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

# STATE OF GEORGIA

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| **THEO HOLT,[[1]](#footnote-1)**  **Petitioner,**  **v.**  **DEPARTMENT OF HUMAN SERVICES,**  **Respondent.** |  | **:**  **:**  **:**  **:**  **:**  **:**  **:**  **:** |  | **Docket No.:**  **OSAH-DHS-RCC\_CRC-1429390-60-Miller** |

INITIAL DECISION

# I. Introduction

The Petitioner in this matter seeks review of the Respondent’s determination that the Petitioner’s criminal record precludes approval of the Petitioner’s employment at a child-placing agency. The hearing took place on February 7, 2014, before the undersigned administrative law judge of the Office of State Administrative Hearings (“OSAH”). After considering all of the admissible evidence, the Respondent’s action is hereby **REVERSED**.

# II. Findings of Fact

1.

The Petitioner, Theo Holt, has been hired as an employee of Care4All Children Services, a licensed child-placing agency. (Testimony of Petitioner; OSAH Form 1 and attachments.)

2.

The Petitioner submitted a preliminary criminal records check to the Respondent in conjunction with his application for clearance to become employed by a child-placing agency. The Respondent notified the Petitioner in writing that his criminal records check was unsatisfactory. (OSAH Form 1 and attachments.)

3.

On August 23, 2010, in the District Court of Jefferson County, Texas, the Petitioner was sentenced under a deferred adjudication order for the felony offense of Possession of Marijuana. The Petitioner was sentenced to five years of community supervision and ordered to complete a substance abuse assessment and 160 hours of community service work. His community supervision is currently inactive, and he applied for early termination in December 2013. The Petitioner’s crime did not cause physical harm to a victim. (Testimony of Petitioner; Exhibit R-1.)

4.

The Petitioner explained that his arrest occurred in June 2009, at a time when he was unemployed and having difficulty paying his bills. A friend offered to pay the Petitioner, who lived in Louisiana, to drive him to Texas to pick up a quantity of marijuana. However, the Petitioner was stopped for a traffic violation on the return trip, and police discovered thirty pounds of marijuana during a search of his vehicle. At the hearing, the Petitioner expressed regret for his conduct, and stated that he had been unaware that his friend was in possession of such a large amount of marijuana. He has had no further interaction with the criminal justice system. (Testimony of Petitioner.)

5.

The Petitioner became certified as a special education teacher in 2010, and he spent three years teaching in Baton Rouge, Louisiana, before moving to Georgia in 2013. He has been married since November 2013 to Stephanie Addison, a pediatrician. Since moving to Georgia, he has also become certified as a personal trainer. (Testimony of Petitioner.)

6.

Having examined the circumstances of the Petitioner’s criminal record, his character, and his employment and other history since the conviction, the undersigned finds that the Petitioner does not have a propensity for cruel behavior or behavior involving moral turpitude.

# III. Conclusions of Law

1.

The Respondent bears the burden of proof in this matter. Ga. Comp. R. & Regs. 616-1-2-.7(1). The burden of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

2.

Under Georgia law, all potential employees or directors of child-placing agencies are required to submit to a criminal records check. O.C.G.A. § 49-5-69(a). See O.C.G.A. §§ 49-5-60(1), 49-5-12(a); Ga. Comp. R. & Regs. 290-9-2-.04(4)(b).

3.

A potential employee with a criminal record based on a felony or other enumerated offense may not be hired unless the criminal record is deemed satisfactory by the Respondent or an administrative law judge. O.C.G.A. §§ 49-5-60(3)-(4), 49-5-69(a), 49-5-73; Ga. Comp. R. & Regs. 290-9-2-.04(4)(b)-(c). The term “criminal record” is defined by statute as:

1. Conviction of a crime;[[2]](#footnote-2)
2. Arrest, charge, and sentencing for a crime where:
3. A plea of nolo contendere was entered to the charge;

(ii) First offender treatment without adjudication of guilt pursuant to the charge was granted; provided, however, that this division shall not apply to a violation of Chapter 13 of Title 16, relating to controlled substances, or any other offense committed in another jurisdiction which, if it were committed in this state, would be a violation of Chapter 13 of Title 16 if such violation or offense constituted only simple possession; or

(iii) Adjudication or sentence was otherwise withheld or not entered on the charge; provided, however, that this division shall not apply to a violation of Chapter 13 of Title 16, relating to controlled substances, or any other offense committed in another jurisdiction which, if it were committed in this state, would be a violation of Chapter 13 of Title 16 if such violation or offense constituted only simple possession; or

1. Arrest and being charged for a crime if the charge is pending, unless the time for prosecuting such crime has expired pursuant to Chapter 3 of Title 17.

O.C.G.A. § 49-5-60(4); see also Ga. Comp. R. & Regs. 290-9-2-.01(l).

4.

Pursuant to O.C.G.A. § 49-5-73, “upon motion from any party, the [administrative law judge] may, in [her] discretion, consider matters in mitigation of any conviction, provided the [administrative law judge] examines the circumstances of the case and makes an independent finding that no physical harm was done to a victim and also examines the character and employment history since the conviction and determines that there is no propensity for cruel behavior or behavior involving moral turpitude . . . .” See O.C.G.A. § 49-5-69(a).

5.

In this case, the Petitioner was arrested, charged, and sentenced on one count of the covered offense of Possession of Marijuana. See O.C.G.A. § 49-5-60(4)(B)(iii). This offense is a “crime” within the meaning of O.C.G.A. § 49-5-60(4)(B), as it would be a felony if committed in Georgia, and it does not constitute simple possession due to the quantity of marijuana involved. O.C.G.A. § 16-13-30(j); cf. O.C.G.A. §§ 16-13-31(c), 16-13-2(b). Thus, absent mitigation, the Petitioner has a criminal record that would disqualify him from employment at a child-placing agency. O.C.G.A. §§ 49-5-60(3)-(4), 49-5-69(a), 49-5-73; Ga. Comp. R. & Regs. 290-9-2-.04(4)(b)-(c).

6.

The Petitioner’s offense, however, occurred nearly five years ago and caused no physical harm to a victim. Further, the evidence presented at the hearing regarding the Petitioner’s character and subsequent employment history was sufficient to establish mitigation,[[3]](#footnote-3) as the Petitioner has no propensity for cruel behavior or behavior involving moral turpitude. See O.C.G.A. § 49-5-73. The Petitioner is therefore eligible for employment at a child-placing agency.

**IV. Decision**

In accordance with the foregoing Findings of Fact and Conclusions of Law, the Petitioner’s motion for authorization to be employed by a child-placing agency, despite his criminal record, is **GRANTED**. The Respondent’s action precluding the Petitioner’s employment by a child-placing agency is hereby **REVERSED**.

**SO ORDERED, this \_\_\_\_ day of February, 2014.**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**KRISTIN L. MILLER**

**Administrative Law Judge**

1. The case style has been changed to reflect the correct spelling of the Petitioner’s name. [↑](#footnote-ref-1)
2. Under O.C.G.A. § 49-5-60(3), “‘Crime’ means any felony; a violation of Code Section 16-5-23 when the victim is a minor; a violation of Code Section 16-12-1; a violation of Chapter 6 of Title 16, excluding the offenses of bigamy or marrying a bigamist; a violation of Code Section 16-4-1 when the crime attempted is any of the crimes specified by this paragraph; or any other offenses committed in another jurisdiction which, if committed in this state, would be one of the enumerated crimes listed in this paragraph.” [↑](#footnote-ref-2)
3. At the hearing, the Respondent did not object to mitigation. [↑](#footnote-ref-3)