

IN THE MATTER OF THE DENIAL :
OF CERTIFICATION AFTER : COMMISSIONER OF EDUCATION
REVOCATION OF OTTO KRUPP. : DECISION
_____ :

SYNOPSIS

Petitioner -- former mathematics teacher convicted of first-degree murder in 1979 -- appealed, for the second time, denial by State Board of Examiners (SBE) of his application for re-issuance of a teaching certificate. A previous Commissioner's Decision, dated June 24, 2004 and affirmed by the State Board on October 6, 2004, sustained the SBE's denial of petitioner's first request for re-issuance of certificate, finding that the petitioner was statutorily disqualified from holding a New Jersey teaching certificate by virtue of his murder conviction, pursuant to *N.J.S.A. 18A:6-7.1*. Petitioner did not appeal to the Appellate Division, but instead submitted another application for certification to the SBE.

The SBE denied petitioner's application on January 20, 2005, finding that, as was previously determined by the Commissioner and affirmed by the State Board, petitioner is permanently disqualified from teaching in any institution or agency under the supervision of the Department of Education. The SBE further determined that it did not have the authority under its own regulations to issue petitioner a certificate since he was statutorily barred from teaching pursuant to *N.J.S.A. 18A:6-7.1*. Petitioner subsequently filed the within appeal to the State Board, which was remanded to the Commissioner.

Upon thorough review of the submissions by petitioner and the arguments presented by the SBE, the Commissioner finds that no new substantive issue has been raised by petitioner that was not argued and considered in the Commissioner's 2004 decision. In that the issues and facts presented in the instant matter, as well as the substantive merits of petitioner's arguments, have previously been litigated and decided in the prior case involving the same parties, therefore, the Commissioner finds that the fundamental principle of *res judicata* precludes further litigation of this matter. Accordingly, the petition in this matter is dismissed, with prejudice.

<p>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.</p>

IN THE MATTER OF THE DENIAL :
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REVOCATION OF OTTO KRUPP. : DECISION
_____ :

This matter was initiated by way of a Petition of Appeal, filed on August 24, 2005, following the State Board of Education's (State Board) August 3, 2005 remand of this matter to the Commissioner in accord with the Commissioner's jurisdiction to hear and issue determinations on appeals from decisions of the State Board of Examiners (SBE) denying issuance of certification.

On June 11, 1981, the SBE revoked petitioner's Teacher of Secondary School Mathematics certification following his May 21, 1979 conviction for first-degree murder. Upon petitioner's release after almost 23 years of incarceration, he applied for certification after revocation, claiming that he would waive any right to teach in the public school system and contending that he was solely requesting a conditional license restricting him to teach in correctional facilities operated by the Juvenile Justice System. On September 26, 2002, the SBE voted to deny petitioner's application for certification after revocation, finding that petitioner had not demonstrated rehabilitation sufficient to show that he could function effectively outside of confinement, and concluding that it had no authority to issue a limited or restricted certificate for the sole purpose of working within the correctional system.

Petitioner appealed the SBE's decision to the State Board. On May 7, 2003, the State Board remanded the matter to the Commissioner, finding that the jurisdiction to hear an

appeal of the SBE's denial of an application for a teaching certificate rests with the Commissioner. The State Board's remand required the Commissioner to resolve the issues relating to the application of *N.J.S.A. 18A:6-7.1*, noting that the SBE rendered its decision under the Rehabilitated Convicted Offenders Act (RCOA), *N.J.S.A. 2A:158A-1 et seq.*, and that it did not consider the effect of *N.J.S.A. 18A:6-7.1* on the issue of whether or not a certificate should be issued to petitioner. Upon receipt of the case, the Commissioner transmitted the matter to the Office of Administrative Law (OAL) for hearing as a contested case. In an Initial Decision issued on May 10, 2004, the Administrative Law Judge (ALJ) concluded that petitioner had demonstrated sufficient rehabilitation to warrant certification after revocation. However, he also found that respondent was statutorily disqualified from holding a teaching certificate which would allow him to teach in the public schools or in correctional facilities in that, pursuant to *N.J.S.A. 18A:6-7.1*, petitioner was permanently disqualified from employment in New Jersey public schools and any other facility under the supervision of the Department of Education.

Upon review, the Commissioner disagreed with the ALJ's conclusion that petitioner had demonstrated sufficient rehabilitation to warrant certification after revocation, but agreed with the ALJ's conclusion that petitioner was statutorily disqualified from holding a teaching certificate. Like the ALJ, the Commissioner rejected petitioner's contention that he was entitled to certification because he had satisfied the criteria of the RCOA. Specifically, the Commissioner found that application for a teaching certificate is solely within the jurisdiction of the SBE, and that "the RCOA provides no independent authorization for the issuance of a teaching certificate, but, rather, operates to preclude licensing authorities from disqualifying or discriminating against an applicant for these credentials based *solely* on his or her conviction of a crime." *In the Matter of the Denial of the Issuance of a Teaching Certificate to Otto Krupp*, Commissioner's Decision June 24, 2004, slip op. at 19. The Commissioner further found no

conflict or tension between the RCOA, *N.J.S.A. 2A:168A-1 et seq.*, which was originally enacted by the Legislature in 1968, and *N.J.S.A. 18A:6-7.1*, noting that:

The intent of this Act is reflected in 2A:168A-1 **Legislative Findings**:

The Legislature finds and declares that it is in the public interest to assist the rehabilitation of convicted offenders by removing impediments and restrictions upon their ability to obtain employment or to participate in vocational or educational rehabilitation programs based solely upon the existence of a criminal record.

Therefore, the Legislature finds and declares that notwithstanding the contrary provisions of any law or rule or regulation issued pursuant to law, a person shall not be disqualified or discriminated against by any licensing authority because of any conviction for a crime, unless N.J.S. 2C:51-2 is applicable *or unless the conviction relates adversely to the occupation, trade, vocation, profession or business for which the license or certificate is sought.* (emphasis supplied in Commissioner's decision))

As such, pursuant to this statutory provision, the relevant inquiry in judging the propriety of disqualification or discrimination against an applicant for licensure or certification based on conviction of a crime is whether the conviction at issue has a direct relation to the license or certificate being sought. *See Storcella v. State Dept. of Treasury*, 296 *N.J. Super.* 238 (App. Div. 1997).

Turning to the provisions of *N.J.S.A. 18A:6-7.1 et seq.*, as recognized by the ALJ, pursuant to amendments enacted by the Legislature in 1998, this provision

Disqualifies [an individual] from employment in "any facility, center, school or school system under the supervision of the Department of Education" if he had been convicted of certain crimes, including murder. Before the change in the law, subsection (e) of the statute allowed a person convicted of a disqualifying offense

the opportunity to demonstrate affirmatively his or her rehabilitation by clear and convincing evidence. As a result of the 1998 amendments, however, *N.J.S.A.* 18A:6-7.1 now provides that an individual convicted of a disqualifying offense “shall be permanently disqualified from employment or service.” Similarly, the Legislature expressly repealed the provision in the law that had previously granted such individual the opportunity to show rehabilitation. Instead, subsection (e) limits the individual to “an opportunity to challenge the accuracy of the disqualifying criminal record.” (citation omitted) Initial Decision at 8.

The Commissioner notes that the Legislature in enacting the 1998 amendments to *N.J.S.A.* 18A:6-7.1 proclaimed that a conviction for a first or second degree crime was inimical to employment in the public schools. When these amendments were drafted, the Legislature declared that the interest and safety of school children in the State of New Jersey must prevail. Indeed, one of the sponsors of the amendments declared, “We are entrusting these people with our children’s safety. The risk that these people have not been rehabilitated is a gamble that we are not willing to take.” Senator Norman M. Robertson, Senate and Assembly News Release, GovNet #30085. The other sponsor of the amendments stated, “There is no good reason why we should have a child abuser or flasher working with our children. This legislation keeps these people where they belong -- far away from our kids.” Senator Joseph A. Palaia, Senate and Assembly News Release, GovNet #30085.

Because the enactment of the 1998 amendments to *N.J.S.A.* 18A:6-7.1 is specifically predicated on the Legislature’s belief that an individual’s conviction for certain crimes, including murder, *relates adversely to employment in the public school system of New Jersey*, disqualification or discrimination against such an individual who has applied for a teaching certificate is specifically exempted from the dictates of the RCOA by that provision’s clear language as a consequence of the relationship between the offense and the certification being sought.

Id., slip op. at 19-21

Additionally, the Commissioner concluded that:

Most importantly, the award of a certificate by the Board of Examiners certifies that the holder has met all of the requirements established by the State Board of Education and is authorized to serve in the public schools of New Jersey. As a consequence of *N.J.S.A. 18A:6-7.1*, petitioner is precluded from employment in any entity under the auspices of the Department of Education and the State Board of Education, rendering the award of certification to him a legal impossibility.

Id., slip op. at 22

Thus, the Commissioner found rehabilitation was not a consideration, as petitioner was statutorily disqualified from holding a New Jersey teaching certificate by virtue of his murder conviction, pursuant to *N.J.S.A. 18A:6-7.1*. Accordingly, the Commissioner adopted the Initial Decision of the OAL, as modified, sustaining the SBE's denial of petitioner's request for certification after revocation. On October 6, 2004, the State Board affirmed the Commissioner's determination "for the reasons expressed therein." Petitioner did not appeal to the Appellate Division. Instead, petitioner submitted another application for certification to the SBE. On January 20, 2005, the SBE denied petitioner's application for certification, finding that, as previously determined by the Commissioner and affirmed by the State Board, petitioner is permanently disqualified from teaching in any institution or agency under the supervision of the Department of Education. The SBE further determined that it did not have the authority under its own regulations to issue petitioner a certificate since he was statutorily barred from teaching, pursuant to *N.J.S.A. 18A:6-7.1*. Subsequently, petitioner filed the within appeal to the State Board, which was remanded to the Commissioner as noted above.

By letter of August 16, 2005, the Director of the Bureau of Controversies and Disputes requested that petitioner submit a petition of appeal, conforming to *N.J.A.C. 6A:3-1.3 et seq.*, and a legal memorandum or brief addressing why the issue raised in this matter has not already been decided by the Commissioner's June 24, 2004 determination, affirmed by the State Board on October 6, 2004, which found petitioner statutorily disqualified from holding a

New Jersey teaching certificate by virtue of his murder conviction. The SBE was directed to file its Answer and to respond to petitioner's legal memorandum upon its receipt.

Upon review, the arguments submitted by the petitioner¹ are essentially the same arguments presented in the previous matter, *i.e.*: 1) the legislative intent of *N.J.S.A. 18A:6-7.1* "was not to totally bar rehabilitated offenders, just bar entry into the public schools," thus, he should be allowed to use certification in any other forum from which he is not barred; 2) the RCOA states that an applicant cannot be disqualified or discriminated against based on a prior conviction -- yet, in the instant matter, petitioner is being discriminated against based on a prior conviction; 3) he is being discriminated against because, prior to the enactment of the 1998 amendment (*N.J.S.A. 18A:6-7.1*), two similarly situated individuals with homicide convictions were issued teaching certificates after promising that they would not teach in a public school; 4) the Department of Corrections and the Juvenile Justice System do not have a board of education, and, thus, do not fall under the criteria listed in *N.J.S.A. 18A:6-7.1*; and 5) petitioner is not barred from teaching in the adult correctional system because *N.J.S.A. 18A:6-7.1* would not apply as he would not be dealing with children under the age of 18. (Petitioner's Brief at 1-2 and Petitioner's Reply Brief at 2-3)

The SBE submits, *inter alia*, that petitioner is attempting to litigate again the issue of the effect of his disqualification from public school employment upon his eligibility for certification which was conclusively decided in the previous decision of the Commissioner (referenced above) regarding this same issue. (SBE Brief at 9) The SBE notes that petitioner did not appeal the State Board's affirmation of the Commissioner's finding to the Appellate Division, making the State Board's determination final. (*Id.* at 9-10) The SBE claims that petitioner is, therefore, barred from re-litigating the issue of the effect of his disqualification

¹ Although not requested to do so, petitioner additionally filed a reply to the SBE's brief.

from public school employment on his eligibility for certification and his petition should be dismissed. (*Id.* at 10)

Upon a thorough assessment of petitioner's submissions in this matter, as well as the arguments presented by the SBE, the Commissioner finds that no new substantive issue has been raised by petitioner that was not argued and considered in the Commissioner's June 24, 2004 decision, wherein it was determined that petitioner was statutorily disqualified from holding a New Jersey teaching certificate. In that the issues and facts presented in the instant matter, as well as the substantive merits of petitioner's arguments, have previously been litigated and decided in the prior case involving the same parties, therefore, the Commissioner finds that the fundamental principle of *res judicata* precludes further litigation of this matter. See *City of Hackensack v. Winner*, 82 N.J. 1, 31, 34 (1980) and *T.W. v. A.W.*, 224 N.J. Super. 675, 682 (App. Div. 1988).

Accordingly, for the reasons set forth above, the petition in this matter is dismissed, with prejudice.

IT IS SO ORDERED.²

ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 7, 2005

Date of Mailing: October 7, 2005

² This decision may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 *et seq.* and *N.J.A.C.* 6A:4-1.1 *et seq.*