

JOHN HILKEVICH, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE CITY : DECISION
 OF TRENTON, MERCER COUNTY, :
 :
 RESPONDENT. :
 _____ :

SYNOPSIS

Petitioner – currently incarcerated and with an appeal of his sentence on criminal charges dating back to 1999 pending before the Appellate Division of the New Jersey Superior Court – was employed by respondent Board as a tenured teacher prior to his conviction in 2000 for aggravated sexual assault, endangering the welfare of a child, and criminal sexual conduct. Petitioner seeks reinstatement to his position, with back pay and benefits. The case was the subject of orders of inactivity or otherwise held in abeyance from September 2003 through March 2009 because of the pendency of criminal proceedings involving petitioner. Respondent Board filed a motion to dismiss, contending that the petitioner’s appeal is inappropriate and without merit.

The ALJ found that: the petitioner’s suspension without pay, beginning on September 14, 1999, was valid and proper; there was no period of time since September 14, 1999 when petitioner was not under indictment, convicted, or had tenure charges certified against him; petitioner was twice convicted for crimes that require automatic forfeiture of his tenured teaching position; and the pending appeal in Superior Court is in reference to petitioner’s sentence has no effect on the within matter. Accordingly, the ALJ granted the respondent’s motion to dismiss the petition.

Upon independent and careful review of the record, the Commissioner adopted the Initial Decision as the final decision in this matter. A copy of this decision has been transmitted to the State Board of Examiners for consideration.

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.

October 19, 2009

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner’s exceptions and the Board’s reply thereto – filed in accordance with *N.J.A.C.* 1:1-18.4 – were fully considered by the Commissioner in reaching her determination herein.

Exceptions on behalf of petitioner forward two copies of his letter brief filed before the Administrative Law Judge (ALJ) below. Additionally, petitioner’s counsel advises that it is his belief that Mr. Hilkevich’s pro se appeal – currently pending before the Appellate Division – appeals not only his sentence but also his second conviction on both substantive and procedural grounds. (Petitioner’s Exceptions at 1-2)

In reply, the Board points out that – notwithstanding the argument that petitioner’s appeal involves more than just appeal of his sentence, “Exhibit B of Petitioner’s own brief dated July 1, 2009, characterizes the nature of the appeal as an ‘Appeal of Resentencing’ throughout the document.” It, thus, urges – based on this fact and for the reasons presented in the ALJ’s decision – that the Commissioner uphold the Initial Decision. (Board’s Reply Exceptions at 1)

Upon full consideration, the Commissioner agrees with the ALJ that the Board’s Motion to Dismiss this matter is appropriately granted as she fully concurs that “there was no period of time since September 14, 1999, when petitioner was not under indictment, convicted, or had tenure charges certified against him. Therefore, he has no claim to back pay, benefits or emoluments for any period following his September 1999 indictment.” (Initial Decision at 7) The Commissioner is further in accord with the ALJ’s determination that – as the crimes for which petitioner has been convicted require automatic forfeiture of his

position as of the date of his conviction – the tenure charges against him which have been held in abeyance pursuant to *Ott v. Hamilton Township Bd. of Education*, 160 N.J. Super. 333 (App. Div. 1978) are rendered moot and are hereby dismissed. Notwithstanding that petitioner’s forfeiture of his position was automatic upon conviction, given that the Court at that time did not specifically order it, the Board is encouraged to file an application with the Superior Court of New Jersey for entry of an Order of Forfeiture of petitioner’s public employment pursuant to N.J.S.A. 2C:51-2. See *State v. Ercolano*, 335 N.J. Super. 236 (App. Div. 2000).

Accordingly, the recommended decision of the OAL is adopted for the reasons stated therein and the instant petition of appeal is dismissed. A copy of this decision will be transmitted to the State Board of Examiners for consideration.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: October 19, 2009

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*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).