

BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

DENNIS SIMONS,

Appellant,

vs.

DEPARTMENT OF CORRECTIONS,

Respondent.

CASE NO. R-DEMO-09-005

FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND ORDER OF THE BOARD

**I. INTRODUCTION**

1.1 **Hearing.** This matter came before the Personnel Resources Board, LAURA ANDERSON, Vice Chair, and DJ MARK, Member. The hearing was held on February 18 and 19, 2010, in the Personnel Resources Board hearing room in Olympia, Washington. Closing arguments were submitted in writing on March 15, 2010.

1.2 **Appearances.** Appellant Dennis Simons was present and represented himself. Elizabeth Delay Brown, Assistant Attorney General, represented Respondent Department of Corrections.

1.3 **Nature of Appeal.** This is an appeal from a demotion for failing to follow DOC policies and procedures during an escape attempt at McNeil Island Corrections Center.

**II. FINDINGS OF FACT**

2.1 Appellant Dennis Simons is a permanent employee for Respondent Department of Corrections (DOC). Appellant and Respondent are subject to Chapter 41.06 RCW and the rules promulgated thereunder, Title 357 WAC. Appellant filed a timely appeal with the Personnel Resources Board on July 28, 2009.

2.2 Appellant has been employed with DOC for approximately 13 years. At the time of the actions giving rise to this appeal, Appellant was a Correctional Lieutenant at McNeil Island

1 Corrections Center (MICC). On the date of the incident giving rise to this appeal, Appellant was  
2 the Shift Lieutenant/Commander.

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4 2.3 Appellant's work history indicates that at the time of this incident, he had received no  
5 formal disciplinary actions. In addition, his work history includes extensive training on safety,  
6 security and emergency response; functioning as an assistant team leader for the Emergency  
7 Response Team at MICC; and providing training to other staff regarding emergency response  
8 procedures.

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10 2.4 On December 29, 2008, Appellant was on duty on the third shift. As the shift lieutenant,  
11 Appellant functioned as the incident commander for any critical incidents that occurred during the  
12 shift. Appellant testified that he has dealt with numerous incidents while employed with DOC.

13  
14 2.5 At approximately 5:30 pm, inmate Dravis attempted to escape from MICC. Dravis was  
15 serving a 10 year 9 month sentence for 3 counts of child molestation. He was considered a violent  
16 sex offender and ordered by the court to have no contact with minor children.

17  
18 2.6 The MICC gatehouse is the entrance and exit point for persons entering and leaving the  
19 facility. Before proceeding through the gatehouse, persons must show identification.

20  
21 2.7 During his escape attempt, Dravis entered in the gatehouse. The officer on duty, Officer  
22 David Snow, asked Dravis for identification. Dravis failed to provide identification. Rather, he told  
23 Officer Snow that his identification was in the truck. Dravis then left the gatehouse. Officer Jason  
24 Meyers saw Dravis walk down the sidewalk toward the MICC boat dock. Dravis then proceeded to  
25 walk down the dock, entered the passenger ferry boat and sit down at the back left corner of the  
26 boat. The passenger boat is used to ferry visitors, residents (including minor children), staff and  
27 contractors to and from the island.

1 2.8 Officer Meyers followed Dravis onto the boat, called his name and asked him what he was  
2 doing on the boat. Dravis looked up when Officer Meyers called his name but he did not identify  
3 himself when asked to do so. Rather, he told Officer Meyers that he had been released. Following  
4 further conversation, Officer Meyers was unable to determine whether Dravis had the proper  
5 release papers.

6  
7 2.9 Officer Meyers notified Appellant that Dravis was on the boat claiming that he had been  
8 released but that he had no paperwork. Officer Meyers told Appellant that they had a possible  
9 escape attempt. Appellant told Officer Meyers to tell the boat captain not to depart from the dock  
10 and that he would send assistance. Officer Meyers testified that there was no indication that  
11 Appellant was sending armed officers to help.

12  
13 2.10 Appellant directed Sergeant Herbert Johnson to report to the boat. When Sgt. Johnson  
14 arrived at the boat, he and Officer Meyers continued to talk to Dravis about his paperwork. Dravis  
15 became angry, the visitors were removed from the boat, and then Dravis was escorted from the  
16 boat. In the meantime, Officers Kevin Bolden and Trevor Humphrey arrived at the dock with a van  
17 in which to transport Dravis back to the facility.

18  
19 2.11 At the time of the incident, Officer David Jimenez was driving the roving patrol vehicle  
20 outside of the perimeter of the facility. The roving patrol vehicle contains a lethal force option.  
21 Officer Jimenez testified that Appellant directed him to go to the end of the causeway to provide  
22 watch. Although Appellant told Officer Jimenez to go to the causeway, he did not tell him why  
23 coverage was needed. But, Officer Jimenez heard chatter on the radio that an inmate had made it  
24 out of the facility and on to the boat. Officer Jimenez testified that he was positioned at the end of  
25 the dock. During his testimony, Superintendent Ron Van Boening acknowledged that Officer  
26 Jimenez was positioned at the end of the dock with a lethal force option, but further explained that  
27 while Officer Jimenez was at the end of the dock at the causeway, the emergency was occurring at  
28 the end of the pier.

1  
2 2.12 A preponderance of the credible testimony establishes that Appellant failed to tell the  
3 officers reporting to the incident that they were reporting to a possible escape attempt.  
4

5 2.13 After Officer Meyers, Sgt. Johnson and Dravis arrived at the van, Dravis was seated in the  
6 van but he was not searched or placed in restraints. However, before the van left the dock area,  
7 Appellant contacted Sgt. Johnson and directed him to place restraints on Dravis. As a result, Dravis  
8 was removed from the van, briefly pat searched and placed in wrist restraints with his hands behind  
9 his back. He was then placed back into the van and driven to the facility.  
10

11 2.14 After the van arrived at the facility, Dravis was taken out of the van and the officers  
12 escorted him into the facility by positioning themselves on each side of him and behind him. The  
13 officers on each side of him kept "hands on" while they escorted him through the sally port into the  
14 facility and up the walkway into the gatehouse.  
15

16 2.15 As Dravis was being escorted into the gatehouse, he became upset in response to a  
17 comment made to him by Officer Snow. Appellant was also in the gatehouse and Officer Meyers  
18 again told Appellant that they had Dravis. Because Dravis was upset and struggling against the  
19 escorting officers, the officers took Dravis to the wall of the gatehouse that contained staff  
20 mailboxes. While Dravis was being restrained near the wall, he became aggressive and had to be  
21 taken to the floor by Officers Meyers and Jacob Cummings. The officers began to place leg  
22 restraints on Dravis as he struggled and flailed his legs. But, Appellant told them to remove the leg  
23 restraints and to have Dravis sit on a table. Appellant continued to attempt to have further dialogue  
24 with Dravis. Dravis eventually told Appellant that he had paperwork in the pocket of his pants.  
25 After Appellant retrieved and reviewed the paperwork, Dravis was escorted to health services.  
26 Dravis was not strip searched before entering the facility, while in the gatehouse or before being  
27 taken to health services.  
28  
29

1 2.16 Following the incident, Appellant completed an incident report (TIR). The report identified  
2 the staff involved in the incident. However, Appellant neglected to identify Officer Snow's  
3 involvement in the incident.

4  
5 2.17 Appellant testified that he was not certain that Dravis was in fact an inmate. However,  
6 Appellant's statements during the incident investigations and the credible testimony of Officers  
7 Meyers and Jimenez establish that Appellant had more than enough information to reasonably  
8 conclude that Dravis was an inmate before he was even transported to the gatehouse.

9  
10 2.18 Appellant did not initiate an emergency notification or notification of a potential escape  
11 when he first learned than Dravis had exited the facility. Further, based on the testimony provided,  
12 the critical incident checklist that Appellant completed, and Appellant's incident report, Appellant  
13 did not initiate a picture card count to assure all inmates were accounted for until an hour after he  
14 was notified of the attempted escape.

15  
16 2.19 In his incident report, Appellant further indicates that at 6:33 pm, a picture card count  
17 commenced, escape posts were posted, and the emergency response/incident response teams were  
18 placed on standby. The report indicates that these events occurred simultaneous with Dravis being  
19 taken to health services, instead of immediately following Officer Meyers' report of Dravis's  
20 attempted escape.

21  
22 2.20 DOC has policies and procedures that must be followed when a critical incident such as an  
23 escape or attempted escape is occurring. The procedures include the use of a critical incident  
24 checklist by the incident commander to assure that all steps are followed and processes completed.  
25 Appellant was trained and knowledgeable of the policies and procedures and he had trained others  
26 on the policies and processes to follow when a critical incident occurs.

2.21 MICC 410.360 Operational Memorandum, Escape Preparedness and Response (Restricted) section III. Initial Response states,

A. In the event of a suspected escape, including an incorrect recount, the Shift Lieutenant initiates the Initial Emergency Response Checklist and the appropriate MICC Escape Response Emergency Checklist.

B. The Shift Lieutenant will again notify the appropriate people and conduct a staff debriefing if all offenders are accounted for.

2.22 Section 4.b. of MICC 410.360 Operational Memorandum includes an emergency checklist for escape responses from the facility. The checklist provides, in part, that in the event of a suspected escape, the incident commander is required to immediately:

- Initiate a picture count
- Ensure facility access/egress points and perimeter posts are notified . . .
- Assign a supervisor or an approved staff to the Armory . . .
- Make tentative escape post assignment to QRT, ERT and/or SERT.
- . . . .
- Immediately post staff to any structural break or breach in the perimeter security.

(Emphasis added.)

2.23 DOC Policy 420.100, Transportation Standards (Restricted), Section VII., Searches of Offenders, states, in part:

B. When transports into custody are required from areas without a secured area for a strip search, a minimum of 2 thorough pat searches will be conducted on the offender prior to entering the facility.

C. Offenders will be under constant surveillance until released in the presence of receiving staff at the Department facility and strip searched as part of the in-processing.

2.24 DOC Policy 410.200, Use of Force, Section IV, states, in part,

A. 2. The appropriate amount of force necessary is determined by the exact nature of the given situation and totality of the surrounding circumstances. In most cases, physical control would be a lower level force. . . .”

1 B. 1. In all cases, staff presence and verbal intervention should occur prior to the  
2 following force options:

3 a. Physical intervention or control/impedance tactics requiring staff to  
4 physically control the offender(s).

5 . . . .

6 2.25 The Shift Lieutenant Post Orders indicate that the shift lieutenant is responsible for  
7 maintaining the overall security and operations of the institution, the island, the docks and the depot  
8 during the assigned shift. The Post Orders further provide, in part:

9 Principles of Initial Individual Response

10 In this position you are the initial incident commander to all incidents within your  
11 zone of control. You are expected to resolve all emergencies as quickly and safely as  
12 possible. As the Shift Lieutenant, you are expected to know the location of the  
13 emergency response plans and to use them to fit the emergency you are managing.  
14 You are also expected to make notifications to the Superintendent and institution  
15 OD when dealing with an emergency.

16 (Emphasis added.)

17 2.26 Ron Van Boening is the Superintendent of MICC and as such, is Appellant's appointing  
18 authority. Superintendent Van Boening credibly testified that as the shift commander during an  
19 attempted escape, Appellant was responsible for managing the emergency by following the  
20 emergency response checklist and recording the actions taken. Superintendent Van Boening  
21 explained that whenever staff is not sure of the identity of a person, the person should be suspected  
22 of being an inmate, detained and brought inside the perimeter of the facility until identification is  
23 confirmed.

24 2.27 Superintendent Van Boening also explained that an incident review takes place after every  
25 incident. In this case, an incident review and an administrative investigation were conducted. The  
26 departmental Critical Incident Review was completed on January 7, 2009. The MICC internal  
27 administrative investigation was initiated on January 15, 2009 and was completed on February 18,  
28 2009.

1 2.28 After receiving the review and the investigation reports, Superintendent Van Boening  
2 scheduled a pre-disciplinary meeting with Appellant. In the March 12, 2009 pre-disciplinary letter,  
3 Superintendent Van Boening alleged that Appellant:

- 4 • Failed to recover videotaped information from health services
- 5 • Failed to dispatch appropriate force options for an escape response
- 6 • Inappropriately ordered the removal of restraints from Dravis, a combative escapee
- 7 • Failed to search Dravis when he was apprehended or when he was returned to the  
8 facility
- 9 • Failed to report Officer Snow's involvement in the incident or his comment.

10 2.29 Superintendent Van Boening met with Appellant on March 23, 2009. During the meeting  
11 Appellant provided his responses to the allegations. Following consideration of Appellant's  
12 responses and review of his work history and experience, Superintendent Van Boening concluded  
13 that misconduct had occurred. Superintendent Van Boening determined that Appellant had failed to  
14 dispatch appropriate force options for an escape response, inappropriately ordered the removal of  
15 restraints from Dravis, failed to assure Dravis was searched when he was apprehended or when he  
16 was returned to the facility, and failed to report Officer Snow's involvement in the incident.  
17 Superintendent Van Boening concluded that Appellant failed to follow agency policies and  
18 procedures, that during the incident his behavior demonstrated faulty judgment and decision  
19 making, and that his actions posed a safety and security risk to staff, visitors, the community,  
20 offenders, and the department. As a result, Superintendent Van Boening lost confidence in  
21 Appellant's ability to function in the role of incident commander and in his ability to handle any  
22 and all situations appropriately. Therefore, by letter dated June 22, 2009, Superintendent Van  
23 Boening notified Appellant of his demotion to Correctional Sergeant, effective June 30, 2009.

### 24 25 **III. ARGUMENTS OF THE PARTIES**

26 3.1 In summary, Respondent argues that Appellant violated published DOC policies and  
27 procedures, that his actions were not reasonable given the seriousness of an attempted escape, and  
28 that his behavior demonstrated inappropriate judgment and inability to continue to function in a  
29

1 supervisory role for staff. Respondent contends that given Appellant's training and experience, he  
2 should have been aware of his obligations to comply with DOC policies and should have been more  
3 than equipped to properly, quickly and efficiently handle the situation so that staff and others were  
4 not placed at risk. Respondent asserts that Appellant failed to act as a role model for staff, failed to  
5 inform them of the possible escape attempt when he sent them to the dock, failed to provide  
6 appropriate direction to staff, and failed to display a high standard for professionalism. Respondent  
7 asserts that the Superintendent can no longer trust Appellant to utilize the judgment and skills  
8 required of a lieutenant and incident commander and to take situations such as possible escape  
9 attempts seriously. Respondent contends that demotion is the only discipline that assures Appellant  
10 will not provide supervision and instructions to others as the shift commander and that assures his  
11 actions will not place MICC and the community at risk.

12  
13 3.2 In summary, Appellant argues that none of the DOC training, policies or procedures  
14 address or identify the steps and systematic processes required when dealing with an unidentified  
15 person on a marine vessel that transports staff members, volunteers, and contractors to and from the  
16 mainland. Appellant asserts that he appropriately applied DOC policies by using the tools and  
17 resources available and dispatching staff to respond to the dock including Officer Jimenez whose  
18 presence provided a lethal force option. Appellant further asserts that he provided direction to and  
19 communicated with staff based on the information he had and that he initiated facility emergency  
20 beacon status, escape post response, and total recall picture card count as required by policy.  
21 Appellant also asserts that Dravis was not 100 percent identified as an offender until he was in the  
22 gatehouse. Appellant contends that once Dravis was identified, he initiated a total recall picture card  
23 count. Appellant further contends that Dravis was under supervision at all times while in wrist  
24 restraints and that staff had hands-on escort further assuring his inability to pose a risk. Appellant  
25 acknowledges that there were omissions in his report but argues that he was not provided an  
26 opportunity to correct the report which was a common practice. Appellant further argues that the  
27 investigations of the incident were not fair and impartial. Appellant asserts that he complied with  
28 DOC policies and procedures and that he takes the safety of staff, the public and offenders very  
29

1 seriously. Appellant further asserts that MICC management allowed the facility to be lax in  
2 requiring offenders to wear proper identification and that major components of safety and security  
3 were lacking at MICC. Finally, Appellant asserts that he was allowed to continue to work in the  
4 capacity of a shift lieutenant after the incident, during and after the investigations and until the  
5 effective date of his demotion which demonstrates that the Superintendent had not lost confidence  
6 in his ability to assure the safety and security of staff, the public and offenders and demonstrates  
7 that he has the skills to meet the expectations of a shift lieutenant, to apply DOC policies, to make  
8 good decisions, and to effectively maintain compliance with department goals and strategic  
9 objectives.

#### 10 **IV. CONCLUSIONS OF LAW**

11 4.1 The Personnel Resources Board has jurisdiction over the parties and the subject matter.  
12

13 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting  
14 the charges upon which the action was initiated by proving by a preponderance of the credible  
15 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the  
16 sanction was appropriate under the facts and circumstances. WAC 357-52-110.  
17

18 4.3 Respondent has met its burden of proof. The preponderance of the credible testimony and  
19 evidence proves that:  
20

- 21 • Appellant failed to comply with agency policies and directives when he did not dispatch  
22 appropriate force options for an escape response and when he did not notify the responding  
23 officers that they were responding to a possible escape attempt.
- 24 • Appellant acted contrary to DOC policies regarding the transport of offenders and the use of  
25 force when he failed to assure Dravis was searched when he was apprehended or when he  
26 was returned to the facility and when he inappropriately ordered the removal of the leg  
27 restraints from Dravis in the gatehouse.
- 28 • Appellant failed to report Officer Snow's involvement in the incident.  
29

4.4 Respondent has met its burden of proof that the sanction imposed was appropriate and  
should not be disturbed. From the start of the incident, Appellant demonstrated a lack of

1 leadership and failed to be a role model for other staff. First, Appellant knew or should have  
2 known that Dravis was an offender and that he had breached the perimeter of the facility when  
3 Officer Meyers reported to him that Dravis was on the passenger ferry. The location of the escape  
4 attempt, in this case the passenger ferry, does not negate Appellant's responsibility to follow  
5 MICC's emergency response plans. Appellant continued to show a lack of leadership as the shift  
6 lieutenant and incident commander throughout the incident by failing to abide by the policies,  
7 operational memorandum, and post orders governing escape attempts and failed to take the  
8 immediate actions required of an incident commander. Based on the record, Appellant is very  
9 experienced in all aspects of incident response; in fact, he has trained other staff and served as  
10 the Assistant Team Leader on the MICC Emergency Response Team. As a result, when  
11 considering Appellant's vast experience and training and under the proven facts and  
12 circumstances of this case, the disciplinary sanction of demotion to a non-supervisory position is  
13 appropriate.

14  
15 4.5 Under the totality of the proven facts and circumstances, the disciplinary sanction of  
16 demotion is appropriate. Therefore, the demotion should be affirmed and the appeal should be  
17 denied.

#### 18 **V. ORDER**

19 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Dennis Simons is denied.

20  
21 DATED this \_\_\_\_ day of \_\_\_\_\_, 2010.

22 WASHINGTON PERSONNEL RESOURCES BOARD

23  
24 \_\_\_\_\_  
25 LAURA ANDERSON, Member

26  
27 \_\_\_\_\_  
28 DJ MARK, Member  
29