" during the Appellant's employment. He testified that personal or romantic relationships would never be OK, and any relationship outside of their work role with inmates or their families would not be proper.

32. He stated that employees are permitted to date one another. He further stated that if there were any problems during the training Academy, they should have been reported. He stated that, regarding training on polices, some are verbal, some are computer-based modules, and some are in binders. There is a Procedures Office that keeps files of policies centralized, who communicates and oversees any changes to policy. He testified he is not sure if each candidate is given a hard copy of the employee handbook, but they work their way through the binder during the Academy and all the policies are available in the intranet. He testified that everyone is trained on PREA. He identified and testified regarding **Appellant's Exhibits 1, 2, 3, and 4 and Appellee's Exhibit 11**.

33. He stated that his direct report, Ms. Simon, was unhappy about the Appellant's interaction with inmate Thompson, who was not on the Appellant's caseload. He testified that when an individual reports someone to Internal Affairs, it is customary to get a statement from others. He did not know whether Ms. Simon reported the Appellant to Internal Affairs. He stated that the Appellant was terminated for her improper relationship with inmate Thompson.

34. Day two of the hearing convened on June 25, 2021, at 9:00 a.m. ET, with the next witness to testify on behalf of the Appellee being **Sagan Simon**. After being sworn, Ms. Simon testified that she was the first line supervisor of the Appellant in the Phoenix Program at the institution. In this program, they do family work and group counseling for mental health disorders

for the inmates. She stated that she is the administrator and supervises two social service clinicians, who help her by handling group counseling (non-clinical) and anger management courses. She testified that she was on the Appellant's interview panel, and that the Appellant was her first choice of the candidates interviewed. She identified and testified regarding **Appellee's Exhibit 22**.

35. She testified that the bulletin boards regarding PREA and the prohibition regarding sexual interactions with inmates were present in several places at their workplace within the institution for the entire time the Appellant worked there. She stated that she had cautioned the Appellant about meeting with inmates alone off camera. When she realized that the Appellant had met with inmate Thompson off camera for an extended period of time, she specifically mentioned inmate Thompson in her conversation with the Appellant. The witness stated that she considered inmate Thompson dangerous because of the charges - rape and battery - that landed him in prison. Additionally, she stated that, during a staff meeting with the Appellant and Mr. Billings, she specifically discussed the need to keep discussions with any inmates not on their caseload to a minimum when approached by the inmates. She identified and discussed the agenda for that meeting, **Appellee's Exhibit 12**. She testified that, during the staff meeting, the Appellant seemed upset, and the witness ended the meeting early because it became very tense. The witness stated that the Appellant worked for the witness for a few weeks, then was transferred from the Phoenix Program to the Thrive Program. She testified she was not made aware of why the transfer occurred.

36. The next witness to testify was **John Harrison**. After being sworn, he testified that he had been employed in Corrections for thirty-two (32) years, and he has held eight or nine positions from Correctional Officer to Administrative Branch Manager. He stated that, in August 2019, he was involved in training new Corrections' employees, but does not believe that he trained the Appellant, specifically. He testified that all policies and procedures are covered and that packets are made available to staff together with 4-inch binders containing scenarios and policies. He stated that the new employees are told in orientation where to find the policies, and it was made clear they were to follow the policies. He outlined the Code of Ethics Policy 3.1 is covered as well as Policy 3.22, Staff Sexual Offenses. He stated he has been providing training for fifteen (15) years and that the trainings cover PREA, the Code of Ethics, and Sexual Offenses extensively because policy violations can lead to so many problems within the department when staff become sexually involved with inmates. He identified and testified regarding **Appellee's Exhibit 8**.

37. The witness testified that, during the fifth week of training, the Academy class goes to the gun range. Everyone does not have to attend, but every officer must qualify. He stated that, if a person who was not hired as an officer wanted to work security or to accompany an inmate to the hospital, they would need to carry a firearm, so they would go to the gun range to qualify. He

stated that, at times, the Deputy Warden will assign someone who wants to volunteer for additional work, and he would accommodate by training them.

38. He stated that, as it pertains to the Appellant and the gun range, all that he recalls is that the Appellant did not initially pass her qualification with the .40 caliber at the range and, by the second day, she stated that she was giving up. He stated that neither she nor anyone else ever reported any racial statements occurring at the gun range and that, if such a statement was made, his staff would have reported it.

39. As it pertains to employee relationships with other employees, the witness testified that there is a section in the class where he discusses the number of staff who have become involved with their coworkers. He stated that they are perfectly welcome to do so, but he does not encourage it. He stated that it works out for some people, but there is no reason for staff to become personally involved with inmates and that Policies 3.22, 3.14, 3.5 and 3.21 prohibit it. He stated that, if an employee develops romantic feelings for an inmate, they should report it and never act on it.

40. As it pertains to the Appellant's alleged dress code violations, he was aware of the two incidents that occurred at a different institution, and no violations were sustained against the Appellant in either case.

41. The next witness to testify was **Gregory Billings**. After being sworn, he testified that he is a Social Service Clinician and also instructs new hires on firearms. In August 2019, he believes he was the firearms instructor for the Academy class the Appellant attended. He stated he did not make any racial statements, nor did he hear any other instructor do so. The witness testified that, after the Academy, he and the Appellant were coworkers and each had a caseload assigned to them, where each had inmates of varying races. He recalls there being tension in the office one day when the Appellant was yelling and screaming something about being petty. He did not know what she was talking about. He never saw anyone discriminate against or treat the Appellant badly. He testified that there were PREA signs throughout the institution. The witness identified **Appellant's Exhibit 25** as an October 23, 2019 email between him and the Appellant regarding inmate Thompson, within which the Appellant stated that she met with inmate Thompson in his absence, and she told Thompson to come back again. In the email, she advised Mr. Billings that she wanted to become involved and know more about how the witness was assisting inmate Thompson. The witness stated in the email and in testimony that the day that inmate Thompson showed up was a controlled movement day, so the yard would not have been open for the inmate to come to the office.

42. The next witness to testify was **Timothy Gordon**. After being sworn, he stated that, in August 2019, he served as the Training Coordinator, and he was promoted to another

position in September 2019. In August 2019, he taught orientation, which included packets of several policies, access to a binder in the room containing other policies, and the website. He stated that he taught the trainees about Policy 3.1, Code of Ethics. He testified that he starts by going over the definition of "Offender" and "Employee" and explains that both definitions are very broad. He stated that an "inmate" is defined as anyone under the authority of the Department of Corrections, including halfway houses and those on probation and parole. He stated that an individual is deemed an "offender" for a year and a day after they are released from DOC custody. He has been providing training for six (6) years, and he advises trainees that anything other than normal business with an inmate would violate Policy 3.1.

43. He stated that the DOC PREA policy (CPP 3.14) is taught by the PREA Coordinator. He identified and testified regarding **Appellee's Exhibits 7, 8, and 9**. He testified that, during the Academy, he discussed a real-life scenario and how inmates can manipulate staff. He told the trainees that he was in a relationship with a coworker, each of them unmarried, when she developed a relationship with an inmate. Once he suspected an improper relationship, he reported his girlfriend to Internal Affairs, since her conduct had put both of them at risk of harm. He testified that, during the training, he never encouraged sexual relationships with coworkers or with inmates.

44. The next witness was **Adam McClain**, who, after being sworn, testified he was a trainer and recalled training the Appellant in firearms. He recalls that the Appellant was not safe with firearm, and that, once she mastered the safety, she was unable to master shooting. She then became frustrated and said, "I'm done!" and quit the firing range. He stated that neither he nor anyone else made any racial remark to the Appellant and he never encouraged romantic relationships between staff members or staff and inmates.

45. The Appellee recalled **Deputy Warden Philip Campbell**, who was still under oath. He testified that the Appellant was moved from the Phoenix Program to the Thrive Program because it was important for that program to be fully staffed and, since the Appellant was a relatively new hire and had not fully settled into a caseload, it caused the least disruption to move her to this program.

46. The next witness was **Captain Jeromy Ball**, who, after being sworn, testified that he serves as an Internal Affairs Investigator. He investigated the Appellant and the allegations of her having an inappropriate relationship with inmate Thompson. He stated that, once he completes an investigation, he forwards it, along with any evidence and recordings, to the Warden. He identified **Appellee's Exhibit 15**, as his investigative report of the Appellant. He came to know the Appellant just in passing in the institution prior to investigating her. He never received any reports of racial discrimination from her. He stated that the Appellant's inappropriate relationship

with inmate Thompson was reported by Officer David Richardson, who received a direct report in addition to several anonymous reports. He believed Sagan Ladd (Simon) also reported it, but that he received that information second-hand.

47. The witness testified that, during his investigation, he pulled video of the Appellant walking in the yard with inmate Thompson. He then began to look at J-Pay accounts to see if there was involvement with messages. There was. The witness explained that J-Pay accounts are a means to send messages, pictures, and videos, and buy stamps for inmates. It also has an app that can be downloaded. He stated that the Department of Corrections can monitor J-Pay accounts and can look up users' payment methods. He identified **Appellee's Exhibit 18** and identified the message from inmate Thompson, which was to Dakota Thompson. The witness stated there was video of the Appellant and inmate Thompson at the gym; he also reviewed telephone calls between the two. Captain Ball testified that, once they moved the Appellant to the Thrive Program, she and inmate Thompson continued to meet in various places around the institution.

48. He reviewed the inmate phone system and then listened to a December 4, 2019 phone call between the Appellant and inmate Thompson, which was of a sexual nature. The witness identified **Appellee's Exhibit 1**, a CD with the audio recording of that call. During that call, the Appellant identified herself as Kenya Wade inadvertently. After he listened to that call, he spoke with the PREA Compliance Manager, Daniel King, then he and Mr. King interviewed the Appellant. He stated that they recorded the interview, and the Appellant admitted it was her on the call. The investigation revealed the Appellant spoke with him outside of the institution as well and that the talk was sexual in nature. The witness stated that, during the interview, the Appellant stated she had feelings for inmate Thompson, and admitted that she had met with his family outside of the institution.

49. The witness identified **Appellee's Exhibit 17** as a photo of the Appellant, Kenya Wade, and a second photo as inmate Thompson. The witness explained that his investigation revealed that the messages to/from Dakota Thompson and the attached photos were actually to/from the Appellant. He knew this because of 1) the photos the Appellant sent to the inmate and 2) the debit card utilized to establish the Dakota Thompson J-Pay account was the Appellant's debit card, which was already on file with the institution, because the Appellant had used it to establish an account for another inmate. Moreover, during a sexual phone conversation with inmate Thompson on the "Dakota Johnson" account, the Appellant inadvertently stated that she was "Kenya Wade."

50. The witness stated that, at the conclusion of his interview, he advised the Appellant not to continue to communicate with inmate Thompson and stated that, for safety reasons, he continued to monitor the J-Pay account of Dakota Thompson thereafter. The witness identified

and testified regarding **Appellee's Exhibit 19**. He stated that the Appellant was terminated on December 9, 2019, and that, during his continued monitoring, he obtained the December 12, 2019 sexual communication between the Appellant and inmate Thompson, when the Appellant was again using the Dakota Thompson alias. He testified that inmate Thompson is serving a seventy (70) - year prison sentence for multiple charges of rape and burglary.

51. The next witness to testify was **Daniel King**, the Prison Rape Elimination Act (PREA) Compliance Manager. He was serving in that capacity in the fall of 2019 when the Appellant was hired and trained. He stated that PREA is derived from 28 CFR Part 115 and its purpose is to protect those in penal institutions from sexual abuse. He testified that their status as prisoners renders them incapable of providing consent to any sort of sexual activity, including talk of a sexual nature. He identified **Appellee's Exhibit 5**, as photos of several signs and placards on bulletin boards and elsewhere around the institution, which he personally framed and placed in multiple locations around the institution prior to the January 2019 PREA Audit. He identified **Appellee's Exhibits 4, 5, 6, 7, 8, 14, 15, and 16**, and testified regarding them. He stated that, during the course of his new hire training, he stressed zero tolerance for sexual contact with inmates.

52. The witness then read the transcripts of several phone calls between the Appellant and inmate Thompson and explained that they violate the PREA standards. He testified that there is no way an individual employed by the Department of Corrections would not know about PREA. He testified that, at the conclusion of his interview on December 9, 2019, the Appellant was escorted off the property, which only meant that she was restricted off the property. He is not told when employees are fired and continued his investigation to its conclusion.

53. The final witness to testify for the Appellee was **Warden Anna Valentine**, who, after being sworn, testified that she is the Warden at Kentucky State Reformatory and that she is familiar with the policies and procedures of the facility. She testified regarding **Appellee's Exhibit 4**. She testified that newly hired merit employees serve a probationary period for six (6) months during which they are evaluated to see if they meet the standards to become merit employees. She testified that an appointing authority is not required to give reasons for termination during a probationary period, however, employees cannot be terminated for a discriminatory reason.

54. She testified that, in going through the interview and hiring process, the Appellant was the first choice of the hiring panel. The witness identified and testified regarding **Appellee's Exhibit 22**. She stated that, regarding the testimony over the previous two days, she was aware that the Appellant had testified that she did not know why she was the only non-correctional officer trainee who was required to go to the Academy during the final two weeks and required to go to

the gun range. Warden Valentine testified that employees are able to volunteer to work security, and the Appellant had indicated she wanted to do so. She testified that, based upon the Appellant's request, the Warden permitted it, so the Appellant attended additional training, including the gun range.

55. Warden Valentine testified that the Appellant was never disciplined for any dress code violations and there was no indication that the investigation of her inappropriate relationship with inmate Thompson was tainted by any discriminatory motive. She testified that, on the date the Appellant was interviewed by Internal Affairs, she learned of the Appellant's confession, reviewed the evidence they had, listened to the audio of the calls, and decided to terminate her.

56. She testified that, during the course of this hearing, she was present for the Appellant's testimony during which the Appellant testified that: (1) she was not utilizing the alias Dakota Thompson, (2) she did not send or receive the messages or photographs of her and inmate Thompson, and (3) her debit card was not used to set up a J-Pay account to communicate with inmate Thompson.

57. The Warden testified that, based upon that testimony provided by the Appellant on June 24, 2019, the Warden had accessed the J-Pay system that same day and reviewed the payment card on file for the Appellant, which the Appellant had previously utilized to communicate with an incarcerated family member. She then pulled the payment info on file for "Dakota Thompson." The Warden determined that the debit card on file for both accounts had the name Kenya Wade and the card numbers for the two accounts matched. She then identified the documents supporting this testimony as **Appellee's Exhibit 23** and the exhibit was entered into the record without objection.

58. The Appellee rested. Each party made a closing statement. The Hearing Officer considered the entire administrative record.

FINDINGS OF FACT

1. The Appellant, Kenya Wade, was employed in the position of Social Service Clinician in the Department of Corrections as a probationary Employee beginning August 12, 2019. (Testimony of the Appellant.)

2. The Appellant holds Associate's, Bachelor's and Master's degrees in Social Work. (Testimony of the Appellant.)

3. As a part of her training, the Appellant attended a six-week orientation and comprehensive training, which included the Code of Ethics, Staff Sexual Offenses, Sexual Abuse Prevention and Intervention, and staff responsibilities under the Prison Rape Elimination Act (PREA). (Testimony of the Appellant, Tim Gordon, Daniel King, and Appellee's Exhibit 5, 6, 7, and 8.)

4. The Prison Rape Elimination Act (28 FR Part 115) is a federal law requiring that penal institutions institute and oversee a zero-tolerance policy for sexual abuse of inmates, which includes comprehensive training, compliance and investigations. (Appellee's Exhibit 5, Testimony of Daniel King.)

5. The Department of Corrections has instituted the requirements of PREA, which includes the existence of a PREA Compliance Coordinator responsible for training and investigations. (Testimony of Daniel King and Appellee's Exhibit 5.)

6. In carrying out its responsibilities under PREA, the Department of Corrections requires PREA training for its new hires, places signs and placards in multiple places throughout their institutions, and mandates PREA training for employees annually thereafter. The prohibition against sexual interaction with inmates is made clear to employees. (Testimony of Shawan Allen, Daniel King, Sagan Simon, John Harrison, and Appellee's Exhibit 4.)

7. As a part of her training, the Appellant was provided training and access to policies and procedures of the institution, including PREA, the Code of Ethics and Policies regarding Sexual Abuse and Sex Abuse Prevention. The Appellant signed forms acknowledging her attendance and receipt of such training, which included access to all policies and procedures. (Testimony of the Appellant, Daniel King, Timothy Gordon, and Appellee's Exhibits 9 and 10.)

8. The policies at issue, Staff Sexual Offenses and Sexual Abuse Prevention and Intervention Programs, both prohibit "Sexual Offense," which is defined, in part, as: "[S]exual conversations or correspondence, which suggest a romantic or sexual relationship between an offender and a staff member." (Appellee's Exhibit 7, page 2, and Appellee's Exhibit 8, page 3.)

9. The Department of Corrections, Code of Ethics Policy 3.1, Item I(B)(3)(d) and (e) prohibits:

- d. Developing a relationship between staff and an offender other than that necessary in the normal conduct of business. An employee shall not become romantically involved with an offender, engage in sexual relations with an

offender, or develop a sexual relationship with a member of an offender's immediate family.

- e. Taking, sending, either to or from, an inmate any verbal or written message, from or to a third person; or any literature, reading matter, item, article or substance, except as necessary in carrying out the employee's assigned duties. **(Appellee's Exhibit 6.)**

10. During her employment with the Department of Corrections, the Appellant began a relationship with an African American inmate, Cedric Thompson, who was not on her caseload and with whom she had no assigned responsibilities or duties. (Testimony of the Appellant, Sagan Simon, Daniel King, Jeromy Ball, and Appellee's Exhibits 15 and 16.)

11. The Appellant met with the inmate off camera for an extended period of time (30 minutes) and then made additional efforts to become involved in his case through his assigned clinician, Gregory Billings. (Testimony of Sagan Simon, Appellee's Exhibit 25, and Appellee's Exhibits 15 and 16.)

12. In meetings and via email, the Appellant's Unit Administrator, Sagan Simon and Deputy Warden Philip Campbell, the Appellant's first- and second-line supervisors, both directed the Appellant not to meet or have conversations with inmates, sometimes mentioning inmate Thompson specifically. Despite this, the Appellant continued to meet and converse with inmate Thompson in various locations in the institution. (Testimony of Sagan Simon, Jeromy Ball, Daniel King, and Appellee's Exhibits 12 and 15.)

13. The Appellant then connected with the inmate's sister, provided the sister with the Appellant's phone number, and utilized the sister to facilitate her speaking with inmate Thompson by phone to develop a relationship not in the course of her work. (Testimony of the Appellant, Jeromy Ball, and Appellee's Exhibits 15 and 16.)

14. The Appellant also established an alias, "Dakota Thompson," and began using her own debit/credit card to establish an account to communicate with inmate Thompson, exchanging photos of themselves with the Appellant, specifically sending messages of a romantic and sexual nature via the J-Pay system. The Appellant declared her love for the inmate and had sexually explicit phone conversations, discussing in detail her desire to perform specific sexual acts with the inmate. (Testimony of Jeromy Ball, Daniel King, and Warden Anna Valentine, and Appellee's Exhibits 1, 2, 3, 15, 16, 18, and 23.)

15. In her sworn testimony, the Appellant denied knowledge of Dakota Thompson, denied using an alias, denied using her own debit or credit card, and sending or receiving photos or messages with inmate Thompson as Dakota Thompson. (Testimony of the Appellant.)

16. In her interview with Internal Affairs, the Appellant admitted to having the sexually explicit conversations and sending or receiving the messages under the alias "Dakota Thompson" and admitted to having feelings for inmate Thompson. (Testimony of Jeromy Ball and Appellee's Exhibits 15 and 16.)

17. The Hearing Officer finds that the Appellant lacks any credibility, since her testimony is soundly refuted by the evidence to the contrary, including her own prior admissions in interviews and her debit card information pulled from the J-Pay System. (Testimony of the Appellant, Daniel King, Jeromy Ball, and Warden Anna Valentine, and Appellee's Exhibits 1, 2, 3, 15, 16, and 23.)

18. The Hearing Officer finds that the Appellant committed violations of the Code of Ethics, PREA, and the policies of the Department of Corrections regarding sexual abuse and sexual offenses, which resulted in her termination during her initial probationary period. (Appellee's Exhibits 6, 7, 8, 9, 15, 16, and 19.)

19. In her testimony, the Appellant contended that the internal discussions of Corrections' administration regarding her interaction with inmate Thompson, who was African American, was discriminatory activity, because the administration did not discuss any of her interaction with Caucasian inmates. (Testimony of the Appellant.)

20. The Appellant contended that two incidents of alleged dress code violations, none of which resulted in discipline, were discriminatory acts based upon her race. (Testimony of the Appellant and Deputy Warden Philip Campbell.)

21. The Hearing Officer finds that discussions of the Appellant's possible dress code violations and possible violations of the policies and directives regarding her interaction with inmates does not constitute evidence of discrimination since they were legitimate employee issues of alleged violations of policies necessitating discussion.

22. The Appellant and witness, Markeisha Mayweather, each contended that an alleged discriminatory comment was made by an unknown instructor in the Appellant's presence at the gun range regarding Black people and guns. (Testimony of the Appellant and Markeisha Mayweather.)

23. This allegation had never been reported by the Appellant prior to the first day of the hearing, including on the appeal form or in written responses to interrogatories. (Testimony of the Appellant and Appellee's Exhibits 20 and 21.)

24. Based on the above, the Hearing Officer finds that the Appellant and her witness, Markeisha Mayweather, lack credibility, and no such comment occurred.

25. The Hearing Officer finds that the Appellant has put forth no credible evidence of discrimination based upon race and color.

26. The Hearing Officer finds that the Appellant has put forth no evidence of being denied, abridged, or impeded a request to copy or inspect records.

CONCLUSIONS OF LAW

1. The Hearing Officer concludes that the Appellant, Kenya Wade, has failed to meet her burden to show that her probationary termination was based upon discrimination, namely upon her race and color.

2. The Hearing Officer concludes that the Appellant, Kenya Wade has failed to meet her burden to show that she was denied, abridged, or impeded her right to copy or inspect records.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the case of **KENYA WADE VS. JUSTICE AND PUBLIC SAFETY CABINET DEPARTMENT OF CORRECTIONS (APPEAL NO. 2019-279) BE DISMISSED.**

NOTICE OF EXCEPTION AND APPEAL RIGHTS

Pursuant to KRS 13B.110(4), each party shall have fifteen 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 exception 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 the 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 Brenda D. Allen** this 30 day of November 2021.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy this day mailed to:

Hon. Jesse Robbins
Hon. Nick Mudd
Hon. Rosemary Holbrook (Personnel Cabinet)