

New Jersey Commissioner of Education

Decision

Mark Santeramo,

Petitioner,

v.

New Jersey Department of Education, Office of
Student Protection,

Respondent.

Synopsis

Pro se petitioner appealed the decision of the Office of Student Protection (OSP) to permanently disqualify him from serving in any institution under the supervision of the Department of Education (DOE) following his arrest and entry into a plea agreement. Petitioner pleaded guilty to assault by auto while driving intoxicated resulting in serious bodily injury, in violation of *N.J.S.A. 2C:12-1(c)(2)* – a crime of the third degree. Petitioner contended that he did not intend to harm anyone and that his conviction should be considered a crime of the fourth degree, and therefore not disqualifying. He further argued that the accident was brought on by a seizure and that he had been coerced into a plea agreement. The respondent filed a motion to dismiss in lieu of an answer to the petition.

The ALJ found, *inter alia*, that: petitioner was arrested on August 4, 2018 by the Nutley Police Department; he thereafter entered into a plea agreement wherein he pleaded guilty to a violation of *N.J.S.A. 2C:12-1(c)(2)* in the third degree; petitioner was notified via letter from OSP dated June 18, 2019 that he was permanently disqualified from serving in any capacity with an educational institution under the supervision of the DOE; petitioner alleged that the accident was caused by him having a seizure; further, petitioner claimed that he was coerced into a plea agreement but felt it was in his best interests to avoid taking the case to trial; however, reckless behavior is all that is required for a conviction for assault by auto, and petitioner had to lay a factual basis under oath when he entered his guilty plea. The ALJ concluded that a third-degree conviction of assault by auto under these circumstances does warrant a disqualification of petitioner’s employment in public education; further, this tribunal is not the appropriate forum to address petitioner’s complaints regarding the prosecution of the criminal charges against him. Accordingly, the respondent’s motion to dismiss was granted, and the appeal was dismissed with prejudice.

Upon review, the Commissioner concurred with the findings and conclusions of the ALJ, for the reasons thoroughly expressed in the Initial Decision. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter, and the petition was dismissed with prejudice.

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

December 17, 2019

New Jersey Commissioner of Education
Final Decision

Mark Santeramo,

Petitioner,

v.

New Jersey Department of Education, Office of
Student Protection,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The parties did not file exceptions.

Upon such review, the Commissioner agrees with the Administrative Law Judge (ALJ) that the petitioner's guilty plea to assault by auto while driving intoxicated and resulting in serious bodily injury in violation of *N.J.S.A. 2C:12-1(c)(2)* – a crime of the third degree – warrants his disqualification from employment in public education, pursuant to *N.J.S.A. 18A:6-7.1(c)(1)*. The Commissioner further concurs with the ALJ that whether petitioner was coerced into a plea agreement is not within the Commissioner's jurisdiction and cannot be addressed in this forum.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter for the reasons thoroughly expressed therein, and the petition is hereby dismissed with prejudice.

IT IS SO ORDERED.¹

COMMISSIONER OF EDUCATION

Date of Decision: December 17, 2019
Date of Mailing: December 18, 2019

¹ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

DISMISSAL

OAL DKT. NO. EDU 13088-19

AGENCY DKT. NO. 177-7/19

MARK SANTERAMO,
Petitioner,

vs.

**NEW JERSEY DEPARTMENT OF EDUCATION,
OFFICE OF STUDENT PROTECTION,**
Respondents.

Mark Santeramo, Petitioner, pro se

Jaclyn M. Frey, Deputy Attorney General, (Gurbir S. Grewal, Attorney General
of New Jersey, attorneys)

Record Closed: October 28, 2019

Decided: November 4, 2019

BEFORE THOMAS R. BETANCOURT, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner filed a pro se Petition of Appeal with the New Jersey Department of Education's Office of Controversies and Disputes appealing the decision of the Office of Student Protection to permanently disqualify him from serving in any institution under the supervision of the Department of Education.

The matter was transferred to the Office of Administrative Law (OAL), where it was filed on September 17, 2019, as a contested case.

A prehearing conference was held on September 27, 2019. A prehearing order was entered on September 30, 2019.

Respondent filed a Motion to Dismiss in lieu of an Answer to the Petition with the Commissioner of the Department of Education, dated September 10, 2019. This occurred prior to the transmittal of the matter to the OAL.

The prehearing order set forth a briefing schedule for the motion. Petitioner filed his response to the motion, titled "Opening Statement"ⁱⁱ on October 9, 2019. Respondent filed a reply thereto on October 28, 2019.

The record closed on October 28, 2019.

FACTUAL BACKGROUND

Petitioner was arrested on August 4, 2018, by the Nutley Police Department. That arrest led to Petitioner entering into a plea agreement wherein he entered a plea of guilty to the charge of a violation of N.J.S.A. 2C:12-1(c)(2) in the third degree.

ⁱⁱ Petitioner appears pro se. I accept his "Opening Statement" as his certification as he sets forth certain facts therein.

By letter dated June 18, 2019, OSP informed petitioner that he was permanently disqualified from serving in any position with an educational institution under the supervision of the Department of Education. Petitioner then filed the instant appeal.

LEGAL ANALYSIS AND CONCLUSION

Respondent seeks an order of dismissal as petitioner does not dispute he was convicted of a crime of the third degree in violation of N.J.S.A. 2C:1(c)(2). Rather, it is petitioner's contention that the conviction should be treated as a fourth degree offense.

N.J.A.C. 6A:3-1.10 provides as follows:

At any time prior to transmittal of the pleadings to the OAL, in the Commissioner's discretion or upon motion to dismiss filed in lieu of answer, the Commissioner may dismiss the petition on the grounds that the petitioner has advanced no cause of action even if the petitioner's factual allegations are accepted as true or for lack of jurisdiction, failure to prosecute or other good reason.

It is clear herein that petitioner has not advanced a cause of action. Petitioner does not dispute his conviction, by way of plea bargain, to a crime of the third degree in violation of N.J.S.A. 2C:12-1(c)2. That crime is assault by auto while in violation of N.J.S.A. 4-50, Driving While Intoxicated, which results in serious bodily injury.

Rather, petitioner argues that he did not intend to harm anyone and that his conviction should be considered a crime of the fourth degree and therefore not disqualifying. Petitioner cites Parshelunis v. N.J. State Dep't of Educ., Office of Crim. Hist. Rev., OAL Dkt. No. EDU 10282-07, Initial Decision (August 28, 2008), adopted Comm'r Final Decision (November 25, 2008). In that matter the petitioner pled guilty to a fourth degree offense that did not involve serious bodily injury.

Parshelunis is distinguishable from the instant matter. In Markakis v. N.J. Dep't of Educ., Office of Crim. Hist. Rev., OAL Dkt. No. EDU 13275-10, Initial Decision (June 10, 2011), adopted Comm'r Final Decision (September 1, 2011), the petitioner was

found guilty of the same offense as petitioner herein. In Markakis the decision disqualifying the petitioner from school employment was affirmed.

Petitioner alleges in his Opening Statement that the accident was caused by him having a seizure. He states that the criminal charges against him were “unscrupulous”. He further states he was coerced into a plea agreement, but felt it was in his best interests to avoid taking the case to trial. This tribunal is not the forum to address what happened during the course of the prosecution of the criminal charges against petitioner. That is a matter to be addressed at the Superior Court level via perhaps a motion for post-conviction relief. It cannot be addressed here.

While petitioner may not have intended to cause the injury and harm that he caused, a mens rea of intent to harm is not a requirement of the statute. Reckless behavior is all that is required for a conviction for assault by auto, and petitioner had to lay a factual basis under oath when he entered his guilty plea. Reckless behavior can also form the basis for a conviction of aggravated assault and manslaughter, crimes listed as disqualifiers under N.J.S.A. 18A:6-7.1(c)(1). Petitioner caused serious bodily injury by the use of force upon another. I **CONCLUDE** that a third degree conviction of assault by auto under these circumstances does warrant a disqualification of petitioner’s employment in public education.

ORDER

It is hereby **ORDERED** that Respondent’s motion to dismiss is **GRANTED**; and it is further **ORDERED** that petitioner’s appeal is **DISMISSED** with prejudice.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized

to make a final decision in this matter. If the Commissioner of the Department of Education 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. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

DATE

THOMAS R. BETANCOURT, ALJ

Date Received at Agency:

Date Mailed to Parties:

db

APPENDIX

List of Moving Papers

For Petitioner:

Opening Statement

For Respondent:

Notice of Motion to Dismiss

Letter Brief in Support of Motion to Dismiss with Exhibits A and B

Letter reply brief

For Intervenor:

Letter brief in support of Motion for Summary Decision

Pleadings:

Pro se Petition of Appeal