

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA



04/04/2023

Devin Hamilton, Legal Assistant

JEON LATOYA GRAHAM, : Docket No.: 2314674
Petitioner, : 2314674-OSAH-PSC-SAN-44-Walker
v. :
PROFESSIONAL : Agency Reference No.: 2314674
STANDARDS COMMISSION, :
Respondent. :

FINAL DECISION

I. Introduction

The Petitioner, Jeon Latoya Graham (“Petitioner”) appeals the decision of the Professional Standards Commission (“Commission”) to sanction her educator’s certificate. The hearing in this matter was conducted on March 6, 2023. Borquaye Thomas, Esq. represented the Petitioner at the hearing. The Commission was represented by Lee Stoy, Assistant Attorney General. After consideration of the evidence and the arguments of the parties, and for the reasons stated below, the Commission’s determination that the Petitioner violated the Code of Ethics for Educators is **AFFIRMED** in part and **REVERSED** in part; however, based on the Findings of Fact and Conclusions of Law, the undersigned finds that no sanction is warranted.

II. Findings of Fact

1.

The Petitioner holds an educator’s certificate to teach in the State of Georgia. (Testimony of Paul Phillips; Statement of Matters Asserted ¶ 1.)¹

¹ Although the Petitioner’s Answer in response to the Statement of Matters Asserted denied that she had an educator’s certificate, she did not contest this assertion at the hearing. (See Court File.)

2.

On or about January 24, 2006, the Petitioner pled guilty to one misdemeanor count of Theft by Shoplifting, Docket No. 05CR4126, in the Superior Court of DeKalb County, Georgia.² She was sentenced pursuant to the provisions of the First Offender Act and placed on probation. The judgement specified that “[u]pon fulfillment of the terms of probation . . . the defendant shall stand discharged of said offense charged and completely exonerated of guilt of said offense charged.” (Statement of Matters Asserted ¶ 2; Exhibit R-5.)

3.

On or about January 9, 2019, the Superior Court of DeKalb County issued the Petitioner an Order of Discharge under O.C.G.A. § 42-8-60 stating as follows:

- A. The Defendant be discharged without court adjudication of guilt;
- B. That this discharge shall completely exonerate the Defendant of any criminal purpose.
- C. That this discharge shall not affect any of said Defendant’s civil rights or liberties; and
- D. The Defendant shall not be considered to have a criminal conviction.
- E. This discharge may not be used to disqualify a person in any application for employment or appointment to office in either the public or private sector.

A criminal record check, dated July 22, 2019, does not reflect that the Petitioner has either a criminal record in either the Georgia Bureau of Investigation (“GBI”) or Federal Bureau of Investigation (“FBI”) databases. (Statement of Matters Asserted ¶ 2; Exhibits P-1; R-5.)

4.

On or about August 26, 2019, the Respondent submitted a License and Clearance Application to the Commission (“Clearance Application”). She answered “No” to a personal affirmation question regarding her criminal history. The personal affirmation question stated as

² Initially, the Statement of Matters Asserted stated that this was a felony charge; however, at the hearing the Commission moved to amend the pleading to reflect that she had pled guilty to a misdemeanor charge.

follows:

For any felony or any crime involving moral turpitude have you ever:

- Pled guilty;
- Entered a plea of *nolo contendere*;
- Been found guilty;
- Pled guilty to a lesser offense;
- Been granted first offender treatment without adjudication of guilt;
- Participated in a pre-trial diversion program;
- Been found not guilty by reason of insanity; or
- Been placed under a court order whereby an adjudication or sentence was withheld?

(Testimony of Paul Phillips; Exhibit R-1.)

5.

At the bottom of the personal affirmation page, the Clearance Application stated as follows:

Moral Turpitude

<u>Crimes involving moral turpitude:</u>	<u>Crimes NOT involving moral turpitude:</u>
<ul style="list-style-type: none">• Fraud or false pretenses in obtaining something of value• Larceny or a misdemeanor theft by taking• Larceny after trust• Murder• Soliciting for prostitutes• Voluntary manslaughter• Sale of Narcotics or other illegal drugs• Pattern of failure to file federal tax returns• Criminal Issuance of a bad check• Making a false report of a crime	<ul style="list-style-type: none">• Public drunkenness• Driving under the influence• Carrying a concealed weapon• Unlawful sale of liquor• Simple Battery and Simple Assault• Misdemeanor criminal trespass• Child abandonment• Misdemeanor offense of escape• Obstruction of a law enforcement officer (Misd.)• Most traffic offenses

The listing did not include Theft by Shoplifting as a crime of moral turpitude. (Exhibit R-1.)

6.

On or about October 30, 2020, Petitioner submitted a personal affirmation to the Commission. She answered “No” to the following question:

For any felony or any crime involving moral turpitude have you ever:

- Pled guilty;
- Entered a plea of nolo contendere;
- Been found guilty;
- Pled guilty to a lesser offense;
- Been granted first offender treatment without adjudication of guilt;
- Participated in a pre-trial diversion program;
- Been found not guilty by reason of insanity; or
- Been placed under a court order whereby an adjudication or sentence was withheld?

The document also asked the following question: “While under investigation, have you ever left an employment position (retired, been dismissed, terminated, non-renewed or otherwise)? The Petitioner answered “Yes” to this question. (Testimony of Paul Phillips; Exhibit R-3.)

7.

On November 25, 2020, the Petitioner submitted a personal affirmation to the Commission.

She answered “No” to the following question:

For any felony or any crime involving moral turpitude have you ever:

- Pled guilty;
- Entered a plea of nolo contendere;
- Been found guilty;
- Pled guilty to a lesser offense;
- Been granted first offender treatment without adjudication of guilt;
- Participated in a pre-trial diversion program;
- Been found not guilty by reason of insanity; or
- Been placed under a court order whereby an adjudication or sentence was withheld?

The personal affirmation also asked the following question: “While under investigation, have you ever left an employment position (retired, been dismissed, terminated, non-renewed or otherwise)?

The Petitioner answered “Yes” to this question. (Testimony of Paul Phillips; Exhibit R-4.)

8.

On November 27, 2020, the Petitioner submitted a Certification Application to the Commission. She answered “No” to the following personal affirmation question contained in the

Certification Application:

For any felony or any crime involving moral turpitude have you ever:

- Pled guilty;
- Entered a plea of nolo contendere;
- Been found guilty;
- Pled guilty to a lesser offense;
- Been granted first offender treatment without adjudication of guilt;
- Participated in a pre-trial diversion program;
- Been found not guilty by reason of insanity; or
- Been placed under a court order whereby an adjudication or sentence was withheld?

The Certification Application also asked “While under investigation, have you ever left an employment position (retired, been dismissed, terminated, non-renewed or otherwise)? The Petitioner answered “Yes” to this question. (Testimony of Paul Phillips; Exhibit R-2.)

9.

The Petitioner acknowledged that over eighteen years ago she had been arrested for and pled guilty to the misdemeanor offense of Theft by Shoplifting. At the time of her arrest, she was a seventeen-year-old high school student. A criminal record check, dated July 22, 2019, did not reflect that she had a GBI or FBI criminal record. She testified that she did not intend to deceive the Commission, noting that she had honestly answered the questions in the personal affirmations and Certification Application that she had left a position while being investigated. (Testimony of Petitioner.)

10.

Based on the facts and circumstances set forth above, the Commission found probable cause that the Petitioner violated the laws, rules, and regulations of the Commission. The Commission charged that her conduct violated Ga. Comp. R. & Regs. 505-6-.01(3)(a) (Legal Compliance), 505-6-.01(3)(d) (Honesty), 505-6-.01(3)(h) (Required Reports), and 505-6-.01(3)(i)

(Professional Conduct) and recommended that her educator’s certificate be suspended for a period of ninety contract days. (Statement of Matters Asserted ¶¶ 7, 8.)

III. Conclusions of Law

1.

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

2.

The Commission has adopted the Code of Ethics for Educators (“Code of Ethics”). O.C.G.A. § 20-2-984.1. Should the Commission find that an educator has violated the Code of Ethics, it may warn, reprimand, or monitor the educator, or suspend, revoke, or deny an educator’s certificate. O.C.G.A. § 20-2-984.5(c).

3.

The Commission charges that the Petitioner’s conduct has violated the Code of Ethics, specifically Ga. Comp. R. & Regs. 505-6-.01(3)(a) (Standard 1 Legal Compliance), 505-6-.01(3)(d) (Standard 4 Honesty), 505-6-.01(3)(h) (Standard 8 Required Reports), and 505-6-.01(3)(i) (Standard 9 Professional Conduct).

4.

Standard 1 of the Code of Ethics for Educators states, in pertinent part:

Legal Compliance - 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 a felony or of any crime involving moral turpitude; 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; or of any other sexual offense as provided for in Code Section 16-6-1 through 16-6-17, 16-6-20, 16-6-22.2, or 16-12-100; or any other laws applicable to the profession. As used herein, conviction includes 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.

Ga. Comp. R. & Regs. 505-6-.01(3)(a) (2019).

5.

The evidence demonstrated that the Petitioner pled guilty, under the First Offender Act, to a misdemeanor count of shoplifting. Shoplifting is considered to be a crime of moral turpitude. See Clements v. State, 299 Ga. App. 561, 562 (2009) (also noting that under O.C.G.A. § 24-9-84.1(a)(3), witnesses no longer may be impeached by crimes of moral turpitude). Accordingly, the Petitioner's conduct violated Standard 1.

6.

Standard 4 of the Code of Ethics for Educators states, in relevant part:

Honesty - An educator shall exemplify honesty and integrity in the course of professional practice. Unethical conduct includes but is not limited to, falsifying, misrepresenting or omitting:

1. Professional qualifications, criminal history . . . [and]

. . .

6. Information submitted in the course of professional practice.

Ga. Comp. R. & Regs. 505-6-.01(3)(d) (2019).

7.

Standard 8 of the Code of Ethics for Educators states in relevant part:

Required Reports –

Unethical conduct includes but is not limited to:

1. Failure to report to the Georgia Professional Standards Commission all requested information on documents required by the Commission when applying for or renewing any certificate with the Commission;

Ga. Comp. R. & Regs. 505-6-.01(3)(h) (2019).

8.

The Commission argues that the Petitioner misrepresented her criminal history by purposefully failing to disclose that she had a conviction in her Clearance Certification, personal affirmations, and Certification Application. Nonetheless, multiple factors suggest that her failure to disclose the conviction was an honest mistake. The Petitioner was a seventeen-year-old high school student when she was charged, and the incident took place over eighteen years ago. She had no criminal record listed in either the GBI or FBI databases. Further, she honestly answered the question in the Certification Application and personal affirmations asking whether she had left a position while being investigated.

9.

To a layperson, both the court documents and the Commission's Certification Application would have confirmed the Petitioner's belief that she was not required to report her prior criminal history. The Superior Court's written Order of Discharge explicitly provided that, in accordance with the provisions of O.C.G.A. § 16-13-2, "[t]he defendant shall not be considered to have a criminal conviction." Moreover, the Commission's own Clearance Application included an extensive listing of crimes constituting, without limitation or reserve, crimes of moral turpitude, *but failed to include Theft by Shoplifting as a crime of moral turpitude*. The Commission's argument that listing Theft by Taking as a crime of moral turpitude provided sufficient notice to the Petitioner is unavailing. Theft offenses are codified in Georgia Code sections 16-8-1 through 16-8-25. Theft by taking is defined under O.C.G.A. § 16-8-2; O.C.G.A. § 16-8-14 distinguishes Theft by Shoplifting as a separate offense. Theft by Taking and Theft by Shoplifting are distinct crimes with different underlying elements. Given that the document was prepared by the

Commission, the Petitioner should not be penalized for relying on its contents.

10.

“Misrepresent” is defined by the Merriam-Webster dictionary as “to give a false or misleading representation of usually with an intent to deceive or be unfair.” Merriam-Webster.com, <https://www.merriam-webster.com/dictionary/misrepresentation> (last visited April 2, 2023). The undersigned is persuaded by the Petitioner’s testimony that she was not intentionally dishonest when she answered the questions asked in the documents submitted to the Commission. For the reasons stated, the undersigned does not find that the Petitioner’s answer violated either Standard 4 or Standard 8 of the Code of Ethics.

11.

The Commission also asserts that the Petitioner’s actions were a violation of Standard 9 of the Code of Ethics for Educators. Standard 9 states:

Professional Conduct - An educator shall demonstrate conduct that follows generally recognized professional standards and preserves the dignity and integrity of the education profession. Unethical conduct includes but is not limited to a resignation that would equate to a breach of contract; 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. 505-6-.01(3)(i) (2019).

12.

Having considered the evidence in the record, the undersigned concludes that the Petitioner should not be penalized under Standard 9. She was arrested over eighteen years ago, when she was seventeen years old and a high school student. She completed the requirements imposed under the First Offender Act and her conviction was discharged. Additionally, she has not engaged in additional criminal conduct. There was no evidence presented that the Petitioner’s conduct impaired her ability to function professionally, or that her conduct was detrimental to the health,

welfare, discipline, or morals of students. The undersigned does not find a violation of Standard 9 of the Code of Ethics.³

IV. Decision

The Code of Ethics for Educators has been designed to protect the health, safety and general welfare of students in Georgia. A violation of the Code of Ethics constitutes grounds upon which the Commission may deny a certificate or issue a sanction. Ga. Comp. R. & Regs. 505-6-.01(5)(a)(1). The Petitioner has violated Standard 1 of the Code of Ethics for Educators because it is undisputed that she committed the misdemeanor offense of Shoplifting, a crime of moral turpitude.

In considering a recommended sanction, the undersigned takes the following factors into consideration. The incident took place while the Petitioner was in high school, and, in comparison to other criminal violations, the Petitioner committed a relatively minor misdemeanor offense. Additionally, the documents presented, and the Petitioner's testimony, were persuasive evidence that she did not intentionally deceive the Commission. In fairness, even the Commission itself failed to accurately enumerate all the offenses constituting crimes of moral turpitude.

The Commission failed to prove, by a preponderance of the evidence, that the Petitioner has engaged in any conduct that would render her unfit for employment as an educator, as set forth in detail in the Findings of Fact, above. In accordance with the foregoing Findings of Fact and Conclusions of Law, the Commission's decision to sanction the Petitioner is **AFFIRMED** in part

³ There was no information at the hearing regarding the investigation disclosed by the Petitioner in her personal affirmations and Certification Application, so this factor has not been considered by the undersigned in reaching a decision. Whether the Commission will pursue a second disciplinary action was not raised by either party.

and **REVERSED** in part; however, based on the Findings of Fact and Conclusions of Law, the undersigned finds that no sanction is warranted.

SO ORDERED this 4th day of April.

Ronit Walker

RONIT WALKER
Administrative Law Judge

