

REMOND PALMER, :  
 :  
 PETITIONER, :  
 :  
 V. : COMMISSIONER OF EDUCATION  
 :  
 NEW JERSEY STATE DEPARTMENT : DECISION  
 OF EDUCATION, CRIMINAL :  
 HISTORY REVIEW UNIT :

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SYNOPSIS

Petitioner challenges respondent's determination, pursuant to *N.J.S.A.* 18A:6-7.1, that he is permanently disqualified from employment in any position within a school district as a result of his 1989 criminal conviction in South Carolina on charges of possession of cocaine. Petitioner contends that because he was pardoned by the South Carolina Department of Probation, Parole and Pardon Services in 2002, he is qualified to have a New Jersey teaching certificate. Respondent filed a motion to dismiss the petition, asserting that *N.J.S.A.* 18A:6-7.1 mandates permanent disqualification from teaching for any conviction of an offense involving the possession of a controlled dangerous substance, and that a pardon does not remove the record of the conviction.

The ALJ found that: *N.J.S.A.* 18A:6-7.1 is clear in its requirement that a school district cannot employ any teaching staff member or substitute if that individual has a disqualifying criminal history record; a conviction for possession of a controlled dangerous substance is one of the disqualifying provisions of the statute; petitioner's pardon does not remove the criminal record relating to his arrest and conviction; and petitioner is therefore disqualified from obtaining a teaching certificate. The ALJ granted respondent's motion to dismiss the petition.

The Commissioner concurred with the ALJ that the petitioner's appeal must be dismissed, finding that his 2002 pardon does not remove petitioner from the reach of *N.J.S.A.* 18A:6-7.1. Further, the Commissioner noted that New Jersey courts have no jurisdiction to expunge South Carolina convictions. Thus, petitioner's argument that his record should be deemed purged of his conviction because New Jersey allows the expungement of convictions for simple possession of controlled substances cannot succeed. Accordingly, the Commissioner dismissed the petition.

<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>
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OAL DKT. NO. EDU 4145-09  
AGENCY DKT. NO. 26-2/09

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. No exceptions were filed.

Petitioner challenged the 2008 determination of the Criminal History Review Unit of the New Jersey Department of Education (respondent) that, pursuant to *N.J.S.A. 18A: 6-7.1*, petitioner’s 1989 South Carolina conviction for possession of cocaine disqualified him for school employment in New Jersey. The relevant provision of *N.J.S.A. 18A: 6-7.1* states:

an individual . . . shall be permanently disqualified from employment or service under this Act if the individual’s criminal history record check reveals a record of conviction for . . .

- b. an offense involving the manufacture, transportation, sale, possession, distribution or habitual use of a “controlled dangerous substance” as defined in the Comprehensive Drug Reform Act of 1987 . . .

In the first of two arguments presented to support his challenge, petitioner contended that a 2002 pardon for the possession offense that he received from the South Carolina Department of Probation, Parole and Pardon removes him from the reach of *N.J.S.A. 18A: 6-7.1*. The Commissioner finds, however, that the Administrative Law Judge (ALJ) correctly rejected that argument. A pardon, *i.e.* an act of executive clemency – as opposed to a judicial

determination – does not render a person innocent of the offense for which he or she was convicted; nor does a pardon eliminate the record of conviction. *See, e.g., Donald v. Jones*, 445 F. 2d, 601 (5<sup>th</sup> Cir), *cert. den.* 404 U.S. 992 (1971). Thus, *N.J.S.A.* 18A: 6-7.1(b) applies to petitioner.

Petitioner's second argument raised the issue of record expungement. The parties agreed that if the 1989 conviction had been expunged, petitioner would have been eligible for a New Jersey teaching certificate. However, the record of petitioner's 1989 conviction was not expunged, because while South Carolina permits expungement of various offenses, the possession of a controlled dangerous substance such as cocaine is not one of them.

Petitioner asked, in the alternative, that his record be deemed purged of the conviction because New Jersey allows the expungement of a conviction for simple possession of controlled substances. *See, N.J.S.A.* 2C:52-2. However, that fact – while true – is not germane to the instant controversy. The New Jersey courts have no jurisdiction to expunge South Carolina convictions. Consequently, the record of petitioner's conviction stands.

Accordingly, the determination of the Criminal History Review Unit of the Department of Education – that, pursuant to *N.J.S.A.* 18A: 6-7.1(b), petitioner's prior conviction disqualifies him from obtaining a teaching certificate – is upheld, and the petition is dismissed.

IT IS SO ORDERED.\*

COMMISSIONER OF EDUCATION

Date of Decision: January 12, 2010

Date of Mailing: January 12, 2010

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\* This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L.* 2008, c. 36.