

County of Santa Clara

Office of the Sheriff

55 West Younger Avenue
San Jose, California 95110-1721
(408) 808-4611



Laurie Smith
Sheriff

HAND DELIVERED

July 7, 2017

Matthew Farris

**SUBJECT: Final Disciplinary Action: Termination
Internal Affairs Case #2015-022**

Dear Deputy Farris:

In a letter dated May 6, 2016, Sheriff Smith issued you a Recommended Disciplinary Action Letter advising you of the recommendation that you be terminated from your position as a Sheriff's Correctional Deputy for the County of Santa Clara effective May 21, 2016.

The May 6, 2016 Recommended Disciplinary Action letter reads, in relevant part, as follows:

"This is to advise you that I am recommending you be TERMINATED from your position as a Sheriff's Correctional Deputy for the County of Santa Clara, Sheriff's Office Custody Bureau, effective May 21, 2016.

Based on the findings of the attached investigation report, the Department sustains the following charges, which are the basis of this recommended disciplinary action:

Santa Clara County Merit System Rule 425-301(a)(1): "Violation of the county charter, merit system rules and regulations and written and published departmental rules and policies which do not conflict with this article."

Santa Clara County Merit System Rule 425-301(a)(4): "Brutality in the performance of duties."

Santa Clara County Merit System Rule 425-301(b)(2): "Guilty of immoral conduct or criminal act."

Santa Clara County Merit System Rule 425-301(b)(1): "Guilty of gross misconduct, or conduct unbecoming a county officer of employee which tends to discredit the county or county service."

D.O.C. Policy 3.31.II.A - Employee Relationships with Inmates: "Employees have the responsibility to provide for the safety, security and welfare of the inmates under their supervision."

D.O.C. Policy 3.31.II.B - Employee Relationships with Inmates: "Brutality will not be tolerated and is cause for dismissal and possible criminal charges."

D.O.C. Policy 3.31.II.C - Employee Relationships with Inmates: "Employees shall not touch an inmate except to: 1. Defend themselves. 2. Control or restrain an inmate. 3. Prevent the escape of an inmate. 4. Prevent serious injury or damage to a person or property. 5. Quell a disturbance. 6. Search an inmate. 7. Render medical aid."

D.O.C. Policy 3.31.IV.J.I.a - Employee Conduct/Conformance to Law: "Employees are expected to adhere to Department Policies and Procedures, County Personnel Regulations, County Administrative Procedures, Executive Orders, County Merit System Rules, and all laws applicable to the general public."

D.O.C Policy 3.31.IV.J.2. -- Compliance with Order: "Employees shall obey a lawful order from a supervisor."

D.O.C. Policy 3.31.IV.J.3.a - Employee Conduct/Use of Force: "Employees shall only use force in accordance with the law and the Department Policy 9.01, Use of Force and Restraints."

D.O.C. Policy 3.31.IV.J.4.a. - Integrity of Reporting System. "Employees shall submit all necessary reports in accordance with established Department policy and procedures. These reports will be accurate, complete, and timely and will be submitted before the end of the employees' tour of duty unless permission is obtained from the on-duty watch Commander to do otherwise."

D.O.C. Policy 3.31.IV.J.9.a - Employee Conduct/Conduct Unbecoming: "An employee shall not commit any act which constitutes conduct unbecoming a Department employee. Conduct unbecoming an employee includes, but is not limited to, any criminal or dishonest act or an act of moral turpitude."

D.O.C. Policy 3.31.IV.J.10.b - Neglect of Duty/Unsatisfactory Performance: "Unsatisfactory performance is demonstrated by an inability or unwillingness to

perform assigned tasks, failure to take appropriate action in a situation needing attention, or failure to conform to work standards established for the employee's rank, grade or position."

D.O.C. Policy 3.31.IV.J.14.a-- Employee Conduct/Untruthful Statements: "Employees shall not make less than truthful statements, either verbal or written."

D.O.C. Policy 9.01.I.4.1 - Use of Force: "In the performance of their duties, badge staff is authorized to use that level of force, which is necessary and objectively reasonable, under the circumstances."

D.O.C. Policy 9.01.I.A.2 - Use of Force: "Badge staff will not use force to discipline..."

D.O.C. Policy 9.27.1.B - Reporting of Incidents: "Staff made aware of reportable incidents or conditions shall promptly notify their supervisor. The seriousness of the situation shall dictate the means of notification. All staff involved in a reportable incident shall submit a written Incident Report describing the event in detail to the supervisor."

The facts, which are the basis for these charges:

(See attached Investigative Report (Statement of Findings IAU#2015-022) from Renne Sloan Holtzman Sakai LLP, dated February 2, 2016)

The Basis for the Recommendation:

The administrative investigation revealed that, on August 26, 2015, between 10:38 p.m. and 11:09 p.m., during a cell search of _____ for excess clothing, you, Deputy Lubrin and Deputy Rodriguez used excessive and unnecessary force to discipline _____ and _____ for disruptions that occurred earlier in the evening in _____. _____ and _____ were protective custody inmates with mental health issues. Witness accounts and video documentation established that you, Deputy Lubrin and Deputy Rodriguez were present inside _____ and _____ cells when the excessive and unnecessary force was used on them. Witness accounts also establish that while you, Deputy Lubrin and Deputy Rodriguez were present inside each cell they heard sounds and statements coming from the cell that would lead a reasonable person to believe force was being used on the inmate in the cell.

On August 27, 2015, at approximately 12:12 p.m. (0012 hours), Deputy Lubrin found _____ in his cell unresponsive and summoned assistance. Although life saving measures were taken, at 12:35 a.m. _____ was declared dead.

The Medical Examiner's Report concluded that _____, a 31-year-old inmate, sustained a severed spleen and liver as the result of the infliction of blunt force trauma at the hands of another. He died of exsanguination and his death was classified as a homicide. The unnecessary and excessive force you, Deputy Lubrin and Deputy Rodriguez used on _____ caused the injuries that resulted in his death.

After _____ death, you made false and misleading statements during incident briefings and in your written Employee Reports. In fact, you did not report any use of force against _____ or _____ on the night of the incident as required by department policy.

_____, a 44-year-old inmate, suffered injuries to his arm, shoulder, wrist and knee, causing visual bruising as a result of the excessive and unnecessary force you, Deputy Lubrin and Deputy Rodriguez used on him.

On September 3, 2015, the Sheriff's Department notified you to appear for an investigative interview on October 1, 2015. The interview was continued to October 30, 2015. On October 30, 2015, you appeared, accompanied by counsel, for your Investigative Interview. You were given the Lybarger admonition, which compelled you to cooperate with the Administrative Investigation by truthfully and candidly answering all questions asked by the investigators. You were advised that failure to do so would be considered insubordination, which could lead to termination from the department. With this knowledge, you chose to invoke your Fifth Amendment right against self-incrimination and refused to cooperate with the Administrative Investigation.

The preponderance of the evidence established by the investigation, found that you participated in using excessive and unnecessary force on _____ and _____ to discipline them for disruptions they were a part of earlier in the shift. Your brutal treatment of these two inmates was purposeful, malicious and immoral.

Your failure to file the necessary use of force reports and the misleading statements you made to others regarding the incident was conduct which was unprofessional, dishonest, self-serving and unbecoming of a Santa Clara County correctional deputy.

Your actions during and after the incident, can only be categorized as misconduct that was negligent, unprofessional, indifferent, irresponsible, dishonest, unbecoming a Correctional Deputy, and violated County and Department policy.

As a deputy with your level of experience and training, you knew, or reasonably should have known, the importance of adhering to department policy using good judgment that supports department policy and your absolute responsibility to protect inmates from cruel and unusual punishment. Instead, your actions demonstrated a lack of concern for the physical and mental well-being of inmates in your care and custody. You knew, or reasonably should have known, that it was your responsibility and duty when faced with an uncooperative or disruptive inmate,

especially an inmate with mental health issues, to competently resolve the situation without or with the least amount of force necessary. You understood or reasonable should have understood, the magnitude and possible ramifications of your decisions and actions and made the proper decisions to include intervening to prevent harm to the inmates, not participate in the brutal treatment of inmates and immediately report those who do.

The administrative investigation established facts that support a conclusion that you used excessive and unnecessary force, failed to discharge your duties in a responsible and professional manner, failed to exercise good judgment, failed to uphold the law, failed to report your actions and failed to follow Department and County policy. Based on your training, knowledge and experience you should have known that the actions you took against _____ and _____ violated County Merit System Rules and department policies and would result in the death of _____ and would physically and mentally harm _____.

Based upon the foregoing, I am recommending that you be TERMINATED from your position as a Sheriff's Correctional Deputy with the Santa Clara County Department of Correction/Office of the Sheriff- Custody Bureau effective May 21, 2016.

The above-mentioned discipline is a recommendation. Therefore, the termination date listed is tentative. Any actual discipline dates will be listed on a Final Disciplinary Action Letter that will be served to you.

History/Past Discipline:

None"

This concludes the relevant quotation from Sheriff Smith's May 6, 2016 Recommended Disciplinary Action Letter.

Administrative Hearing:

An Administrative Hearing was held on June 8, 2017 at the Maguire Correctional Facility in Redwood City. I served as the Administrative Hearing Officer at this hearing, which was attended by your attorney, _____, Captain Frank Zacharisen of the Sheriff's Office Personnel Division attended as my note-taker.

At the hearing, _____ presented me with a copy of a letter dated June 7, 2017 (attached as Exhibit A) that he had previously sent to me. In this letter, _____ opined that the recommended termination of your employment was predicated on your disqualification from acting as peace officer based on your conviction of a felony. _____ argued that the guilty verdict returned by the jury in your criminal trial on June 1, 2017 did not constitute a formal felony conviction, and that several post-trial motions could significantly alter this verdict.

_____ therefore believed that any disciplinary action based on this verdict was premature and

should be held in abeyance until criminal proceedings in your case have been completed and a judgement of conviction has been entered.

In addition to the argument set forth in his letter dated June 7, 2017, [redacted] stated that he did not feel he had enough time to prepare for the hearing between the date you were given notice of the hearing (June 1, 2017) and the date of the hearing itself (June 8, 2017). To avoid delaying the process, [redacted] adopted in advance any opinions, legal positions, or comments made by [redacted] (attorney for Jereh Lubrin) and [redacted] (attorney for Rafael Rodriguez) on behalf of their respective clients as those opinions, legal positions, or comments related to the May 2016 Recommended Disciplinary Action letter.

The hearing was then concluded.

Administrative Hearing Officer's Decision:

After reviewing the Internal Affairs investigative file, the May 6, 2016 Recommended Disciplinary Action letter, and the evidence provided during the investigation and Administrative Hearing, I find that there are sufficient grounds to believe that you engaged in the alleged misconduct listed in the Recommended Disciplinary Action letter and that your misconduct supports the recommended disciplinary action of termination. I also find that your misconduct constitutes a violation of the Merit System Rules and Department of Correction Policies and Procedures listed on pages 1-3 of this letter. Your voluntary misconduct has caused irreparable damage to this organization.

At your Administrative Hearing, [redacted] provided his opinion that the recommended termination relied at least in part upon your felony conviction, which legally bars you from serving as a peace officer. In [redacted] view, since the jury verdict is not a formal conviction, any disciplinary actions are premature unless and until a formal judgement of conviction is entered. [redacted] is incorrect about your recommended discipline being based upon the felony conviction. The May 6, 2016 Recommended Disciplinary Letter and charges put forth against you in that May 6th Recommended Disciplinary Action letter were based upon the administrative investigation report attached to that letter and were not based upon your recent felony conviction in June of 2017.

In my view, your termination is warranted based on the sustained findings of misconduct in the Sheriff's Office administrative investigative report and based upon the charges levied against you in the May 6, 2016 Recommended Disciplinary Action letter. The list of sustained allegations against you includes brutality, insubordination, gross misconduct, and untruthful statements. While circumstances vary from case to case, any of these sustained charges standing alone could warrant termination from this department. In your case, I believe that any one of these sustained charges standing on its own would merit your termination, but when considered as a whole it forms an insurmountable impediment to your continued employment with this law enforcement agency.

Your position as a Correctional Deputy is a position that requires the trust of the public, the inmates you supervise, your peers and supervisors, and the administration of the Department of Correction and Office of the Sheriff. Based on the investigation and sustained findings against you for brutality, insubordination, gross misconduct and untruthful statements, your actions have broken the trust required for you to perform your duties as a Correctional Deputy.

As an employer of law enforcement personnel, the County has a mandated responsibility to ensure that all employees, particularly peace officers employed by the department, maintain the highest standards of ethical, moral and legal behavior. The County also has a responsibility to ensure employees do not expose themselves or the County to criticism, disgrace or public ridicule. You have failed in your mandated responsibility to uphold the ethical, moral and legal standards of this County and your appointed position, and you have greatly damaged the reputation of the Office of the Sheriff, the Department of Correction, and everyone who works here. Allowing you to continue working in a public law enforcement agency and jail environment would send a message of tolerance in an area of behavior and conduct where I believe none should be shown. Based on the foregoing, I am upholding the recommended disciplinary action. Therefore, you will be TERMINATED from your position as a Sheriff's Correctional Deputy with the County of Santa Clara, Office of the Sheriff, Custody Bureau effective July 7, 2017.

Right to Appeal:

Should you be dissatisfied with the decision in this Final Disciplinary Action Letter ("final action"), the County of Santa Clara Charter, Section 708(c) gives you the right to appeal the decision. You may appeal the final action within ten (10) working days of receipt of the final action to the Personnel Board pursuant to County of Santa Clara Charter, Section 708(c):

"The employee shall have ten working days from receipt of such written notice within which to file an answer to the statement of charges should the employee desire to do so, and the filing of such an answer shall be deemed to be an automatic request for a hearing unless such employee otherwise indicates. The answer to such charges shall be filed with the Personnel Board."

Should you choose to appeal the decision you must send a written notice to:

William Anderson
Chairperson, Personnel Board
c/o Clerk of the Board
70 West Hedding Street, 10th Floor East Wing
San Jose, California 95110

Alternatively, should you voluntarily waive your right to appeal any disciplinary action to the Personnel Board, by filing for arbitration of your appeal pursuant to Section 23 Grievance Procedure, of the Memorandum of Understanding between the County of Santa Clara and the Santa Clara County Correctional Peace Officers' Association, Inc. to appeal the disciplinary action to arbitration by submitting a request in writing to the Office of Labor Relations within fifteen (15) working days from receipt of the Final Notice (Skelly Decision) of disciplinary action. Should you choose to do so, you must send the written request to:

Mitchell Buellesbach
Employee Services Agency, Labor Relations
70 West Hedding Street, 8th Floor East Wing
San Jose, California 95110

You may seek either a hearing before the Personnel Board or an arbitration hearing, but not both.

Filing a request for an arbitration hearing, under Section 23 of the MOU shall be deemed an automatic waiver of the employee's right to appeal to Personnel Board.

You have the right to be represented in your appeal by your union or another representative of your choice. You can contact your union at:

Santa Clara County Correctional Peace Officers' Association (CPOA)
1930 O'Toole Way
San Jose, CA 95131
(408) 526-0606

You have the right to the materials upon which this action is based. Those materials have already been provided to you.

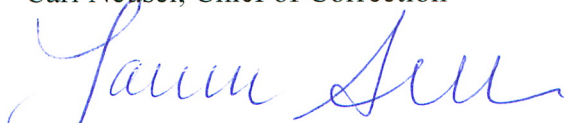
Sincerely,



Ken Binder, Assistant Sheriff
Administrative Hearing Officer



Carl Neusel, Chief of Correction



LAURIE SMITH, Sheriff

c: Troy Beliveau, Assistant Sheriff, Custody Bureau
Captain Eric Taylor, Main Jail Division
Captain Tim Davis, Elmwood Division
Captain Frank Zacharisen, Personnel Division
Juan Gallardo, Director of Administrative Services
Mitchell Buellesbach, Labor Relations Representative, ESA
Anita Asher, Human Resources Manager, ESA

Matthew Farris (hand-delivered at Maguire Correctional Facility, Redwood City, California)

enc: *Response to Notice of Intent to Terminate the Employment of Correctional Deputy Matthew Farris*, dated
June 7, 2017

Exhibit A

June 7, 2017

SENT BY E-MAIL

Kenneth.binder@sheriff.sccgov.org

Kenneth Binder, Assistant Sheriff
County of Santa Clara, Sheriff's Department
55 West Younger Avenue
San Jose, California 95110

**Re: *Response to Notice of Intent to Terminate the Employment
of Correctional Deputy Matthew Farris***

Dear Assistant Sheriff Binder:

On behalf of Correctional Deputy Matthew Farris, I write in response to the June 1, 2017 "Administrative Leave Without Pay" letter, the June 7, 2017 Notice of "Administrative Hearing" letter, and the Notice of Intent to Terminate Employment issued by Memorandum dated May 6, 2016 from Sheriff Laurie Smith. This response is timely submitted in advance of the Administrative Appeal Hearing set for June 8, 2017 at noon.

The charges, which are predicated on the jury verdict disqualifying Correctional Deputy Matthew Farris from acting as a peace officer, are premature. No disciplinary action can be taken until after the final judgment issues and sentencing occurs. Only at that time will we know whether the results of the criminal proceedings disqualify Correctional Deputy Matthew Farris from his position with the Santa Clara County Sheriff's Office.

There are several post-trial motions that may significantly alter the verdict, which would thereby significantly impact whether the factual foundation relied upon by the Department in its Notice of Intent to Terminate is sound or lawful.

First, a motion in Arrest of Judgment pursuant to Penal Code section 1185 will challenge the verdict on Penal Code section 187 based on a significant legal defect in the

verdict. Second, a motion for new trial will challenge the Penal Code 187 verdict based on serious errors that occurred during the trial. This verdict is so flawed procedurally that it should not be relied upon at this juncture for the employment determination. Upon completion of the post-trial motions, the landscape related to this verdict, and the impact of this verdict on Correctional Deputy Farris' employment, could significantly change.

As to that portion of the recommendation that relies upon the felony verdict to disqualify Correctional Deputy Farris pursuant to Penal Code section 1029 and 1031, that conclusion is premature. In *Boyll v. State Personnel Board*, 146 Cal. App. 3d 1070 (1983), the court ruled that a peace officer is not convicted within the meaning of Penal Code section 1029 until after a judgment issues on the verdict. The court stated:

As appears in the case law, the terms "convicted or "conviction" do not have a uniform or unambiguous meaning in California. Sometimes they are used in a narrow sense signifying a verdict or guilty plea, some other times they are given a broader scope so as to include both the jury verdict (or guilty plea) *and* the judgment pronounced thereon. [Citations omitted.] However, where as in the instant case, a civil disability flows as a consequence of the conviction, the majority and better rule is that "conviction" must include both the guilty verdict (or guilty plea) *and* a judgment entered upon such verdict or plea.

Id. at 1074 (emphasis in original). The court went on to state: "[I]n the absence of a judgment of conviction or imposition of sentence" a police officer "cannot be deemed to be 'convicted' under section 1029," and therefore cannot be deprived of the fundamental right to obtain or maintain public employment. Since no judgment has yet issued against Correctional Deputy Farris, he cannot be considered disqualified under Penal Code section 1029.

Based on the foregoing, it is clear that the foundation upon which the Notice of Intent to Terminate issued is not sound, and the recommendation premature. Until such time as the criminal proceedings are complete and a judgment of conviction is entered, the Santa Clara County Sheriff's Office and Santa Clara County should hold off on any formal decisions concerning Correctional Deputy Farris' employment status.

Kenneth Binder
Re: Correctional Deputy Matthew Farris
June 7, 2017
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Thank you for the opportunity to respond to the Notice that issued. If further discussions would be helpful toward your final decision, I invite you to contact me directly either by telephone or electronic mail.

Very truly yours,

LAW OFFICES OF

By:

cc: Mitchell Buellesbach, Labor Relations, ESA
Mitchell.Buellesbach@esa.sccgov.org
(by e-mail)
Matthew Farris