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Carl Garrett

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**BEFORE THE CIVIL SERVICE COMMISSION OF THE
STATE OF TENNESSEE**

IN THE MATTER OF:

Carl Garrett

DOCKET NO: 26.05-102760J

INITIAL ORDER

This matter was heard on March 31, 2010, in Memphis, Tennessee, before Joyce Carter-Ball, Administrative Law Judge, assigned by the Secretary of State to sit for the Civil Service Commission of the State of Tennessee. Teresa S. Thomas, Staff Attorney for Department of Correction (hereinafter referred to as the "Department") represented the State. Carl Garrett (hereinafter referred to as "Grievant") represented himself.

The issue in this hearing is whether the State carried its burden of proof of preponderance of evidence that Grievant's conduct warranted his termination from employment with the Department of Correction.

Grievant properly appealed this disciplinary action, and this hearing constituted Grievant's 5th step hearing before the Civil Service Commission.

After consideration of all of the evidence, arguments of counsel and the entire record in this matter, it is determined that Grievant's termination for policy violations is **proper** and is **UPHELD**.

This decision is based upon the following:

PROCEDURAL HISTORY

Prior to his termination, Grievant had been employed at Mark Luttrell Correctional Facility. This facility houses female inmates of varying classifications and seriousness of their offenses. Mark Luttrell Correctional Facility is the smallest of all the facilities, with a total bed count of four hundred forty (440).

This case was first brought to the attention of former Commissioner Little based upon an inmate complaint that named Grievant as treating her in an unprofessional manner. Those allegations were investigated by the Department's Internal Affairs Unit. While that investigation was ongoing by the Department's Internal Affairs Unit, it came to the investigating officer's attention, Joe England, that another inmate, April Beltran, was involved as well. Ms. Beltran was not the complaining witness.

Mr. England conducted an investigation and interviewed several people. While he did not sustain the allegation brought by the complaining inmate against Mr. Garrett, he did sustain violation of TDOC Policy 305.03, Employer Offender Relations, against Grievant brought by Ms. Beltran.

FINDINGS OF FACT

1. April Beltran is currently an inmate at Mark Luttrell Correctional Facility. She was sentenced to 13 ½ years and has served 8 years. Ms. Beltran is classified as a minimum trustee and is allowed to walk around the grounds and has a job as the warehouse commissary.
2. During the hearing, Ms. Beltran denied performing oral sex on Grievant and having vaginal sex with Grievant. Ms. Beltran **admitted** to telling the Internal Affairs Investigator prior to the hearing that she had sex with Grievant.

3. Ms. Beltran knows that Grievant has a tattoo, some kind of heart, on his chest and that he has an uncircumcised penis.
4. Terrance Rowand, acting facility manager, supervised Grievant when he was employed at Mark Luttrell Correctional Facility.
5. Mr. Rowand witnessed Grievant and Ms. Beltran alone in the parts room, where the two were standing chest to chest facing each other. They were talking in a low voice when Mr. Rowand entered the room and they appeared to be surprised at his presence.
6. Mr. Rowand had no knowledge as to why Grievant and Ms. Beltran were in the parts room alone.
7. Another time, Mr. Rowand and one of his vendors went into the boiler room, where the front door was secured. They walked back to where the chemicals were stored and Mr. Rowand noticed a head pop up from below the window in the office. Mr. Rowand recognized the individual as Ms. Beltran. The lights were off. When Mr. Rowand turned the lights on he saw Grievant sitting on the corner of the desk and Ms. Beltran sitting on the opposite corner.
8. Ms. Beltran only wanted to work with Grievant, as opposed to working with other staff.
9. When Ms. Beltran was assigned to the warehouse prior to coming to maintenance, she would come in dressed plainly. However, when she worked with Grievant, she wore heavy make-up.
10. Sherman Porter works as a correction officer and maintenance worker at Mark Luttrell Correctional Facility. One day Mr. Porter ran into Grievant in the tool room. Mr. Porter came in to secure the tool room and lock the maintenance shop and met Grievant coming out of the tool room **around 4:15**. Three or four minutes later Ms. Beltran came out of the tool room. **Inmates should have been in their building before 3:45.**

11. Tremont Fields is a maintenance worker at Mark Luttrell Correctional Facility. Mr. Fields also saw Grievant coming out of the tool room, and Ms. Beltran came out about three to five seconds later. Grievant appeared to be startled at Mr. Field's presence.
12. Joe England, Special Agent, Internal Affairs Division for the Department, began the initial investigation when inmate Regina Gerrard filed a complaint that Grievant had sexually harassed her. During the course of the investigation, Mr. England learned that Grievant was possibly involved with Ms. Beltran.
13. Ms. Beltran told Mr. England that she loved Grievant, and that they were involved in a sexual relationship. Ms. Beltran told Mr. England personal information about Grievant.
14. Grievant admitted that he probably had provided candy or gum to inmates, and to Ms. Beltran.
15. Jennie Jobe, Acting Warden at Mark Luttrell Correction Facility, explained that inmates can be very manipulative and that is why "employees shall conduct themselves in a **professional** manner when interacting with offenders."

APPLICABLE LAW

1. In a fifth step level hearing, an administrative law judge presides to take proof and render an initial order which is subject to review by the Civil Service Commission.
2. The Department bears the burden of proof, which is a preponderance of the evidence standard, to show that Grievant's termination was proper.
3. Grievant's inappropriate behavior with Ms. Beltran violates **TDOC policy 305.03 Employer Offender Relations Policy**: "Conversations with inmates shall be limited to that necessary as part of the employee's duties." Section VI, A and VI, C.

“An employee shall not give items to offenders or their families without prior approval from the warden.” Section VI, H.

4. Pursuant to the Department of Correction **Code of Conduct, CR Form 3601:**

“Employees will conduct themselves in a manner that creates and maintains respect for their worksite, fellow employees and visitors, the Tennessee Department of Correction and the State of Tennessee. Fraternalization with inmates, ex-inmates, inmates’ relatives or friends is prohibited. Employees shall not make more than incidental contact or become unduly familiar with inmates nor permit inmates to become unduly familiar with them. No employee shall possess contraband or knowingly permit inmates to obtain or retain contraband.”

5. “An employee may not engage in or allow another person to engage in sexual activity with an inmate. An employee may not encourage, threaten or force an inmate to have sexual relationships with them or anyone else. There is no such thing as consensual sex between staff and inmates. The violation of this rule will result in disciplinary action up to and including termination and criminal prosecution.” **Code of Conduct...**

ANALYSIS

Having considered and reviewed the entire record in this case, and having carefully evaluated the testimony of each and every witness, it is determined that the Department has proved, by a preponderance of the evidence, that Grievant’s conduct warranted his termination from employment with the Department of Correction.

Grievant clearly engaged in inappropriate conversation either to or around Ms. Beltran for her to have the personal knowledge that she has about Grievant. The proof does not sustain that there was sexual activity between Grievant and Ms. Beltran, however the proof does sustain

that there were inappropriate interactions between Grievant and Ms. Beltran. Grievant clearly had an inappropriate relationship with Ms. Beltran.

Grievant **admitted** that he gave candy to the inmates when he had extra. Ms. Jobe explained that giving the inmates food, candy or gum is prohibited because once that starts, the inmate has a hook in the staff and the staff is vulnerable at that point because they know they're not supposed to do this.

Allegations had previously been brought against Grievant regarding inappropriate inmate relations, and three years later, Grievant put himself in that same position with Ms. Beltran, another inmate. His behavior did not change. Grievant's actions show a pattern of poor judgment and an inappropriate pattern of behavior.

CONCLUSIONS OF LAW

1. It is **concluded** that the Department has met its burden of proof that Grievant violated the Department's **Code of Conduct** and the **Employee Offender Relations Policy**.
2. Grievant presented no evidence to counter any information the Department presented.
3. Based on the above, it is determined that the termination of Grievant's employment with the Department was **proper**.
4. Therefore, it is **ORDERED** that Grievant's termination of his employment with the Department of the Correction be **UPHELD**.

IT IS SO ORDERED.

This Initial Order entered and effective this 30th day of July, 2010.

Joyce Carter-Ball
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 30th day of July, 2010.

A handwritten signature in black ink that reads "Thomas G. Stovall". The signature is written in a cursive style with a large, looped initial 'T'.

Thomas G. Stovall, Director
Administrative Procedures Division