

New Jersey Commissioner of Education
Final Decision

Raymond Vella,

Petitioner,

v.

New Jersey Department of Education,
Office of Student Protection,

Respondent.

Synopsis

Petitioner appealed the determination of the respondent, New Jersey Department of Education, Office of Student Protection (OSP), that he is permanently disqualified from employment in New Jersey public schools. Petitioner was disqualified as the result of information revealed during a criminal history background check pursuant to *N.J.S.A.* 18A-6.7.1. Respondent filed a motion to dismiss the petition.

The ALJ found, *inter alia*, that: there are no material facts at issue here, and the matter is ripe for summary decision; petitioner’s criminal history background check revealed that in 2008, in connection with his work as a contractor, petitioner was convicted of several separate acts of Federal crimes, including five counts of mail fraud, one count of making a corrupt payment, Theft or Bribery Concerning Programs Receiving Federal Funds and obtaining property by fraud involving Federal Funds; petitioner was sentenced to thirty-nine months and ordered to pay \$82,705 in restitution; petitioner did not dispute any of his federal convictions, but argued that those crimes were not “substantially equivalent” to any New Jersey crime of the second degree, which would be disqualifying. The ALJ concluded, *inter alia*, that: USC Section 666 (a) (2) (A) and *N.J.S.A.* 2C:27-2 are statutes seeking to punish the bribing of public officials and obtaining rewards in return for payments or other consideration and are substantially equivalent to each other; the controlling statute here, *N.J.S.A.* 18A:6-7.1, mandates permanent disqualification and does not provide any leniency or discretion in regard to its application. Accordingly, the ALJ granted the OSP’s motion for summary decision and dismissed the petition.

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 reader. It has been neither reviewed nor approved by the Commissioner.

August 28, 2020

190-20

OAL Dkt. No. EDU 03040-20
Agency Dkt. No. 29-2/20

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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 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. The Commissioner agrees with the ALJ's conclusion that the federal crimes of which petitioner was convicted are substantially similar to New Jersey crimes of the second degree, which makes his disqualification 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

INTERIM COMMISSIONER OF EDUCATION

Date of Decision: August 28, 2020

Date of Mailing: August 31, 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

SUMMARY DECISION

OAL DKT. NO. EDU 03040-20

AGENCY DKT. NO. 29-2/20

RAYMOND VELLA,

Petitioner,

v.

**NJ DEPARTMENT OF EDUCATION
OFFICE OF STUDENT PROTECTION,**

Respondent.

Bianca P. Pereiras, Esq. for petitioner

Sydney Finklestein, Deputy Attorney General, for Respondent (Gurbir S. Grewal,
Attorney General of New Jersey, attorneys)

Record Closed: May 4, 2020

Decided: July 20, 2020

BEFORE **ERNEST M. BONGIOVANNI**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Raymond Vella (Vella or petitioner) challenges an administrative determination, by letter dated November 18, 2019, by the New Jersey Department of Education Office

of Student Protection (respondent) which disqualified him from “serving in any position, paid or unpaid, with an educational institution under the supervision of the Department of Education or with a contracted service provided under contract with said school or educational facility.” On February 1, 2020, Vella filed an appeal with the Commissioner of Education. The appeal was transmitted to the Office of Administrative Law (OAL) by the respondent, where it was filed on March 2, 2020, for hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

Respondent filed a motion for Summary Decision seeking a dismissal, with a brief and Exhibits, in lieu of filing an Answer. Petitioner filed a brief and exhibits in opposition to the motion on March 13, 2020.

I convened a pre-hearing conference of May 4, 2020, at which time counsel for petitioner and respondent both agreed that no further briefing or oral argument was requested or necessary and that the motion was ripe for decision.

MOTION UNDER CONSIDERATION

Respondent moves for summary disposition from the appeal of the respondent’s determination to disqualify petitioner from holding any position, paid or unpaid, or to contract with the Department of Education on the basis of the disqualifying criminal convictions on his record that was revealed in a background check.

FACTUAL DISCUSSION

Based upon the papers submitted, by both sides all of the relevant facts are uncontested, and accordingly I **FIND** the following to be undisputed facts.

1. Petitioner was a contractor in and around Elizabeth, New Jersey. He performed contract work with the Linden Neighborhood Preservation Program (LNPP/

Program), which received federal funds through the United States Department of Housing and Urban Development (HUD).

2. As a contractor for the LNPP, petitioner made bids for certain work and if selected, he was contracted to rehabilitate work on homes for individuals who qualified for the LNPP.

3. During the time he was a contractor for the LNPP, the petitioner, to induce procurement of contracts with him, made illegal payments to the head of the Program.

4. In 2008, as a result of these illegal payments, the petitioner was convicted of several Federal crimes, including five counts of mail fraud, one count of making a corrupt payment, Theft or Bribery Concerning Programs Receiving Federal Funds and obtaining property by fraud involving Federal Funds. He was sentenced to thirty-nine months. As a part of the petitioner's online application he was required to proceed through a series of questions and screens that each required imprisonment and ordered to pay \$82,705 in restitution. After prison, the petitioner was put on supervisory release.

5. In 2019, the petitioner underwent a criminal background check as part of seeking employment with the Elizabeth, NJ school district. On November 18, 2019, the Office of Student Protection (OSP) for the NJ Department of Education (DOE) wrote the Petitioner a letter advising him that, as a result of his criminal convictions, he was "permanently disqualified" from serving in any position paid or unpaid "with any educational institution under the DOE's supervision," or "with a contracted service provider under contract" of such educational facilities." Petitioner completed the online application without the acknowledgment that he had been convicted of the aforesaid robbery offense.

ANALYSIS AND CONCLUSIONS OF LAW

If there is no genuine issue as to any material fact, a moving party is entitled to prevail on a motion for summary disposition as a matter of law. Brill v. The Guardian Life Insurance Co. of America, 142 N.J. 520, 540 (1995). The purpose of summary decision is to avoid unnecessary hearings and their concomitant burden on public resources. Under the Brill standard, a fact-finding hearing should be avoided “when the evidence is so one-sided that one party must prevail as a matter of law.” Id.

In the present matter, the respondent seeks a Summary Dismissal of petitioner’s case because the criminal background check revealed “disqualifying offenses.” N.J.S.A. 18A:6-7.1 (d). A disqualifying offense is any conviction under the laws of the State of NJ or “under any similar statutes of the United States or any other state for a substantially equivalent crime or other offense.” The person who has been convicted of any crime of the first or second degree is “permanently disqualified from employment or service under the act.” Respondent argues that Petitioner’s convictions for the eight separate acts of federal crimes are substantially similar to two different second-degree crimes in the State of NJ. Specifically, Respondent believes petitioner’s conviction for offering a corrupt payment (a violation of 18 U.S.C. Section 666 (a) (2) (a)), is substantially similar to N.J.S.A. 2C:27-2, Bribery in Official and Political Matters, a crime of the second degree. Further, petitioner pled guilty to two counts of obtaining property by fraud involving federal funds, in violation of 18 U.S.C. Section 666 (a) (1) (A). Respondent argues that crime is substantially equivalent to N.J.S.A. 2C:20-9 which grades a certain type of theft as a crime of the second degree. Under the New Jersey statute, the person who commits an act of purposefully obtaining or retaining property upon agreement or subject to a known legal obligation to make a specified payment or disposition is “guilty of theft if he deals with the property obtained as his own and fails to make the required payment or disposition.”

Petitioner does not dispute any of the aforesaid facts. He does not argue that there were procedural defects or inaccuracy in the criminal background check. He does not dispute the DOE’s authority to require such background checks nor even their authority to bar employment pursuant to the authorizing legislation, N.J.S.A. 18A:6-7.2,

N.J.S.A. 18A:6-4.13 of N.J.S.A. 18A:12-1.2. Nor, as mentioned, does he dispute any of the convictions for federal crimes. He argues that those crimes, however, were not “substantially equivalent” to any New Jersey crime of the second degree.

Respondent finds a distinction between the conviction for offering a corrupt payment, the federal offense, and Bribery in Official and Political matters, the New Jersey offense. He argues that under the New Jersey offense he would have to have been found guilty of acting “purposefully.” He cites the Jury Charge for N.J.S.A. 27-2, page 2. Under the Federal Crime the language of the statute does not characterize the guilty person’s actions as requiring them to be purposeful. He further argues the respondent would have no basis for characterizing the Petitioner’s actions as purposeful. Thus, he argues, the two offenses can’t be substantially equivalent. Further, he argues that he was “forced” to make the illegal payments to the public official who was running the Program as he “demanded” the corrupt payment in return for rewarding a contract.

I cannot agree with this creative analysis. Under the New Jersey crime the “person is guilty of bribery if he directly or indirectly offers confers or agrees to confer on another or solicits, accepts or agrees to accept from another any benefit as consideration for the performance of official duties.” N.J.S.A. 2C:27-2 (d). The federal conviction to which respondent pled guilty characterizes one as guilty of theft or bribery concerning receiving federal funds when they “corruptly give , offer or agree to give anything of value to any person with intent to influence or reward an agent of an organization of a state local or individual tribal government or any agency thereof, in connection with any business...” Both offenses make illegal bribing or offering to bribe officials or agreeing to make corrupt payments in order to obtain a reward or benefit from the performance of official duties to whom the payment is offered or made.

Other than the fact that the offenses facially appear the same and to have the same intent, to wit, punishing those who make or offer corrupt payments or to induce a corrupt act by public officials and thus are substantially equivalent, there are other fatal flaws in petitioner’s arguments. One, he cites the NJ Jury charge as the basis for

distinction of the two crimes, but does not cite the Federal jury charge, which indeed may use the term “purposeful” or a substantially similar term. If one is going to argue the Jury charge trumps the actual wording of the statute when weighing whether the State crime is not substantially equivalent to the federal crime, it would seem incumbent to analyze and cite the Federal Jury Charge to distinguish the crimes. The New Jersey Statute does not use the word purposeful, and neither does the Federal statute, so it is incumbent to compare apples to apples to analyze anything beyond the precise wording of the applicable two statutes. Two, as stated by petitioner, the applicable NJ crime, under the jury charge, would require a “jury would have to find” that the defendant acted purposefully. However, here the defendant pled guilty to the offense. Under the applicable statute, the offenses themselves have to be substantially equivalent. If one upholds petitioner’s arguments, one could never accept, where conviction was by pleas of guilty, two statutes as being substantially equivalent without going into an unintended, unnecessary, time consuming and torturous process of determining what a jury could have found under the evidence that was never actually proffered, because the defendant pled guilty. In essence, it would negate the ability to find acts as being substantially equivalent if the conviction was obtained, as the vast majority of all of them are by guilty pleas. Finally, it is not necessary under the federal statute to use the word purposeful in order for the two offenses to be substantially equivalent. If we focus, as we should on the elements of the crime, the respondent would have us believe that you can be guilty of the offense of providing corrupt payments and bribing public officials without having the purpose to do so, i.e. he bribed a public official by mistake or accident! In fact, respondent actually argues he was “required” to pay the corrupt official his bribe money in order to get the contract. That is the essence, it would seem, of bribing public officials. It doesn’t matter whose idea it was, the official demanding it, or the one who agrees to give the bribe. In fact, to pose such an argument gives one pause to believe the respondent has learned anything, so far, from his punishment.

I mention without much elaboration, that respondent’s claim that one has to compare the sentencing under the respondent’s federal crimes to the sentencing he would have received under the applicable New Jersey offenses is without merit. Such a

comparison would require imprecise speculation. He argues that his actual sentence was the result of the “relatively minor nature” of his offense which led the sentencing judge to issue a sentence “akin” to one being sentenced for third degree offenses is also highly speculative and without merit. In fact, 39 months’ imprisonment would appear to be a harsh penalty for a New Jersey third-degree offense which permits as little as no imprisonment and a maximum of five years. And in this instance, imprisonment of thirty-nine months would in any event, be a lawful sentence under many NJ second degree crimes as in some cases, defendants plead guilty to 2nd degree crimes, but by plea bargain get sentenced as if convicted of a third-degree offense. It is common knowledge that the State does not admit that a crime is any less heinous because one pled guilty to it rather than was found guilty of it. It simply gives in appropriate cases lesser sentences to those who plead guilty by sparing the State the trouble of ensuring a conviction by trial or by cooperating on other matters (such as insuring the conviction of codefendants).

There is no question that the USC Section 666 (a) (2) (A) and N.J.S.A. 2C:27-2 are statutes seeking to punish bribing public officials and obtaining rewards in return for payments or other consideration are substantially equivalent to each other. No evidence has been presented to the contrary and I must find as a matter of law that the lifetime prohibition on employment and contracting with DOE’s institutions as the substantially equivalent New Jersey offense is a crime of the 2nd degree is therefore justified. I make no determination on Respondent’s additional argument that the other two federal offenses cited pertaining to obtaining federal funds by fraud are substantially similar to N.J.S.A. 2C:20-9. The lifetime prohibition imposed by the DOE requires the conviction of only one commission of a New Jersey second degree crime or a substantially equivalent United States or other state offense to sustain the prohibition,

Accordingly, I **CONCLUDE** as a matter of undisputed fact and law that the decision of the agency must be upheld.

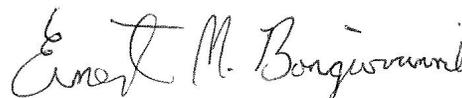
ORDER

For the reasons set forth above, the motion for summary disposition filed by the respondent, New Jersey Department of Education is hereby **GRANTED** and that the petitioner's demand for relief be **DISMISSED**.

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.



July 20, 2020
DATE

ERNEST M. BONGIOVANNI, ALJ

Date Received at Agency:

7/20/20

Mailed to Parties:



id

APPENDIX

List of Moving Papers

For Petitioner:

Petitioner's certification, exhibits and brief in Opposition to Respondent's motion for Summary Decision, dated March 9, 2020 and received March 13, 2020

For Respondent:

Brief in lieu of Answer in support of Respondent's Motion for Summary Decision dated February 25, 2020