

**Inquiries
and
Correspondence**

**Nicholas F. Angiulo
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
P. O. Box 312
Trenton, New Jersey 08625-0312**

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION GRANTING
RESPONDENT'S MOTION FOR
SUMMARY DECISION

OAL DKT. NO. CSV 03324-22

AGENCY DKT. NO. 2022-2677

IN THE MATTER OF BRUCE GOMOLA, JR.,
BURLINGTON COUNTY JAIL.

Bruce Gomola, Jr., appellant, pro se

Margaret E. McHugh, Esq. for respondent, Burlington County Jail (Malamut & Associates, LLC, attorneys)

Record Closed: October 17, 2023

Decided: October 31, 2023

BEFORE **JOAN M. BURKE, ALJ**:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Appellant, Bruce Gomola, appeals from the respondent issuance of his resignation not in good standing effective March 8, 2022. This arose from a Final Notice of Disciplinary Action (FNDA), dated April 14, 2022, substantiating that appellant failed to comply with the required fourteen-day notice which resulted in a violation of N.J.A.C.

4A:2-6.2(b); and actions Involving criminal matters (1st, 2nd,3rd,4th Degree Crimes) in violation of N.J.A.C. 4A:2-2.5(a)2.

On March 8, 2022, the appellant turned in a letter of resignation from his position as a Burlington County Correctional Police Officer. The County informed the appellant on March 16, 2022, that his resignation did not comply with the required fourteen(14)-day notice. A Preliminary Notice of Disciplinary Action (PNDA) was issued with the charge of violating N.J.A.C. 4A:2-6.2(a) - Resignation not in good standing. The appellant attended a department hearing that was held on April 1, 2022. On April 14, 2022, a Final Notice of Disciplinary Action (FNDA) was issued to the appellant and the charges of N.J.A.C. 4A:2-2.5(a)2 - Action involving Criminal Matters (1st, 2nd,3rd, 4th Degree Crimes) and N.J.A.C. 4A:2-6.2 - Resignation not in good standing were sustained. The appellant filed a timely appeal.

This matter was transmitted to the Office of Administrative Law on April 26, 2022, for a hearing pursuant to N.J.S.A. 52:14B-1 to N.J.S.A. 52:14B-15. A Settlement conference was held on July 6, 2022, before the Honorable Susan Scarola, ALJ. On August 24, 2022, the respondent requested that the matter be placed on the inactive list pending final decision of appellant's underlying criminal charges. Subsequently, an Order, dated September 6, 2022, was entered for placement of this matter on the inactive list for six months.

On March 10, 2023, respondent informed the tribunal that the appellant was convicted of aggravated manslaughter and aggravated assault and was awaiting sentencing. An Order, dated March 14, 2023, was entered admitting this matter to the inactive list for an additional six months.

On July 6, 2023, the tribunal received respondent's Motion for Summary Decision. The appellant was notified on July 26, 2023, that the matter was now removed from the inactive list and that a response to the Motion for Summary Decision was due by October

2, 2023. Having received no response from the appellant, the records closed on October 11, 2023.

FACTUAL DISCUSSION AND LEGAL ARGUMENTS

Based upon a review of the evidence presented, I **FIND** the following as **FACT**:

Appellant was employed as a County Correctional Police Officer with the Burlington County Jail. (R-A.) The appellant submitted his resignation on March 8, 2022, while he was an inmate at the Morris County Corrections Facility. (R-A.)

Appellant was served with a PNDA, dated March 16, 2022, charging him with resignation not in good standing in violation of N.J.A.C. 4A:2-6.2. (R-B.) The PNDA states that:

On March 8, 2022 you turned in a letter of resignation for the position of Burlington County Correctional Police Officer "effective this date" to Rick Lombardo (Director of Human Resources). This resignation letter does not comply with the required fourteen (14) day notice. Therefore, you shall be recorded as having "Resigned Not in Good Standing.

[R-B.]

The appellant requested a hearing regarding the charge in the PNDA. The department's hearing was held on April 1, 2022, and the appellant attended it. After the hearing, a FNDA was issued by the County on April 14, 2022, sustaining the charges on the March 16, 2022, PNDA. (R-C.)

The appellant was criminally convicted on February 7, 2023. (R-D.) On June 2, 2023, he was sentenced on two counts of criminal charges. The first count was for aggravated manslaughter, a violation of 2C:11-4A(1); and the second count was for aggravated assault, a violation of 2C:12-1B(1). (R-D.) The appellant was sentenced "for a term of 22 years NERA¹ with five years parole supervision upon release," on the first

¹ NERA is the acronym for the No Early Release Act. See N.J.S.A. 2C:43-7.2

count. Ibid. He was sentenced to a "term of seven (7) years NERA with 3 years parole supervision upon release", on the second count. Ibid. Both counts one and two are to run concurrent to each other. Ibid. As part of his sentence, the Judgement of Conviction & Order for Commitment states, "Defendant to forfeit public employment." (R-D.)

LEGAL DISCUSSION AND CONCLUSIONS

The issues in this matter are whether the appellant complied with the fourteen-day notice requirement when he submitted his letter of resignation; and if he did, whether his appeal is moot because of his criminal conviction.

The respondent seeks relief pursuant to N.J.A.C. 1:1-12.5, which provides that summary decision should be rendered "if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." Our regulation mirrors R. 4:46-2(c) which provides that "the judgment or order sought shall be rendered if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law."

A determination whether a genuine issue of material fact exists that precludes summary decision requires the 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 allegedly disputed issue in favor of the non-moving party. Our courts have long held that "if the opposing party offers . . . only facts which are immaterial or of an insubstantial nature, a mere scintilla, 'fanciful frivolous, gauzy or merely suspicious,' he will not be heard to complain if the court grants summary judgment." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 529 (1995) (citing Judson v. Peoples Bank and Trust Co., 17 N.J. 67, 75 (1954)).

The "judge's function is not himself [or herself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for

trial." Brill, at 540, (citing Anderson v. Liberty Lobby, 477 U.S. 242, 249, 106 S. Ct. 2505, 2511, 91 L. Ed. 2d 202, 213 (1986)). When the evidence "is so one-sided that one party must prevail as a matter of law," the trial court should not hesitate to grant summary judgment. Liberty Lobby, 477 U.S. at 251-252, 106 S. Ct. at 2512, 91 L. Ed. 2d at 214.

Following the Brill standard, after considering all the papers and evidence filed in support of respondent's motion for summary decision, I **CONCLUDE** that there are no genuine issues of material fact that require a plenary hearing and that this matter is ripe for summary decision.

Appellant's rights and duties are governed by laws including the Civil Service Act and accompanying regulations. A civil service employee who commits a wrongful act related to his employment may be subject to discipline, and that discipline, depending upon the incident complained of, may include a suspension or removal. N.J.S.A. 11A:1-2, 11A:2-6, 11A:2-20; N.J.A.C. 4A2-2.

Respondent seeks summary decision in its favor dismissing appellant's appeal. Respondent contends that the instant appeal should be dismissed because the appellant's resignation notice did not comply with the fourteen-day requirement pursuant to N.J.A.C. 4A:2-6.1 and that it is moot.

N.J.S.A. 4A:2-6.1 provides as follows:

- (a) Any permanent employee in the career service may resign in good standing by giving the appointing authority at least 14 days written or verbal notice, unless the appointing authority consents to a shorter notice.
- (b) The resignation shall be considered accepted by the appointing authority upon receipt of the notice of resignation.

The respondent argues that the appellant did not comply with the fourteen-day notice, pursuant to N.J.A.C. 4A:2-6.1. When respondent received the appellant's

resignation notice, they promptly issued a PNDA notifying the appellant that his resignation was not in good standing, because he failed to comply with the fourteen-day notice. The appellant requested a departmental hearing which was held on April 1, 2022. The hearing resulted in a FNDA supporting the charges.

While facts and evidence are to be reviewed in a light most favorable to the non-moving party in determining if summary decision in favor of the moving party is appropriate, the appellant did not respond to the summary decision motion, even though ample time was given to him for a response. The record and documents presented in this matter reveals that the appellant submitted his resignation on March 8, 2022, and his resignation became effective on that date. There was nothing to the contrary here. I therefore **CONCLUDE** that the appellant did not give the appropriate fourteen-day notice to the respondent, pursuant to N.J.A.C. 4A:2-6.1 and summary decision in favor of respondent is appropriate.

Mootness

The Constitution limits the judiciary to the adjudication of actual cases and controversies. U.S. Const. art III, § 2. Accordingly, “[a] case is moot when the issues presented are no longer “live” or the parties lack a legally cognizable interest in the outcome.” Donovan v. Punxsutawney Area Sch. Bd., 336 F.3d 211, 216 (3rd Cir. 2003) (citing Powell v. McCormack, 395 U.S. 486, 496 (1969)). Specifically, it is “[t]he court’s ability to grant effective relief [that] lies at the heart of the mootness doctrine.” (citation omitted). For instance, when developments evolve during the “course of adjudication” that negate the plaintiff’s interest in the outcome of a case or thwart a court from being able to give the requested relief, the suit must be dismissed as moot. Ibid. (citation omitted). “This requirement that a case or controversy be ‘actual [and] ongoing’ extends throughout all stages of . . . judicial proceedings” Ibid. (citing Khodara Envtl., Inc. v. Beckman, 237 F.3d 186, 193 (3rd Cir. 2001) (emphasis supplied). In the absence of an actual case or controversy, a ruling by a court would constitute an advisory opinion, disregarding the Constitution’s limitation of jurisdiction. See, Id. at 217, n.3; see also, Armstrong World Indus., Inc. v. Adams, 961 F.2d 405, 410 (3d Cir. 1992) (stating, “[Article

III, section 2 of the Constitution] 'stands as a direct prohibition on the issuance of advisory opinions.'").

Similarly, the doctrine of mootness has utility in the administrative setting if no effective relief can be granted in a case. Benjamin v. Masciocchi, Comm'r of Educ., EDU 14102-11, Initial Decision (March 12, 2013), adopted, Comm'r (April 11, 2013), <http://njlaw.rutgers.edu/collections/oal/> (citing In re Tenure Hearing of Mujica, EDU 5184-01, Initial Decision (March 15, 2006), adopted, Comm'r (April 25, 2006), <http://njlaw.rutgers.edu/collections/oal/>). An action is considered moot when it no longer presents a justiciable controversy, and the conflict between the parties has become merely hypothetical. Ibid. (citing In re Conroy, 190 N.J. Super. 453, 458 (App. Div. 1983)). It is well-settled law in New Jersey that cases that have become moot prior to adjudication are no longer actionable. Ibid. (citing Mujica, EDU 5184-01). Cases in which the issues are hypothetical, a judgment cannot grant effective relief, or there is no concrete adversity of interest between the parties are moot. See, Advance Elec. Co., Inc. v. Montgomery Twp. Bd. of Educ., 351 N.J. Super. 160, 166 (App. Div. 2002) (citing Anderson v. Sills, 143 N.J. Super. 432, 437 (Ch. Div. 1976)).

The appellant was a County Correction Police Officer. Pursuant to N.J.A.C. 2C:51-2a:

A person holding any public office, position, or employment, elective or appointive, under the government of this State or any agency or political subdivision thereof, who is convicted of an offense shall forfeit such office, position or employment if:

- (1) He is convicted under the laws of this State of an offense involving dishonesty or of a crime of the third degree or above or under the laws of another state or of the United States of an offense or a crime which, if committed in this State, would be such an offense or crime;

The appellant was convicted and sentenced on aggravated manslaughter in the first degree and aggravated assault in the second degree. In addition, as part of the appellant's sentencing for the aforementioned crimes, he was required to forfeit public

employment. The respondent argues that “a reversal of the resignation not in good standing would have no practical effect on Petitioner’s ability to regain public employment as the sentencing of job forfeiture supersedes the resignation status.” See Respondent’s Brief at 2. I agree. Furthermore, N.J.S.A 2C:51-2(d) forever disqualifies the appellant “from holding a position of public employment ... under this State or any of its administrative or political subdivisions”. Id. Appellant will remain removed from his employment regardless of the outcome of this instant appeal. Therefore, I **CONCLUDE** that appellant’s appeal is moot and respondent is entitled to summary decision dismissing appellant’s appeal as moot.

ORDER

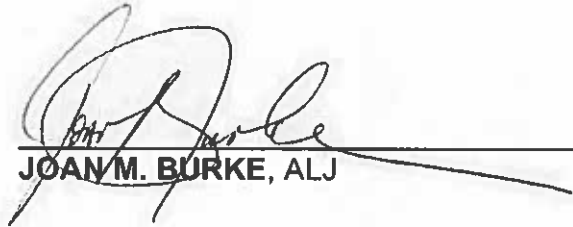
It is hereby **ORDERED** that respondent’s motion for summary decision is **GRANTED**. Appellant’s appeal is **DISMISSED** as moot.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission 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 **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

October 31, 2023
DATE



JOAN M. BURKE, ALJ

Date Received at Agency _____

Date Mailed to Parties: _____

JMB/jm/lam

APPENDIX
EXHIBITS

For appellant

None

For respondent

Respondent's Brief, June 30, 2023

R-A Bruce Gomola, Jr.'s Resignation Letter

R-B PNDA, dated March 16, 2022

R-C FNDA, dated April 14, 2022

R-D Judgement of Conviction & Order of Commitment, Superior Court of New Jersey, Burlington County