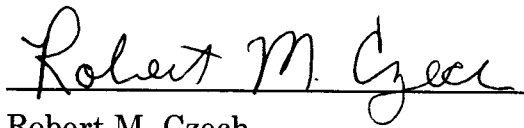


Re: Victor Columbo

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
NOVEMBER 10, 2016



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
Assistant Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Unit H
P. O. Box 312
Trenton, New Jersey 08625-0312

attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

DISMISSAL FOR MOOTNESS

OAL DKT. NO. CSR 4408-14

20160921-1408-14

**IN THE MATTER OF VICTOR COLUMBO,
ALBERT C. WAGNER YOUTH
CORRECTIONAL FACILITY.**

Todd McConnell, Executive Vice President 2, Local 105, for appellant Victor Columbo, pursuant to N.J.A.C. 1:1-5.4(a)6

Peter Jenkins, Deputy Attorney General, for respondent Albert C. Wagner Youth Correctional Facility (Christopher S. Porrino, Attorney General of New Jersey, attorney)

Record Closed: September 8, 2016

Decided: September 22, 2016

BEFORE **JEFF S. MASIN**, ALJ t/a:

The appointing authority removed Victor Columbo, a Senior Correction Officer, from his position at the Albert C. Wagner Youth Correctional Facility, on March 6, 2014, following a determination that Mr. Colombo had violated N.J.A.C. 4A:2-2.3(a)6, Conduct Unbecoming a Public Employee; (a)12, Other Sufficient Cause; a charge arising from his alleged violation of Human Resources Bulletin (HRB) 84-17, as amended, sections C.11, Conduct Unbecoming a Public Employee, and C.30 Use or Possession of any Controlled Dangerous Substance (custody). A Preliminary Notice of Disciplinary Action

(PNDA) was issued asserting these charges on January 16, 2014, and the Final Notice (FNDA), incorporating the removal as the sanction for these violations, followed. As the matter involved the removal of a law enforcement officer, Mr. Columbo filed a joint appeal with the Civil Service Commission and the Office of Administrative Law on April 9, 2014. Due to the pendency of criminal charges related to the alleged conduct that had generated the Civil Service charges, the case was the subject of two Orders of Inactivity, issued by Honorable Elia A. Pelios, ALJ, on August 8, 2014 and February 5, 2015. Thereafter, on January 4, 2016, Honorable James M. Blaney, J.S.C., issued an Order of Forfeiture, providing therein that Victor Columbo's "public employment be forfeited in accordance with N.J.S.A. 2C:51-2(b)." On March 29, 2016, counsel for the respondent filed a motion with Judge Pelios, seeking the dismissal of Mr. Columbo's appeal as moot, due to the Superior Court Order which forfeited his public employment. No reply has been filed to respondent's motion. On September 8, 2016, the contested case was reassigned to this judge, serving on recall. Upon review of the motion and submissions of the respondent in support of the Motion, I **CONCLUDE** that the appeal must be **DISMISSED AS MOOT**.

The appointing authority charged in the PNDA and concluded in the FNDA that Mr. Columbo should be removed from his public employment due to offenses against the applicable Civil Service regulations and internal rules, which violations stemmed from the use or possession of controlled dangerous substances. According to a Judgment of Conviction entered in Superior Court, Ocean County, on December 18, 2015, Mr. Columbo pled guilty to an Indictment which charged, in Count 3, that he had possessed/distributed/manufactured/or dispensed controlled dangerous substances, in violation of N.J.S.A. 2C:35-5A(1) and 5B(5). Upon his plea he was sentenced to one year probation and thirty-one days in the Ocean County Jail, with credit for time served of thirty-one days. In addition, he was ordered to pay monetary penalties. More significantly for the purposes of this administrative appeal, on January 4, 2016, Judge Blaney entered the aforementioned Order of Forfeiture. N.J.S.A. 2C:51-2 provides

- a. A person holding any public office, position, or employment, elective or appointive, under the government of this State or any agency or political subdivision thereof, who is convicted of an offense shall forfeit such office, position or employment if:

- (1) He is convicted under the laws of this State of an offense involving dishonesty or of a crime of the third degree or above or under the laws of another state or of the United States of an offense or a crime which, if committed in this State, would be such an offense or crime;
 - (2) He is convicted of an offense involving or touching such office, position or employment; or
 - (3) The Constitution so provides. As used in this subsection, "involving or touching such office, position or employment" means that the offense was related directly to the person's performance in, or circumstances flowing from, the specific public office, position or employment held by the person.
- b. A court of this State shall enter an order of forfeiture pursuant to subsection a.:
- (1) Immediately upon a finding of guilt by the trier of fact or a plea of guilty entered in any court of this State unless the court, for good cause shown, orders a stay of such forfeiture pending a hearing on the merits at the time of sentencing; or . . .

I **CONCLUDE** that Judge Blaney's Order removing Mr. Columbo from his public employment effectively makes the current administrative appeal moot. The penalty imposed by the appointing authority was removal. That result has now been mandated by the Order of Forfeiture. Mr. Columbo cannot obtain any result from the Civil Service Commission that would undo the Order of Forfeiture. The Commission has no such authority. As such, there exists no purpose to the current appeal. There is no need to expend judicial or administrative agency time and resources to process an appeal that cannot have any meaningful result, in this case to either party, as the appointing authority's desire to remove Columbo is fulfilled by the Order of Forfeiture, and Columbo cannot in any manner achieve any result other than that already mandated by the Court. It is likely that this reality is the cause why no reply was filed to the respondent's motion.

ORDER

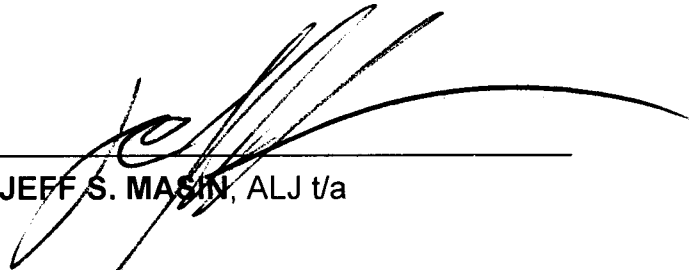
IT IS HEREBY ORDERED that this contested case, and the appeal, are **DISMISSED AS MOOT**.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 40A:14-204.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

September 22, 2016
DATE



JEFF S. MASIN, ALJ t/a

Date Received at Agency:

9/22/16

Date Mailed to Parties:

9/22/16

mph

LIST OF EXHIBITS

For appellant:

None

For respondent:

- R-1 Order of Forfeiture, January 4, 2016
- R-2 Judgment of Conviction, December 22, 2015
- R-3 Final Notice of Disciplinary Action, March 6, 2014 (attached to respondent's Brief)
- R-4 Preliminary Notice of Disciplinary Action, January 16, 2014