

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

QUINCEY RAY BRYANT,
Educator/Petitioner,

v.

**PROFESSIONAL STANDARDS
COMMISSION,**
Respondent.

:
:
:
:
:
:
:
:


Docket No.:
OSAH-PSC-SAN-1338357-31-Miller



AUG 7 2013

FINAL DECISION

I. Introduction



Kevin Westray, Legal Assistant

The Petitioner, Quincey Ray Bryant, appeals a decision by the Professional Standards Commission (“Commission”) to revoke his Georgia teaching certificate based on alleged violations of the Code of Ethics for Educators. The evidentiary hearing took place on June 21, 2013,¹ pursuant to O.C.G.A. §§ 20-2-984.5(d), 50-13-41, and 50-13-13, before the undersigned administrative law judge of the Office of State Administrative Hearings. The Petitioner was represented by Melvin M. Goldstein, Esq. The Commission was represented by Jennifer Colangelo, Assistant Attorney General.

After consideration of the evidence and the arguments of the parties, and for the reasons stated below, the Commission’s decision to sanction the Petitioner’s Georgia teaching certificate is **AFFIRMED**. However, his certificate shall be suspended for a term of ninety contract days, rather than revoked as proposed by the Commission.

¹ The record closed on July 10, 2013, upon receipt of the hearing transcript.

II. Findings of Fact

1.

The Petitioner is thirty-seven years old and has been certified to teach in the State of Georgia since 2008. He began his teaching career in North Carolina, where he taught health and physical education for approximately two years, from 2002 to 2004. The Petitioner moved to Georgia in 2004 and worked as a personal trainer until 2006, when he was hired by the DeKalb County School District as a physical education paraprofessional and coach. After working for two years in that capacity, he obtained his Georgia teaching certificate. (Statement of Matters Asserted (“Matters Asserted”), ¶ 1; Answer, ¶ 1; T. 56-59.)

2.

Since becoming certified, the Petitioner has been employed as a physical education teacher and coach at several DeKalb County schools. Most recently, during the 2012-13 school year, he taught physical education and coached the football, wrestling, and track teams at McNair High School. (T. 59-61.)

3.

On November 15, 2010, in Butts County, Georgia, the Petitioner was arrested and charged with the misdemeanor criminal offense of Violation of the Georgia Controlled Substances Act (Possession of Marijuana Less than One Ounce). Nearly a year later, on October 31, 2011, he entered a plea of *nolo contendere* to the charge. The Butts County Superior Court sentenced him to serve twelve months on probation and ordered him to pay a fine. (Matters Asserted, ¶ 2; Answer, ¶ 2; T. 71-72; Exhibits R-2, R-3.)

4.

The Petitioner reported the criminal charge to his school principal at the time he was arrested. The school district did not terminate his teaching contract or take any other action against him. (T. 73, 87.)

5.

The Petitioner notified the Commission of his conviction in March 2012, when he applied to renew his certificate. In a letter to the Commission dated March 6, 2012, the Petitioner explained his arrest and conviction as follows:

On November 15, 2010, I was on my way to work. My wife had just passed and I did not have a car nor [sic] any way to work, so I borrowed my brother-in-law's car. I was stopped by the police for speeding in Butts County. When the police ran my driver's license, I was told that my license was suspended. The car that I was driving did not belong to me. The police searched the car and said that they found less than one ounce of marijuana in the car. I did not have any knowledge of marijuana being in the car, nor did it belong to me.

However, the Petitioner's statement to the Commission was not truthful. In fact, the marijuana in the car belonged to the Petitioner. (T. 71-73, 82-83; Exhibit R-6.)

6.

At the hearing, the Petitioner testified that he began using marijuana heavily following the death of his wife in October 2009.² He was overwhelmed by grief at that time, and he stopped engaging in social activities. In retrospect, he believes that his use of marijuana was a misguided attempt to cope with his loss. In February 2010, at the invitation of Sylvia Flen, his friend and mentor,³ he began attending church. He grew more comfortable at the church over

² There is no evidence that the Petitioner used marijuana at school or in the presence of students. (T. 28-29, 74-75.)

³ Dr. Flen is an administrator in the DeKalb County School District. In August 2008, she hired the Petitioner to teach at Bethune Middle School, where she served as his supervisor. She became a mentor to the Petitioner, and they have remained in contact since that time. (T. 44-46.)

time, eventually becoming a member. The Petitioner testified that he stopped using marijuana in or near April 2011. (Matters Asserted, ¶ 3; Answer, ¶ 3; T. 38-39, 46-48, 66-69, 74.)

7.

Teachers are expected to be role models for students and to maintain standards of conduct that avoid bringing discredit upon the profession. The Petitioner failed to maintain these standards when he violated the law by possessing marijuana. (T. 20, 45-46, 53, 63.)

8.

The Petitioner has received positive evaluations as an employee of the DeKalb County School District, and students hold him in high regard. Although he was offered a teaching and coaching position at McNair High School for the 2013-14 school year, his contract was placed on hold pending the outcome of this proceeding. (T. 27, 29-30, 37, 40, 44-46, 75-79, 90; Exhibits P-2, P-3, P-4, P-5.)

9.

Based on the findings of its investigation, the Commission found probable cause to revoke the Petitioner's teaching certificate. However, the investigative findings included allegations that the Petitioner had been convicted of two offenses involving the possession of marijuana, whereas the evidence at the hearing established only that the Petitioner had been convicted of one offense. The Petitioner timely appealed the Commission's determination. (OSAH Form 1 and attachments; T. 19-21.)

III. Conclusions of Law

1.

The Commission bears the burden of proof in this matter. Ga. Comp. R. & Regs. r. 616-1-2-.07(1). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. r. 616-1-2-.21(4).

2.

The Commission is authorized to sanction an educator who has violated the statutes and rules governing the teaching profession, including the standards of performance contained in the Code of Ethics for Educators. O.C.G.A. § 20-2-984.1; see Ga. Comp. R. & Regs. r. 505-6-.01. Pursuant to O.C.G.A § 20-2-984.5(c):

If the commission finds that there is probable cause for imposing a sanction against the educator, it may recommend any combination of the following:

- (1) That the educator be warned, reprimanded, monitored,⁴ or any combination thereof; or
- (2) That the certificate of the educator be suspended, revoked, or denied.

See also Ga. Comp. R. & Regs. r. 505-6-.01(5).

3.

Standard 1 of the Code of Ethics for Educators, entitled “Legal Compliance,” provides, in pertinent part, as follows:

An educator shall abide by federal, state, and local laws and statutes. Unethical conduct includes but is not limited to the commission or conviction . . . of any other criminal offense involving the manufacture, distribution, trafficking, sale, or possession of a controlled substance or marijuana as provided for in Chapter 13 of Title 16

⁴ The Commission has declined to exercise its monitoring authority.

Ga. Comp. R. & Regs. r. 505-6-.01(3)(a); see O.C.G.A. § 20-2-984.3(a)(5). The term “conviction” is specifically defined to include:

a finding or verdict of guilty, or a plea of *nolo contendere*, regardless of whether an appeal of the conviction has been sought; a situation where first offender treatment without adjudication of guilt pursuant to the charge was granted; and a situation where an adjudication of guilt or sentence was otherwise withheld or not entered on the charge or the charge was otherwise disposed of in a similar manner in any jurisdiction.

Id.

4.

The Commission proved, by a preponderance of the evidence and as set forth in the Findings of Fact, above, that the Petitioner was convicted of a misdemeanor criminal offense involving the possession of marijuana, in violation of Standard 1 of the Code of Ethics for Educators and O.C.G.A. § 20-2-984.3(a)(5).

5.

The Commission sought to present evidence that the Petitioner was arrested in April 2011 for a second misdemeanor offense involving marijuana possession, which was dismissed after the Petitioner completed a pre-trial diversion program. The Commission asserts that a pre-trial diversion program is a “conviction” within the meaning of Ga. Comp. R. & Regs. r. 505-6-.01(3)(a) and O.C.G.A. § 20-2-984.3(a)(5) because it is “a situation where an adjudication of guilt or sentence was otherwise withheld or not entered on the charge or the charge was otherwise disposed of in a similar manner.” Contrary to the Commission’s argument, however, pre-trial diversion is markedly dissimilar to a disposition that involves the withholding of an adjudication of guilt or sentence. More specifically, the Petitioner was not required to enter a plea as a condition of his participation in pre-trial diversion; thus, there was no adjudication of guilt or sentence that could have been withheld. Further, the Petitioner could not have been

penalized for failing to complete the diversion program. Instead, he would have found himself in the same position he had been in before he began the program: cited for a misdemeanor offense, with the option of entering a plea or proceeding to trial.⁵ The Commission's proffered evidence is therefore inadmissible,⁶ and it has not been considered in the rendering of this decision.

6.

Pursuant to O.C.G.A. § 16-13-111(a), a licensed individual who is convicted of a criminal offense involving the possession of a controlled substance or marijuana must notify the appropriate licensing authority within ten days. The statute contemplates leniency for a first-time offender convicted of a misdemeanor, as follows:

Upon the first conviction, the licensed individual shall have his or her license, permit, registration, certification, or other authorization to conduct a licensed occupation suspended for a period of not less than three months; provided, however, that in the case of a first conviction for a misdemeanor the licensing authority shall be authorized to impose a lesser sanction or no sanction upon the licensed individual

O.C.G.A. § 16-13-111(b)(1). However, "[t]he failure of a licensed individual to notify the appropriate licensing authority of a conviction as required . . . shall be considered grounds for

⁵ In contrast, an individual who is afforded a conditional discharge under O.C.G.A. § 16-13-2 is required to enter a plea, and failure to comply with the terms of a conditional discharge order triggers an adjudication of guilt and sentencing. Therefore, conditional discharge fits the definition of "conviction" under Ga. Comp. R. & Regs. r. 505-6-.01(3)(a) and O.C.G.A. § 20-2-984.3(a)(5).

⁶ An arrest, standing alone, cannot serve as the basis for a disciplinary action against the Petitioner's teaching certificate. O.C.G.A. § 20-2-984.3(a)(5); Ga. Comp. R. & Regs. r. 505-6-.01(3)(a); see Schwartz v. Board of Bar Exam'rs of New Mexico, 353 U.S. 232 (1957) (bar applicant's prior arrests were not evidence that he lacked good moral character). As the United States Supreme Court has noted:

The mere fact that a man has been arrested has very little, if any, probative value in showing that he has engaged in any misconduct. An arrest shows nothing more than that someone probably suspected the person apprehended of an offense. When formal charges are not filed against the arrested person and he is released without trial, whatever probative force the arrest may have had is normally dissipated.

Id. at 241. In this case, the Commission did not present any evidence that the Petitioner had in fact committed the crime for which he was arrested. Accordingly, Exhibits R-4 and R-5 are not admitted.

revocation of his or her license, permit, registration, certification, or other authorization to conduct a licensed occupation.” O.C.G.A. § 16-13-111(c).

7.

The Commission proved, by a preponderance of the evidence and as set forth in the Findings of Fact, above, that the Petitioner failed to report his conviction to the Commission within ten days, in violation of O.C.G.A. § 16-13-111(a).

8.

Standard 10 of the Code of Ethics for Educators, entitled “Professional Conduct,” provides:

An educator shall demonstrate conduct that follows generally recognized professional standards and preserves the dignity and integrity of the teaching profession. Unethical conduct includes but is not limited to any conduct that impairs and/or diminishes the certificate holder’s ability to function professionally in his or her employment position, or behavior or conduct that is detrimental to the health, welfare, discipline, or morals of students.

Ga. Comp. R. & Regs. r. 505-6-.01(3)(j).

9.

The Commission proved, by a preponderance of the evidence and as set forth in the Findings of Fact, above, that the Petitioner engaged in conduct that was detrimental to the health, welfare, discipline, and morals of students by using and possessing marijuana, in violation of Standard 10 of the Code of Ethics for Educators.

10.

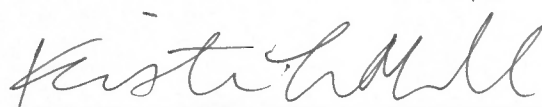
The Commission proposes to revoke the Petitioner’s teaching certificate. However, revocation is not warranted under the particular facts and circumstances of this case, for several reasons. First, although the Commission’s recommendation was based on an investigative report alleging that the Petitioner had been convicted of two misdemeanor offenses for possession of

marijuana, only one conviction was proven at the hearing. Second, revocation of the Petitioner's teaching certificate is not mandatory under O.C.G.A. § 16-13-111. Finally, the Court is persuaded, based on the testimony of the Petitioner and the credible witnesses who appeared on his behalf, that the Petitioner has addressed his grief over his wife's death, which likely contributed to his poor judgment and criminal conduct. While the Court remains concerned that the Petitioner used and possessed an illegal drug and was untruthful in his original written statement to the Commission, a temporary suspension of his teaching certificate, followed by a period of monitoring, is a more appropriate sanction for his conduct.

IV. Decision

In accordance with the foregoing Findings of Fact and Conclusions of Law, the Commission's decision to sanction the Petitioner's Georgia teaching certificate is hereby **AFFIRMED**. However, the proposed sanction is **MODIFIED**, and the Petitioner's teaching certificate shall be suspended for a period of ninety contract days. Upon expiration of the suspension period, the Petitioner's certificate shall be reinstated and monitored by the Commission for one year. During the period of monitoring, the Petitioner shall complete monthly urine screens, which shall be witnessed, with the results reported to the Commission not less than quarterly (on March 31, June 30, September 30, and December 31). The Commission is authorized to impose further sanctions against the Petitioner, including revocation of his certificate, if the Petitioner should test positive for a non-prescribed controlled substance or marijuana or otherwise fail to comply with the terms of monitoring.

SO ORDERED, this 7th day of July, 2013.



KRISTIN L. MILLER
Administrative Law Judge