BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

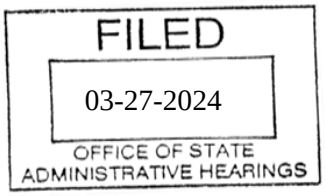
STATE ELECTION BOARD,
Petitioner,

v.

BRIAN PRITCHARD,
Respondent.

Docket No.: 2313073
2313073-OSAH-ELE-LV-55-Boggs

Agency Reference No.: 2313073



INITIAL DECISION

I. INTRODUCTION

The State Election Board (hereinafter "Petitioner" or "Board") filed this matter seeking sanctions against Brian Pritchard (hereinafter "Respondent"). As set forth in the Statement of Matters Asserted, the Petitioner alleges that the Respondent violated State election laws. The evidentiary hearing took place on February 9, 2024,[1] before the undersigned Administrative Law Judge. The Petitioner was represented by Russell Willard, Senior Assistant Attorney General, and John Smith, Assistant Attorney General. The Respondent was represented by George Weaver, Jr., Esq.

After consideration of the evidence presented and for the reasons stated below, the Petitioner's finding that the Respondent violated State election laws is **AFFIRMED**. The Respondent shall be **SANCTIONED**, as set forth in Part IV of this Decision.

[1] The hearing record closed on February 26, 2024, upon receipt of the transcript (cited herein as "Tr.").

II. FINDINGS OF FACT

A. 1995-1996: Charges and Convictions in Pennsylvania

1.

On May 23, 1995, a bill of accusation was filed in the Court of Common Pleas of Allegheny County, Pennsylvania (hereinafter "Allegheny court"), in Case Number 9510964.[2] The bill stated the Respondent had been charged with two counts of "Forgery (Section 4101)" and one count of "Theft by Failure to Make Required Disposition of Funds Received (Section 3927)." The offense date was listed as December 7, 1994. (Tr. 29; Ex. P-5.)

2.

By the Respondent's own admission during the instant hearing, the charges arose from an instance where he endorsed two checks made out to himself and other parties, which resulted in $38,000.00 being "wrongly deposited" in his account. At the time, the Respondent was in the construction business and was involved in a large project for Dick Enterprises, with a contract for approximately $1 million. Each of the two checks in question was two-party checks issued to the Respondent's company and an additional company. On one check, the additional payee was a company run by Walter Scott, and on the other, the additional payee was a company run by Rick Vergot. (Tr. 23-24, 47, 51-52, 109-110.)

3.

A certified copy of the bill of accusation from the Allegheny court for Case Number 9510964 was presented at the hearing. In a section of the document dated May 15, 1996, the bill states as follows, in part: "The Defendant [i.e., the Respondent] present in open court with counsel, pleads guilty to the preferred charges in the within information." This section includes a signature

[2] The case number appears throughout the evidentiary record as either "9510964" or "199510964." (Compare Ex. P-5 with Exs. P-2, P-6.)

from the minute clerk, signifying that the clerk had verified this record. Certified records from the Allegheny court further document that on the same day as the plea, Judge McGregor sentenced the Respondent to serve three years' probation for each of the two forgery charges—with the sentences to run concurrently—and to pay "restitution." The certified court records indicate that on August 26, 1996, pursuant to an agreement between prosecution and defense counsel, the Respondent was ordered by Judge McGregor to pay $38,000.00 in "restitution" to Dick Enterprises. (Ex. P-5.)

4.

In his testimony, the Respondent confirmed he was present in the Allegheny court on May 15, 1996, and he further confirmed that his signature appears on the certified court records documenting his appearance, directly below the line stating he had pled guilty to the charges outlined in the bill of accusation. Notwithstanding this signature, the Respondent asserted he pled "no contest" as directed by his court-appointed counsel, instead of guilty. As for his sentencing, the Respondent did not dispute receiving a three-year probationary sentence in 1996, and he agreed that the Allegheny court's records referred to "restitution." Nevertheless, he maintained the $38,000.00 payment was in actuality a civil "judgment" owed to Dick Enterprises, which the company ultimately declined to enforce. Instead, per the Respondent, Dick Enterprises accepted that it would get repaid through its ongoing contract with the Respondent, with the $38,000.00 going straight back into the construction project in 1996. Also, per the Respondent, Rick Vergot and Walter Scott "were made whole through my contract with Dick Enterprises." (Tr. 22, 25-26, 30-32, 43, 46, 106, 108-110, 112-115; Ex. P-5.)

5.

At the time of the plea and sentencing in 1996, the Respondent was 32 years old, married, and the father of two small children. He lived with his parents in Northampton County,

Pennsylvania, and his father accompanied him to court during his 1996 appearance. The Respondent characterized his construction business in 1996 as "fairly complicated," and he was used to reading contract law as part of his job. However, he also told the Court he has "absolutely no knowledge" of legal documents, and that he had never experienced anything like the May 1996 court proceedings. He described himself as being "scared to death that day" that he might not see his small children that night. (Tr. 25-26, 32, 43, 32, 52, 55, 66, 107-108.)

6.

Several months after appearing in the Allegheny court in May 1996, the Respondent moved to North Carolina for a job in Greensboro. He testified that when he left Pennsylvania, he did not think he had a criminal record. He lived in North Carolina for approximately three-and-a-half years. (Tr. 26-27, 118.)

B. <u>1999: Move to Georgia and Order of Probation Revocation</u>

7.

By 1999, the Respondent had moved to Georgia, where he has remained as of the date of the instant hearing. For one of the jobs he held in Georgia, in downtown Atlanta, he stated he was responsible for a $68 million budget. (Tr. 22, 26, 122.)

8.

The year 1999 would have marked the end of the Respondent's three-year probation sentence handed down in 1996. Certified records from the Allegheny court, however, indicate the Respondent appeared in court with counsel on March 18, 1999, for the revocation of his probation. The certified records showed that Judge McGregor ultimately imposed a new three-year probationary sentence effective March 18, 1999. The Respondent would be supervised by the Northampton County probation office, though he would remain in "non reporting" status. Judge

McGregor also ordered the Respondent to continue paying restitution "as ordered." (Ex. P-5; see also Ex. P-1.)

9.

At the hearing, the Respondent conceded he did appear before the Allegheny court on March 18, 1999, and that he had been notified of the upcoming proceeding via a letter sent by the court to his mother's house. However, he asserted he did not have legal counsel with him that day, even though the certified court records indicated he was represented by counsel. The Respondent also testified he did not recall his probation being "extended" during that court appearance, nor did he recall a discussion about restitution. Rather, he stated that Judge McGregor had informed him the matter was a "civil judgment," and that the judge "did not want the matter in his court any longer." Nothing in the certified court records from March 18, 1999, reflects the judge ever making such a statement or issuing an order to that effect. (Tr. 33, 45, 66, 115; Exs. P-1, P-5.)

10.

The Respondent maintained that, by this point in 1999, he once again believed his criminal case from the Allegheny court was "done" and "finished." (Tr. 27-28, 59.)

C. 2002: Second Order of Probation Violation

11.

The year 2002 would have marked the end of the Respondent's three-year probationary sentence that was handed down in 1999. During the instant hearing, the Board presented the Court with certified records from the Allegheny court for Case 9510964, dated April 2, 2002. According to those records, the Respondent appeared in open court on that date, and, "for cause shown," his probation was again revoked and a new sentence imposed. These records did not indicate whether Respondent had legal counsel with him. The Board also presented a copy of an "Order of Court"

dated April 2, 2002, and issued by Judge McGregor in the Allegheny court for Case Number 9510964.[3] This order stated the Respondent was sentenced to two years' probation effective April 2, 2002, with the special condition of paying $40.00 to $50.00 a month in restitution and reporting by phone. (Exs. P-2, P-5.)

12.

The Respondent maintained at the hearing that he never received notice of a court appearance set for April 2, 2002. Moreover, notwithstanding the certified court records, he stated he never appeared in the Allegheny court on that date, and he had no knowledge of a probation revocation order being issued in April 2002. (Tr. 34, 47, 59, 116-117.)

D. <u>2004: Third Order of Probation Revocation</u>

13.

The year 2004 would have marked the end of the Respondent's two-year probationary sentence that was handed down in 2002. During the instant hearing, the Board introduced certified records and a certified order from the Allegheny court for Case 9510964, dated April 8, 2004. According to those records, the Respondent appeared in open court on that date with legal counsel. During that proceeding, "for cause shown," Judge McGregor revoked the Respondent's probation and imposed a new seven-year probationary sentence, effective April 8, 2004. The Respondent was changed back to a "non reporting" probationary status. He also was ordered to "continue monthly payments." (Exs. P-5, P-6.)

14.

Similar to his testimony about the 2002 court proceeding, the Respondent told the Court he never received any notice to appear in the Allegheny court on April 8, 2004. And again, despite

[3] The copy of the order presented to this Court was not certified by the Allegheny court clerk. (Ex. P-2.) However, the Respondent stipulated to the order's admissibility. (Tr. 15-16.)

the certified court records stating otherwise, he asserted he did not appear in court that day, nor did he have counsel at that time. (Tr. 35-36, 47, 59, 116-117.)

E. 2008: Voter Registration in Gilmer County

15.

Beginning in 2004, the Respondent was residing in Gilmer County, Georgia. (Tr. 37.) On January 29, 2008, the Respondent completed a registration form with Gilmer County's Board of Elections. Appearing above the space where the Respondent signed the form is the following statement: "I SWEAR OR AFFIRM THAT . . . I am not serving a sentence for having been convicted of a felony involving moral turpitude." (Tr. 53-54, 97, 120; Ex. P-8.)

16.

On cross-examination, the Respondent testified that he was not aware of anything that would have prevented him from registering to vote when he signed the application in 2008. He further asserted he did not believe in 2008 that he had three remaining years of probation on his sentence. Rather, by that point, he considered his last involvement with any criminal matter from Pennsylvania to be the March 1999 proceeding. (Tr. 54, 119, 121.)

F. 2008 and 2010 Elections

17.

In 2008, the Respondent voted in Gilmer County in the following elections:

- July 15, 2008: Georgia general primary;
- August 5, 2008: Georgia general primary runoff;
- November 4, 2008: Georgia general election; and
- December 2, 2008: Georgia general election runoff.

(Tr. 70; Ex. P-9.)

18.

In 2010, the Respondent voted in Gilmer County in the following elections:

- May 11, 2010: Special election;
- June 8, 2010: Special election;
- July 20, 2010: Georgia general primary;
- August 10, 2010: Georgia general primary; and
- November 2, 2010: Georgia general election

(Tr. 71; Ex. P-9.)[4]

G. 2011: Gagnon Proceedings

19.

At the hearing, the Board presented a copy of a document titled "Gagnon I Violation Hearing Disposition Report" for Case No. 9510964, dated March 15, 2011 (hereinafter "Gagnon I report").[5] The document includes signatures from the Respondent, a probation officer, and a hearing officer. In the field for defense counsel's signature, the word "WAIVED" appears. The report stated the Respondent's "violation hearing" would be held "ASAP," and that said hearing would be unnecessary if the Respondent paid restitution monthly and specified that each payment was for restitution. The Respondent's initials also appear on the report as confirmation that he had been permitted to ask questions of the probation office concerning the alleged probation violation; and that he understood "that if the Court would fine [*sic*] me in violation, I could face

[4] The Respondent also testified to voting in four elections in 2012, and certified voting records show the Respondent voted in one election in 2013. (Tr. 72-73; Ex. P-9.) However, only the elections identified above were included in the Statement of Matters Asserted. (See Case File, OSAH Form 1, Statement of Matters Asserted, ¶¶ 6-14, filed Dec. 1, 2022.)

[5] This copy was not certified. The Respondent, however, did not object to its admission. (See Tr. 38.)

INCARCERATION as a penalty: Statutory Maximum and/or Balance of the Maximum Term." (Ex. P-7.)

20.

The Respondent conceded at the instant hearing that he returned to the Allegheny courthouse in 2011, in part because he had been receiving phone calls about owing money. He also confirmed that he signed and initialed the Gagnon I report while there, that he asked questions as stated on the report, and that he did not have counsel that day. However, he maintained that his signature and initials did not mean he acknowledged he was still on probation at the time, or that his probation was about to be revoked. Instead, he stated he signed the report in an administrative room instead of a courtroom, and the man there informed him, "You just got to say you showed up," so the form could be turned in. And despite appearing for this Gagnon I proceeding, he averred he did not believe he was serving a felony sentence at that time, nor did he think he owed anything as of 2011. (Tr. 38-39, 40-41, 44, 49-50, 55-57, 62-64, 118.)

21.

Although the Gagnon I report stated the violation hearing would be held "ASAP," the Board did not introduce any court records or other probative evidence showing that such a hearing occurred, or showing that the Respondent was found in violation of his probation again. The Respondent testified he had no further contact with the Alleghany court after 2011. Thus, the probative evidence before this Court does not show that the Respondent's sentence for the 1996 conviction extended past April 2011. (Tr. 58.)

H. 2014: Filing of County Complaint and Request to be Removed from Voter Rolls

22.

Sometime in 2014, the Respondent learned that the Gilmer County Board of Elections had received a complaint alleging he had been voting while still serving a sentence for a felony crime of moral turpitude. Subsequently, on May 15, 2014, the Respondent submitted a handwritten request to the election board to have his name removed from the voter rolls, effective immediately. (Tr. 61, 122-124, 126, 131-133; Ex. P-4.)

23.

The Respondent told the Court that he asked to be removed from the voter rolls out of an abundance of caution, "because I did not want to be doing something unbeknownst to me that could — could be considered wrong." When asked on cross-examination why he did not request removal from the voter rolls in 2011—the year he appeared in the Allegheny court for the Gagnon I proceeding—the Respondent stated he did not believe the document he had signed on March 15, 2011, was "relevant," and he again maintained he had not been serving a felony sentence at that time. (Tr. 61-62, 127.)

I. 2017: Restoration of Rights with Board of Pardons and Paroles

24.

Sometime in 2017, the Respondent applied with the Georgia Board of Pardons and Paroles ("Pardons and Paroles") for the restoration of his civil and political rights, as well as the right to bear arms. He testified that his application included his date of conviction in the Allegheny court in 1996, three letters of reference, and a written section explaining what the convictions had done to his life. However, he could not recall whether he included information about his sentences associated with his convictions. About seven months after submitting the application, the

Respondent traveled to Woodstock, Georgia, for an interview with an individual from Pardons and Paroles (Tr. 67-68, 129-130; Ex. P-3.)

25.

In a document dated November 8, 2017, Pardons and Paroles ordered that the following rights be restored to the Respondent: to serve on a jury; to run for and hold public office; to serve as a notary public; and to receive, possess, and transport in commerce a firearm. Pardons and Paroles specified that these enumerated rights comprised the rights he lost as a result of the three 1996 convictions in the Allegheny court. The order stated the sentence from the 1996 convictions was for three years' probation, handed down on May 15, 1996. It also stated, "Case Closed 5/14/1999." The order included the following findings:

> WHEREAS, having investigated the facts material to the application, which investigation has established to the satisfaction of the Board [of Pardons and Paroles] that each sentence imposed on the applicant stated hereinabove . . . has been served and that each sentence has expired.

Nowhere in the order does Pardons and Paroles make a finding as to exactly when the Respondent's sentences had been fully served or otherwise expired. And when asked on cross examination, the Respondent stated he had no personal knowledge as to how Pardons and Paroles concluded his case had "closed" in 1999. (Tr. 130; Ex. P-30.)

J. Board's Investigation and Lead-Up to Instant Contested Case

26.

Sometime in 2015—following the local election board's own investigation—the Board's Investigations Division was notified of the complaint filed against the Respondent in Gilmer County the year before. As part of its investigation efforts between May and September 2016, which included conducting multiple interviews, the Investigations Division accrued the following costs: $88.00 in mileage reimbursement (76 miles traveled at 50 cents a mile) and $287.14 in

hours worked (14.25 hours at $20.15 an hour), for a total of $375.14. (Tr. 78-80, 82-83, 86, 100; Ex. P-10.)

27.

The Investigations Division ultimately concluded that (i) the Respondent had been convicted in Pennsylvania of two felony forgery charges and one felony charge of theft by taking; (ii) he had been sentenced in 1996 to three years' probation; (iii) his probation had been revoked multiple times between 1999 and 2011; and (iv) during the times he was serving his felony sentence, he registered to vote in 2008 and then voted in elections between 2008 and 2011.[6] The Investigations Division submitted its completed report of the investigation during a meeting of the Board on February 10, 2021. The Board voted to bind the case over to the Office of the Attorney General and to the Gilmer County District Attorney's Office. (Tr. 77, 80-82, 93-94; see also Case File, OSAH Form 1, Statement of Matters Asserted, Ex. A, filed Dec. 2, 2022.)

28.

The Office of the Attorney General, representing the Board, referred the matter to this Court for adjudication on December 1, 2022. (Case File, OSAH Form 1, filed Dec. 1, 2022.) The instant contested case ensued.

K. Additional Testimony from Respondent

29.

Throughout his testimony, the Respondent sought to explain why he believed he could register to vote in Georgia in 2008 and then vote for the next two years, despite the certified records from the Allegheny court showing that his probationary sentence had been extended through at least April 2011. For example, he told the Court that he had never served any time in jail for the

[6] The Respondent only voted in 2008 and 2010; no votes were recorded for 2011. (See Ex. P-9.)

1996 convictions, nor did he ever pay supervision fees. He also stated he never had to report to a probation officer, despite the Allegheny court's 2002 order stating otherwise. The Respondent cited his amicable working relationship with Dick Enterprises and the two payees on the checks, which continued after the 1996 conviction. He also attested that after completing applications for background checks for new employers, he never heard about any adverse findings. He conceded, however, he had no direct knowledge about any results arising from these background checks, or whether the check was even completed in every instance. (Tr. 25, 44-45, 47, 110-111, 122, 134-136.)

30.

In several instances, however, the Respondent's explanations as to his personal understanding of his criminal record appeared somewhat inconsistent. For instance, he testified that in 1996, he believed the criminal matter had been fully resolved, including the $38,000.00 payment to Dick Enterprises. Yet elsewhere in his testimony, he described calling probation offices and the judge's chambers several months after his conviction and sentencing, to determine whether he was restricted from moving to North Carolina. Additionally, the Respondent testified that no one asked him about restitution between 1996 and 1999. Yet he also described how he received a call from a collection agency in 1996, prompting him to make a call to the Northampton County probation office to ask whether he was supposed to send money to someone.[7] (Tr. 27, 45, 111-112.)

31.

Throughout his testimony, the Respondent described himself as someone who had a very limited understanding about his criminal case and the resulting proceedings. For instance, he

[7] The Respondent also testified he received collection calls related to the Allegheny court matter sometime in or around 2009. (Tr. 47-48.)

maintained he did not have legal representation when he appeared at the Allegheny courthouse after 1996, despite court records stating otherwise; he referred to having "absolutely no knowledge" of legal documents; and he mentioned not knowing how to respond to the collection calls he received in 1996. The Respondent described his experience in the Allegheny court as being "shuffled off to a table" and told to sign certain documents, including the Gagnon I report.[8] Despite this purported lack of understanding, the Respondent told the undersigned that he has always attempted to "honor" courts his entire life, and thus he would have appeared before the Allegheny court in 2002 or 2004 had he received notice. He testified he has not been arrested or charged since 1994, and he has since re-enrolled as an elector and voted consistently from 2018 onward. (Tr. 32, 43, 45-46, 55-58, 111-112, 128; Ex. P-9.)

III. CONCLUSIONS OF LAW

1.

Because this matter involves the proposed sanctioning of the Respondent, the Board bears the burden of proof. 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.

When a contested case is referred to this Court, the Administrative Law Judge assigned to the case has "all the powers of the ultimate decision maker." O.C.G.A. § 50-13-41(b). The evidentiary hearing is de novo, and the Administrative Law Judge "shall make an independent determination on the basis of the competent evidence presented at the hearing." Ga. Comp. R. & Regs. 616-1-2-.21(1).

[8] When asked on cross-examination, the Respondent testified he did not suffer from a known legal infirmity, he has not been found mentally incompetent, and he is not aware of any reason why the competency of his signature would be questioned. (Tr. 64-65.) The undersigned did not observe anything at the hearing to dispute these assessments.

A. Overview of Controlling Law

3.

The State Election Board is authorized to enforce the Georgia Election Code, found at O.C.G.A. § 21-2-1 to § 21- 2-604. See O.C.G.A. § 21-2-33.1(a). Its enforcement powers include issuing orders requiring a violator to do one or more of the following:

(1) To cease and desist from committing further violations;

(2) To pay a civil penalty not to exceed $5,000.00 for each violation of the Georgia Election Code or for each failure to comply with any provision of the Code or of any rule or regulation promulgated under the Code;

(3) To be publicly reprimanded;

(4) To pay restitution to a state, county, or city governing authority when it has suffered a monetary loss or damage as a result of the violation;

(5) To attend training as specified by the Board; and

(6) To pay investigative costs incurred by the Board.

Id.

4.

Pursuant to the Election Code, "no person who has been convicted of a felony involving moral turpitude may register, remain registered, or vote except upon completion of the sentence . . . ." O.C.G.A. § 21-2-216(b). This statutory language mirrors the proscription found within the Georgia Constitution. See GA. CONST., art. II, § I, para. III(a).[9]

[9] See also O.C.G.A. § 21-2-216(a) ("No person shall vote in any primary or election held in this state unless such person shall be . . . [r]egistered as an elector in the manner prescribed by law . . . and . . . [p]ossessed of all other qualifications prescribed by law.")

B. Violations of Election Code

5.

The Board has proved, by a preponderance, that the Respondent violated Georgia election law when he registered to vote in 2008 and later voted a total of nine times between 2008 and 2010. The evidence demonstrates he completed these acts prior to the expiration of his sentence for his felony convictions of crimes of moral turpitude, in violation of both O.C.G.A. § 21-2-216 and Article II of the Georgia Constitution. Specifically, records from the Allegheny court show that the Respondent pled guilty to two felony counts of forgery, pursuant to 18 PA. CONST. STAT. § 4101;[10] and one felony count of theft by failure to make a required disposition of funds received, pursuant to 18 PA. CONST. STAT. § 3927.[11] All three charges were felonies, and both the forgery

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[10] This offense was defined as follows:

> A person is guilty of forgery if, with intent to defraud or injure anyone, or with knowledge that he is facilitating a fraud or injury to be perpetrated by anyone, the actor:
>
> (1) alters any writing of another without his authority;
>
> (2) makes, completes, executes, authenticates, issues or transfers any writing so that it purports to be the act of another who did not authorize that act, or to have been executed at a time or place or in a numbered sequence other than was in fact the case, or to be a copy of an original when no such original existed; or
>
> (2) utters any writing which he knows to be forged in a manner specified in paragraphs (1) or (2) of this subsection.

18 PA. CONS. STAT. § 4101(A) (1996). A "writing" was defined as "printing or any other method of recording information, money, coins, tokens, stamps, seals, credit cards, badges, trademarks, and other symbols of value, right, privilege, or identification." Id. § 4101(B) (1996). Forgery was a felony of the second degree if the writing "is or purports to be part of an issue of money, securities, postage or revenue stamps, or other instruments issued by the government, or part of an issue of stock, bonds or other instruments representing interests in or claims against any property or enterprise." Id. § 4101(C) (1996). Forgery was a felony of the third degree "if the writing is or purports to be a will, deed, contract, release, commercial instrument, or other document evidencing, creating, transferring, altering, terminating or otherwise affecting legal relations." Id.

[11] This offense was defined as follows:

> A person who obtains property upon agreement, or subject to a known legal obligation, to make specified payments or other disposition, whether from such property or its proceeds or from his own property to be reserved in equivalent amount, is guilty of theft if he intentionally deals with the property obtained as his own and fails to make the required payment or disposition. The foregoing

and theft crimes constitute crimes of moral turpitude. See Huff v. Anderson, 212 Ga. 32, 34 (1955) (finding that offenses of obtaining money from another by fraud or false pretenses involve moral turpitude), cited in Lewis v. State, 243 Ga. 443, 445 (1979). That said, as noted in the Findings of Facts, supra, the sentences issued in 1996 were for the two forgery convictions only, with no sentence imposed for the theft conviction.

6.

In closing arguments, the Respondent argued that the ordered restitution of $38,000.00 had been converted to a civil judgment, as allowed under Pennsylvania law. On this theory, from as early as 1996, he faced a civil judgment rather than a criminal sentence. Yet the only evidence before this Court that the restitution payment constituted a civil judgment comes from the Respondent's own uncorroborated and self-serving testimony. [citation about self-serving?] None of the court records presented to this Court, dating from 1996 to 2011, describe the ordered restitution as a civil judgment. As for the Respondent's citation of 42 Pa. Cons. Stat. § 9728, any reliance on this statute is misplaced. While this statute does refer to the use of collection agencies to collect owed restitution, it also emphasizes that said restitution is "part of a criminal action," rather than a civil judgment. 42 PA. CONS. STAT. § 9728(A) (1999).[12] Hence, the fact that the Respondent received calls from collection agencies has no bearing on whether the Respondent's restitution requirement was criminal or civil in nature.

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applies notwithstanding that it may be impossible to identify particular property as belonging to the victim at the time of the failure of the actor to make the required payment or disposition.

18 PA. CONS. STAT. § 3927(A) (1996). The offense constituted a felony of the third degree if the amount involved exceeded $2,000.00. Id. § 3903(A.1) (1996).

[12] This particular provision related to the use of collection agencies first appeared in the statute in 1999.

7.

The Respondent further argues that the Allegheny court unlawfully issued orders extending his probation. He cites two Pennsylvania appellate court decisions to support his contention that (i) the Allegheny court could not legally revoke his probation absent a determination that the Respondent's failure to pay was willful;[13] and (ii) the Allegheny court could not extend his probation more than 30 days after entry of the original sentencing order.[14] He also points to his testimony that he did not appear before an Allegheny court judge in 2002 or 2004, despite what that court's records state. Additionally, the Respondent maintained throughout his testimony that he never pled guilty to the three felony charges in 1996, but instead entered a "no-contest" plea. With the above arguments, the Respondent essentially seeks to collaterally attack the Allegheny court's orders during the instant proceeding. See Rawles v. Holt, 304 Ga. 774, 778 (2018).[15] These arguments, however, prove unavailing here.

8.

Georgia courts of record have not directly addressed collateral attacks of criminal convictions in the enforcement of the Election Code or in administrative proceedings in general, nor does the Administrative Procedure Act or this Court's rules address this matter. See O.C.G.A. § 50-13-1- et seq.; Ga Comp. R. & Regs. 616-1-1-.01 et seq. In this context, this tribunal can look to the Georgia Civil Practice Act, O.C.G.A. § 9-11-1, et seq., for guidance as to procedure. See Ga. Comp. R. & Regs. 616-1-2-.02(3). And pursuant to O.C.G.A. § 9-11-60, a judgment that is not otherwise "void on its face" is not subject to collateral attack but instead can be attacked only

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[13] See Commonwealth v. Allsouse, 969 A.2d 1236 (Pa. Super. 2009).

[14] See Commonwealth ex rel. Powell v. Rosenberry, 645 A.2d 1328 (Pa. Super. 1994).

[15] "The term 'collateral attack' has been defined as defined as '[a]n attack on a judgment in a proceeding other than a direct appeal . … A petition for a writ of habeas corpus is one type of collateral attack.'" Rawls, 304 Ga. at 778 (quoting BLACK'S LAW DICTIONARY (10th ed. 2014) and citing Wall v. Kholi, 562 U. S. 545, 552 (2011)).

by a direct proceeding brought in the trial court. O.C.G.A. § 9-11-60(a); see also Dean v. Schreeder, 222 Ga. App. 426, 429 (1996).

9.

Here, nothing in the evidentiary record persuades this Court that the certified records and other orders from the Allegheny court are void on their face. Specifically, notwithstanding the Respondent's uncorroborated testimony, the records from 1999, 2002, and 2004—showing that the Respondent's probation was revoked and he was resentenced to additional years of probation—all indicate the Respondent was present in court for those proceedings. Thus, nothing indicates that the Allegheny court's orders were invalid, such that the court lacked jurisdiction over the Respondent. See Murphy v. Murphy, 263 Ga. 280, 282-83 (1993) (in context of O.C.G.A. § 9-11-60, construing "void on its face" as meaning a judgment in which either personal or subject matter jurisdiction is lacking). And regarding any collateral attack on the validity of the guilty plea in 1996, the Court recognizes the longstanding "presumption of regularity" with respect to final judgments, including criminal convictions. See Lejeune v. McLaughlin, 296 Ga. 291, 294-95 (2014). The burden would rest on the Respondent to overcome that presumption. Id. (referring to burden of proof in context of writ of habeas corpus). Yet apart from his uncorroborated testimony, the Respondent offered no probative evidence that his plea was recorded incorrectly by the Allegheny court.

10.

Even assuming, *arguendo*, that this Court found the Allegheny court's orders to be void on their face (which it does not here), the Election Code itself speaks against looking behind the orders of conviction, sentencing, and probation revocation. Code Section 21-2-216(b) specifies that a person **"*convicted*"** of a felony involving moral turpitude may not register to vote, remain

registered, or vote "except upon ***completion of the sentence***." (Emphasis added.) The provision does not make an exception for any *invalid* outstanding convictions or sentences, nor does it require either the Board or this Court to determine the validity of the underlying felony sentence when enforcing the provision. See McBrayer v. Scarbrough, 317 Ga. 387, 393 (2023) (stating that statutes are given plain meaning when text is clear and unambiguous); Abdulkadir v. State, 279 Ga. 122, 124 (2005) ("A court of law is not authorized to rewrite the statute by inserting additional language that would expand its application . . . ."). The Georgia Supreme Court reached a similar conclusion in the context of a felony-murder prosecution, in which the related felony was possession of a firearm as a convicted felon. In Scott v. State, the murder defendant attacked the conviction that led him to be considered a "convicted felon," arguing that he had not been represented by counsel when earlier convicted of felony burglary. 250 Ga. 195, 198 (1982). The Supreme Court rejected that argument, noting that the statute preventing convicted felons from possessing firearms "plainly purports to prevent *all* convicted felons from possessing a firearm until they are pardoned from their felony convictions . . . or otherwise relieved of this disability . . . ." Id. (emphasis in original).[16] Scott cites to the U.S. Supreme Court's decision in Lewis v. United States, which analyzed a similar issue. Id. at 198. In Lewis, the Supreme Court held that the federal law prohibiting felons from possessing a firearm "focus[es] not on reliability [of the prior felony conviction], but on the mere fact of conviction . . . in order to keep firearms away from potentially dangerous persons . . . ." 445 U.S. 55, 67 (1980).

11.

Turning to his restoration of rights in 2017, the Respondent argued that the Georgia Board of Pardons and Paroles has already concluded that he had completed his felony sentences by 1999.

[16] The referenced statute is former O.C.G.A. § 26-2914. The current statute is O.C.G.A. § 16-11-131.

To the extent the Respondent contends the Pardons and Paroles' decision is binding on this Court and precludes any contrary finding, such argument is rejected. First, while the 2017 order lists the Allegheny criminal case as being "closed" in 1999, it remains unclear what "closed" means in this context. The order then states that the Respondent's sentence had been "served" or was "expired," yet it never states the date of completion or expiration.[17] Moreover, it is not clear from the evidentiary record what Pardons and Paroles relied upon when making its decision, apart from the information provided by the Respondent on his application and during his interview. Second, assuming, *arguendo*, that the Pardons and Paroles' order included a finding as to precisely when the Respondent completed his felony sentence (which it does not), preclusion doctrines would not apply here. To start, the doctrine of res judicata is limited to identical causes of action. See Blackwell v. Ga. Real Estate Com, 205 Ga. App. 233, 233-34 (1992). That is not the case here, as this Court is presiding over an enforcement action under the Election Code, while Pardons and Paroles addressed a restoration of certain enumerated rights, none of which were the right to vote. As for the doctrine of collateral estoppel, administrative decisions may have a preclusive effect in subsequent judicial proceedings only if the following conditions are met:

> (1) both proceedings involve the same parties or their privies; (2) the issue was actually litigated and determined in the first proceeding; (3) the determination was essential to the judgment in the first proceeding; and (4) the party against whom the doctrine is asserted had a full opportunity to litigate the issue in question.

Malloy v. State, 293 Ga. 350, 354-55 (2013). Yet at a minimum, it does not appear that Pardons and Paroles "actually litigated" the question of when the Respondent had completed his felony sentence. Pardons and Paroles is charged with exercising its constitutional "power of executive

[17] Regulations promulgated by Pardons and Paroles specify that restoration of rights requires an applicant to have completed his sentences and to have been free of "supervision and/or criminal involvement" for at least two consecutive years after the sentences' completion and at least two consecutive years immediately prior to applying for restoration of rights. Ga. Comp. R. & Regs. 475-3-.10(6). Based on the requirements alone, it remains possible that the Respondent could have completed his sentences as late as 2015 and still have been eligible for restoration of rights.

clemency," which includes "remov[ing] disabilities imposed by law" upon a party's application. GA. CONST., art. IV, § II, para. II(a); Ga. Comp. R. & Regs. 475-2-.01, 475-2-.10(6).[18] Nothing in either the evidentiary record or the controlling law suggests that in making restoration-of-rights decisions, Pardons and Paroles utilizes a procedure "similar to those employed by courts" and "whose formality approximates those of courts." Lilly v. Heard, 295 Ga. 399, 402-03 (2014) (addressing requirement for application of collateral estoppel to prior administrative decisions) (quotation omitted). For instance, the regulation related to restoration of rights makes no reference to a formal hearing or proceeding once an application is submitted; in fact, with regard to the restoration of firearm rights, the regulation expressly state the decision will be "based on the written record and will ***not*** include a hearing." Ga. Comp. R. & Regs .475-3-.10(4), (6) (emphasis added). The 2017 order also refers to an "investigation" as opposed to an investigation, and the Respondent testified only to attending an "interview." Furthermore, neither the 2017 order nor the controlling legal authority mention the application of a particular standard of proof for restoration of rights, much less whether that standard is higher or lower than preponderance of the evidence. See, e.g., O.C.G.A. § 42-9-43(a); Ga. Comp. R. & Regs. 475-3-.10(6). Accordingly, for the above reasons, the Court cannot rely on the Pardons and Paroles order in determining whether the Respondent's felony sentence had been completed, for purposes of this adjudication.

C. Sanctions

12.

Having concluded, by a preponderance, that the Respondent violated the Election Code when he registered to vote in 2008 and later voted nine times between 2008 and 2010, the Court

[18] See also O.C.G.A. § 42-9-45(c) (authorizing Pardons and Paroles to promulgate rules on the granting of request to remove disabilities imposed by law); § 42-9-42(a) (requiring a majority vote of board before granting any clemency).

now turns to the question of sanction. The controlling law does not lay out particular factors this Court must consider when making its assessment. That said, the undersigned is mindful that the disability in question—a prohibition against voting for those convicted of felony crimes of moral turpitude until the completion of the felony sentence—has been enshrined in the Georgia Constitution. See GA. CONST., art. IV, § II, para. II(a). Additionally, courts have long recognized the importance of voter-registration laws, which is "'to insure and sustain the integrity of public elections.'" Johnson v Byrd, 263 Ga. 173, 174 (1993) (quoting Leverette v. Leonard, 192 Ga. 359, 364 (1941)). See also Crawford v. Marion Cnty. Election Bd., 128 S. Ct. 1610, 1619 (2008) ("There is no question about the legitimacy or importance of the State's interest in counting only the votes of eligible voters."); Purcell v. Gonzalez, 549 U.S. 1, 4 (2006) ("A State indisputably has a compelling interest in preserving the integrity of its election process.") (quotations omitted); Timmons v. Twin Cities Area New Party, 520 U.S. 351, 364 (1997) (noting that states "certainly have an interest in protecting the integrity, fairness, and efficiency of their ballots and election processes as means for electing public officials").

13.

Several of the Respondent's arguments presented at the hearing appeared aimed at mitigation of any ordered sanctions. Primarily, he contends that his decision to register to vote in 2008, followed by his decisions to cast ballots in 2008 and 2010, were made on the good-faith belief that his felony sentences had been completed or otherwise resolved years earlier.

14.

As an initial matter, there is no heightened mens rea requirement for a finding of a violation of O.C.G.A. § 21-2-216(b). Moreover, should this Court accept the Respondent's explanations that he genuinely believed his felony sentence had resolved as early as 1996 or 1999, it would have

to discount such facts as (i) the Respondent conceding he was in court in March 1999, which resulted in an order revoking his probation, reinstating a three-year probation sentence, and ordering restitution payments; and (ii) the Allegheny court documenting that he was present in court in both 2002 and 2004, with the latter proceeding leading to a seven-year extension of his probation, through at least April 2011. To accept the Respondents' explanation that he had no knowledge of the court proceedings and subsequent orders from 2002 and 2004, this court would have to disregard the Allegheny court's certified records indicating that the Respondent *did* appear. To accept the Respondent's explanation that he believed his criminal sentence had been converted to a civil judgment, the Court would need to overlook the fact that *none* of the certified orders or records from the Allegheny court mention such a conversion. And lastly, to accept that the Respondent's grasp of legal proceedings was so unsophisticated that he did not understand the basic terms of his probation in 1996 or his probation revocation in 1999, this Court would need to disregard the Respondent's self-described experience as a businessman handling complex projects as well as million-dollar contracts and budgets. Based on the above, and upon careful consideration of the evidence in its totality the Court does not find the Respondent's explanations credible or convincing.[19] At the very least, even if the Court accepts he did not know about his felony sentences, the record before this Court demonstrates that he should have known.

15.

Accordingly, after considering the evidence presented, and having weighed the importance in ensuring the integrity of Georgia's voting process, the Court concludes the following sanctions are appropriate: a cease-and-desist order for the Respondent to cease any and all violations of

[19] See State v. Brown, 278 Ga. App. 457, 460 (2006) (holding that factfinder is authorized to make credibility determinations).

O.C.G.A. § 21-1-33.1;[20] a $500.00 civil penalty for registering to vote while still serving a sentence for a conviction of a felony crime of moral turpitude; $500.00 in civil penalties for each instance the Respondent voted in 2008 and 2010 while serving a sentence for a conviction of a felony crime of moral turpitude, for a total of $4,500.00 ($500.00 x 9); a public reprimand; and an order to pay the Board's investigation costs of $375.14. See O.C.G.A. § 21-2-33.1(1)-(3), (6).[21]

IV. DECISION

In accordance with the foregoing Findings of Fact and Conclusions of Law, the Court **AFFIRMS** the Petitioner's decision to sanction the Respondent for violating O.C.G.A. § 21-2-216(b). The following sanctions shall be imposed against the Respondent, pursuant to O.C.G.A. § 21-2-33.1:

- The Respondent shall pay civil penalties totaling $5,000.00 to the Board;
- The Respondent shall cease and desist from committing any further violations of O.C.G.A. § 21-2-216(b);
- The Respondent shall be publicly reprimanded for his conduct; and
- The Respondent shall pay the Board $375.14 in investigative costs.

SO ORDERED, this 27th day of March, 2024

Lisa Boggs

Lisa Boggs
Administrative Law Judge

[20] In issuing this sanction, the Court makes no findings as to whether the Respondent has continued to violate O.C.G.A. § 21-1-33.1 following his violations in 2010.

[21] Any other argument raised by the Respondent in this proceeding and not otherwise addressed herein has been considered and is rejected.