

County of Santa Clara

Office of the Sheriff

55 West Younger Avenue
San Jose, California 95110-1721
(408) 808-4900



Laurie Smith
Sheriff

CERTIFIED MAIL DELIVERED

May 9, 2016

Pablo Tempra, Correctional Officer #2752

**SUBJECT: Disciplinary Action: TERMINATION
Internal Affairs Case 2015-022**

Dear Officer Tempra:

This letter is to inform you that you have been **TERMINATED** from your position as a Correctional Officer **effective Saturday May 7, 2016**.

In a letter dated April 21, 2016, Sheriff Laurie Smith issued you a Recommended Disciplinary Action Letter advising you of her intent to **TERMINATE** you from your position as a Sheriff's Correctional Officer for the County of Santa Clara, Sheriff's Office Custody Bureau.

The April 21, 2016, letter reads, in relevant part, as follows:

This action is based on, but not limited to, the following sustained charges:

- I. Santa Clara County Merit System Rule A25-301(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."
- II. Santa Clara County Merit System Rule A25-301(b)(1): "Guilty of gross misconduct, or conduct unbecoming a county officer of employee which tends to discredit the county or county service."
- III. 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.”

- IV. 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.”
- V. 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.”
- VI. D.O.C. Policy 9.27.I.B – Reporting of Incidents: “Staff made aware of reportable incidents of 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.”
- VII. 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.”

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 January 7, 2016)

The Basis for the Recommendation:

On August 26, 2015, between 10:38 p.m. and 11:09 p.m. a 44-year old male inmate, housed in of the Santa Clara County Main Jail, suffered injuries to his arm, shoulder, wrist and knee, resulting in visual bruising.

On August 27, 2015, at 12:35 a.m. , a 31-year old male inmate, housed in of the Santa Clara County Main Jail was declared dead in his cell. The Medical Examiner’s Report concluded tha sustained a severed spleen and liver resulting from the infliction of blunt force trauma.

Both inmate and were protective custody inmates and had mental health issues, neither inmate, had a history of violence against inmates or department personnel. During this period, you were assigned as the floor officer and responsible for staff and inmate movement, communications and overall security of the floor. Also assigned to the floor, as module deputies, were Deputies Lubrin #10772, Farris #10833 and Rodriguez #10837.

As required, an administrative and criminal investigation concluded that during routine cell searches in module Lubrin, Farris and Rodriguez used unnecessary and excessive force on both inmate and The force used resulted in significant injures to both inmates and ultimately was the direct cause of inmate death. The preponderance of the evidence established that on multiple occasions you violated department policies by failing to submit a report, or notify your supervisor that you were aware that Lubrin had used force on inmate you knew this because, the investigation revealed, Lubrin told you he did. It was not until the October 29, 2015 investigative interview that you informed investigators of this fact. In addition, your statements that you had not heard any noise from during the time of beating and death are not credible based on the evidence. Your statement is not credible because multiple witness statements described loud yelling and screaming while Lubrin, Farris and Rodriguez used force on inmates and Sound tests conducted by the investigators established that yelling from the inmate cells could be heard at the floor station.

As a Correctional Officer, you are held to a higher standard in both your professional and private life. It is unlawful, unethical, and a violation of Department and County policy to withhold pertinent information in a criminal investigation; it is unethical, and a violation of Department and County policy to withhold pertinent information in an administrative investigation. Your actions impeded both the criminal investigation and the administrative investigation.

Your conduct has cast considerable doubt on your integrity and character. In addition, the Department no longer trusts your ability to honestly, ethically and properly execute the duties and responsibilities of a Correctional Officer. You have tarnished your reputation and violated the public trust. You have dishonored the Sheriff's Office, your fellow Correctional Deputies and Officers, and our profession.

Based upon the foregoing, I am recommending that you be **TERMINATED** from your position as a Correctional Officer with the Santa Clara County Department of Correction/Office of the Sheriff - Custody Bureau **effective Saturday, May 7, 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 portion of Sheriff Smith's September 26, 2013 Recommended Disciplinary Action Letter.

Administrative Hearing Officer's Decision:

Officer Tempra, on April 23, 2016 at 1135 hours you were served with a Recommended Discipline Letter (RDA), case number for IAU case 2015-022. The RDA provided you with the

investigative information, the sustained violations and the reasons for the recommended discipline of TERMINATION.

Officer Tempra in your Recommended Discipline Letter you were advised that Sheriff Smith had assigned me (Assistant Sheriff Ken Binder) as the Administrative Officer for you case. The letter informed you that you had ten (10) work-days to contact me to schedule an administrative hearing or provide me with notice that you would be submitting your response in writing. You were also advised that failure to do so would result in you waiving your right to an Administrative Hearing. Officer Tempra, I did not receive any contact from you during the ten (10) work-day period, therefore, you waived your right to repond.

Even though you waived your right to respond, I still reviewed your case and the recommended disciplinary action. In doing so, I reviewed the Internal Affairs Investigative Report, the Recommended Disciplinary Action Letter as submitted. After a careful review, I believe that the evidence is sufficient to uphold all of the listed charges, both individually and as a whole. I further believe that there is just cause for discipline based upon the evidence obtained during the Internal Administrative Investigation.

Based upon the foregoing, I am upholding the recommended discipline and you will be **TERMINATED** from your position as a Correctional Deputy with the Santa Clara County Department of Correction/Office of the Sheriff - Custody Bureau, **effective Saturday, May 7, 2016.**

Right to Appeal:

Should you be dissatisfied with the 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, CA 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, CA 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 24 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

Sincerely,



Ken Binder, Assistant Sheriff
Administrative Hearing Officer

c: Laurie Smith, Sheriff
John Hirokawa, Chief of Correction
Ken Binder, Assistant Sheriff, Administrative Hearing Officer
Troy Beliveau, Assistant Sheriff, Custody Bureau
Carl Neusel, Assistant Sheriff
Juan Gallardo, Acting Administrative Services Director
Captain Blanca Hoyt, Main Jail Division
Captain David Sepulveda, Elmwood Division
Captain Michael Doty, Personnel Unit
Mitchell Buellesbach, Labor Relations Representative
Personnel, ESA