

New Jersey Commissioner of Education
Final Decision

Christopher Wong,

Petitioner,

v.

New Jersey Department of Education, Office of
Student Protection,

Respondent.

Synopsis

Petitioner appealed the July 2019 determination of the respondent, New Jersey Department of Education, Office of Student Protection (OSP), that he is permanently disqualified from any employment with a Department of Education contracting unit in the State of New Jersey. Petitioner was disqualified as the result of a 2014 guilty plea in New York State (NYS) to a charge of attempted unlawful surveillance in the second degree, a class E felony under NYS's Penal Law 110-250.45 sub 1; this offense mirrors invasion of privacy under New Jersey's *N.J.S.A. 2C:14-9(b)(1)*. The respondent filed a motion to dismiss the petition.

The ALJ found, *inter alia*, that: *N.J.S.A. 18A:7-7.1(c)2* requires permanent disqualification following a violation or attempted violation of any offense under *N.J.S.A. 2C Title 14*; petitioner submitted psychological evaluations purportedly showing that he is a minimal risk to recommit the acts at issue in this matter; petitioner has not presented any evidence disputing the criminal charges he pled guilty to in NYS; rather, petitioner seeks to have the Commissioner reject his mandatory disqualification based on the facts and circumstances of petitioner's individual situation and the documentation of his mental state following his commission of the crime; the Commissioner is, however, bound by the statutory language, which states that petitioner "shall be permanently disqualified." The ALJ concluded that the law is settled against the petitioner and denied his request for relief.

Upon review, the Commissioner concurred with the findings of the ALJ and adopted the Initial Decision of the OAL as the final decision in this matter. The petition was dismissed.

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

May 20, 2020

116-20

OAL Dkt. No. EDU 14375-19
Agency Dkt. No. 205-8/19

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Office of Student Protection

Respondent.

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

Upon review, the Commissioner concurs with the ALJ that petitioner is permanently disqualified from employment in any educational institution under the supervision of the Department of Education. Petitioner does not challenge the accuracy of his criminal history record but seeks only to present evidence of his individual circumstances. However, his disqualification is mandatory pursuant to *N.J.S.A.* 18A:6-7.1.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter and the petition is hereby dismissed.

IT IS SO ORDERED.¹

COMMISSIONER OF EDUCATION

Date of Decision: May 20, 2020
Date of Mailing: May 20, 2020

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 ON MOTION
FOR SUMMARY DISPOSITION

OAL DKT. NO. EDU 14375-19

AGENCY DKT. NO. 205-8/9

CHRISTOPHER WONG,

Petitioner,

v.

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

Respondent.

Patrick M. Metz, Esq., for petitioner (Dario, Albert, Metz & Eyerman, Canda, Concannon, Ortiz & Krouse, LLC, attorneys)

Kerry Soranno, DAG for respondent (Gurbir S. Grewal, Attorney General, State of New Jersey, attorneys)

Record Closed: March 10, 2020

Decided: April 6, 2020

BEFORE **JOSEPH A. ASCIONE**, ALJ

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, Christopher Wong (Wong) challenges the New Jersey Department of Education's Office of Student Protection, (NJDOE's) July 3, 2019, determination he be permanently disqualified from any employment with a Department of Education contracting unit in the State of New Jersey. On October 8, 2019, respondent brought a summary disposition motion to dismiss the petition on the grounds petitioner did not dispute the September 18, 2014, criminal conviction by plea in New York State of a misdemeanor

for actions committed on or about September 10, 2012, under New York State's Penal Law 110-250.45 sub. 1, attempted unlawful surveillance 2nd degree. Such E felony mirrors N.J.S.A. 2C:14-9(B)(1) invasion of privacy. N.J.S.A. 18A:7-7.1 (c) 2 requires permanent disqualification of one's teaching certificate for a violation or attempted violation of any offense under N.J.S.A. 2C Title 14. Petitioner submits psychological evaluations purportedly minimizing the risk of the petitioner; however petitioner does not dispute the accuracy of the conviction.

On August 13, 2019, petitioner made this application for relief to the New Jersey State Commissioner of Education. On October 10, 2019, the New Jersey State Department of Education, Bureau of Controversies and Disputes, transmitted the matter to the Office of Administrative Law (OAL), pursuant to N.J.A.C. 1:1-8.2. On October 8, 2019, respondent moved to dismiss the petition. On February 28, 2020, the petitioner responded to the motion. On March 5, 2020, the respondent submitted a reply brief. The OAL did not conduct oral argument and closed the record on March 10, 2020.

STATEMENT OF FACTS

After consideration of the motion to dismiss, the responding papers and the certification of petitioner, and the respondent's reply brief for purposes of this motion for summary disposition dismissing this petition, I **FIND** as **FACT**:

1. In September 2014, Petitioner then age twenty-two, pled to an attempt to commit a class E felony in the State of New York for violation of attempted unlawful surveillance in the 2nd degree for actions occurring in September 2012. He received a one-year conditional discharge sentence, and fines. The latter consistent with a plea to a misdemeanor.

2. Petitioner's pre-sentencing psychological evaluation reflects he is a minimal risk to recommit the actions he previously took.

3. Petitioner has not presented any evidence disputing the criminal charges he pled guilty to in New York State.

4. The crime petitioner committed in New York are related to invasion of privacy and are similar to violations of N.J.S.A. 2C:14-9(b) 1 and 2.

5. On July 3, 2019, the Department of Education permanently disqualified petitioner from employment through any entity under their supervision, for his plea to the New York penal statute.

LEGAL DISCUSSION

N.J.S.A. 18A:6-7.1 (1) provides for criminal background checks of a potential employee, volunteer, or vendor of an entity under the supervision of the Department of Education.

It further provides,

“An individual, except as provided in subsection g. of this section, **shall** (emphasis provided) be permanently disqualified from employment or service under this act if the individual's criminal history record check reveals a record of conviction for any crime of the first or second degree; or

a. An offense as set forth in chapter 14 of Title 2C of the New Jersey Statutes, . . . , or

(4) Conspiracy to commit or an attempt to commit any of the crimes described in this act.

d. For the purposes of this section, a conviction exists if the individual has at any time been convicted under the laws of this State or under any similar statutes of the United States or any other state for a substantially equivalent crime or other offense.

e. Notwithstanding the provisions of this section, an individual shall not be disqualified from employment or service under this act on the basis of any conviction disclosed by a criminal record check performed pursuant to this act without an opportunity to challenge the **accuracy** (emphasis supplied) of the disqualifying criminal history record.”

Here the accuracy of the conviction has not been disputed by the petitioner. Petitioner’s application seeks the intervention of this tribunal or the Commissioner to consider not applying this mandatory disqualification based on the facts and circumstances of the petitioner’s individual situation, the underlying offense committed, and petitioner’s documentation of his mental state post commission of the crime.

Petitioner’s counsel herein seeks to have this tribunal find that the proof of conviction of an enumerated crime, allows the Commissioner to determine whether to permanently disqualify the petitioner. The statutory language is “shall be permanently disqualified.”

In *Brill v. Guardian Life Insurance Co.*, 142 N.J. 520, 540 (1995), the New Jersey Supreme Court set forth the standard governing a motion for summary judgment: [A] determination whether there exists a “genuine issue” of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the nonmoving party. The judge’s function is not . . . to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.

New York State Penal Law 250.45(1) provides,

“A person is guilty of unlawful surveillance in the second degree when:

1. For his or her own, or another person's amusement, entertainment, or profit, or for the purpose of degrading or abusing a person, he or she intentionally uses or installs, or permits the utilization or installation of an imaging device to surreptitiously view, broadcast or record a person dressing or undressing or the sexual or other intimate parts of such person at a place and time when such person has a reasonable expectation of privacy, without such person's knowledge or consent.

....

Unlawful surveillance in the second degree is a class E felony.”

Petitioner's conviction is for the attempt to commit the above crime, is signified by the prefix 110, which provides for attempts to commit a crime. The sentence of conditional discharge for one year is consistent with the offense being categorized as a misdemeanor. See New York Penal Code Sections 110, and 65.

New Jersey Statutes 2C:14-9(b)(1) and (2) provides,

“(1) An actor commits a crime of the third degree if, knowing that he is not licensed or privileged to do so, he photographs, films, videotapes, records, or otherwise reproduces in any manner, the image of another person whose intimate parts are exposed or who is engaged in an act of sexual penetration or sexual contact, without that person's consent and under circumstances in which a reasonable person would not expect to be observed.

(2) An actor commits a crime of the fourth degree if, knowing that he is not licensed or privileged to do so, he photographs, films, videotapes, records, or otherwise reproduces in any manner, the image of the undergarment-clad intimate parts of another person, without that person's consent and under circumstances in which a reasonable person would not expect to have his undergarment-clad intimate parts observed.”

The similarities of the two penal crimes satisfies N.J.S.A. 18:6-7.1(d).

Turning to the standard to reverse the actions of the respondent, the petitioner has the burden of proof to show that the respondent's actions were arbitrary, capricious or unreasonable. Petitioner has shown that respondent acted within the authority granted her under N.J.S.A. 18A:7A-55. The record is devoid of any factual support that the respondent's decision was an abuse of discretion. Petitioner has not shown any arbitrary, capricious or unreasonable action in the process of the respondent's determination.

CONCLUSION

After hearing the arguments of petitioner and respondent and considering the documents submitted, I **CONCLUDE** that petitioner is not entitled to relief because the proofs submitted fail to establish the necessary elements to grant relief under N.J.A.C. 6A:3-1.6(b). The law is settled against the petitioner, and the balance of harm, regardless of the degree of risk, favors the respondent.

I further **CONCLUDE** that the respondent has properly acted in the exercise of its discretion to permanently disqualify petitioner.

For the foregoing reasons, petitioner's request for relief is **DENIED**.

ORDER

It is hereby **ORDERED** that petitioner's request for relief is **DENIED**.

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.

April 6, 2020

DATE



JOSEPH A. ASCIONE, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

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APPENDIX

NO WITNESSES

LIST OF EXHIBITS

For Petitioner:

P-1 Entire package included with transmittal

For Respondent:

R-1 Entire package in opposition to application