

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

BILLY JACOBS JR.,	:	
Petitioner,	:	
	:	
v.	:	Docket No.: 2107129-OSAH-PSC-APP-76-
	:	Howells
PROFESSIONAL STANDARDS	:	
COMMISSION,	:	
Respondent.	:	

FINAL DECISION

The Professional Standards Commission (“Commission”) issued Petitioner a teaching certificate but found probable cause to issue a reprimand at the same time it issued the certificate. Petitioner appealed the Commission’s decision. The video hearing in this matter was held on January 14, 2021. Petitioner was represented by Charles E. Cox, Jr., Esq. Respondent was represented by Amy Cowan, Esq.

After consideration of the evidence and the arguments of the parties, and for the reasons stated below, the Commission’s decision is **AFFIRMED**.

Findings of Fact

1.

Petitioner applied for a teaching certificate on September 19, 2018. (Joint Stipulations 1, 2.)

2.

On the application, Petitioner answered "yes" to a personal affirmation question regarding criminal history. The personal affirmation question stated as follows:

7. 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?

(Joint Stipulation 2.)

3.

Petitioner was charged with theft by shoplifting after an arrest on November 26, 2002. Nolle prosequi was entered in the case on April 16, 2003. Case No. 2003-C-066256 (State Court of Houston County, April 16, 2003). (Joint Stipulation 3.)

4.

On June 24, 2003, Petitioner entered a not guilty plea to felony theft by receiving stolen property. On July 16, 2003, nolle prosequi was entered in the case after restitution was paid. *State v. Billy Jacobs, Jr.*, Case No. 2003-C-30261L (Houston County Superior Court, July 16, 2003). (Joint Stipulation 4.)

5.

In 2009, Petitioner was charged with felony theft by conversion. On August 4, 2009, nolle prosequi was entered in the case after restitution was paid. *State v. Billy Jacobs, Jr.*, Case No. 2009-C-41242L (Houston County Superior Court, August 4, 2009). (Joint Stipulation 5.)

6.

On November 17, 2010, Petitioner entered a guilty plea to misdemeanor theft by taking. *State v. Billy Jacobs, Jr.*, Case No. 2010–C-43743 (Houston County Superior Court, November 17, 2010). (Joint Stipulation 6.)

7.

Based upon the facts and circumstances set forth above, the Commission found probable cause for a reprimand. In particular, the Commission decided that alleged conduct of Petitioner violated Rule 505-6-.01(3)(a) [Legal Compliance – Criminal Acts] (2018) and Rule 505-6-.01(5)(a)(7) [Good and Sufficient Cause] (2018) of the Rules of the Professional Standards Commission. (Statement of Matters Asserted ¶ 7; Petitioner’s Response to Statement of Matters Asserted ¶ 7.)

8.

Paul Phillips is an investigator with the Ethics Division of the Georgia Professional Standards Commission. He has been employed in that capacity for approximately five and a half years. Mr. Phillips testified that whenever an applicant answers “yes” to a personal affirmation question, the Commission launches an investigation. Mr. Phillips conducted the investigation regarding Petitioner’s past criminal history. Upon completion of his investigation, he reported his findings to the Commission. (Testimony of Paul Phillips.)

9.

It is Mr. Phillips’ understanding that in the past, when faced with multiple criminal offenses within a ten to fifteen-year time span, the Commission would routinely deny any application for a certificate. However, more recently, to give individuals a second chance, the Commission has, in some cases, granted a certificate and issued a reprimand simultaneously. In

Mr. Phillips' experience, this usually happens when the criminal history is remote or there were only one or two minor offenses. Mr. Phillips was surprised when the Commission decided to grant the Petitioner a certificate and administer a reprimand. In his experience, the Commission usually denies a certificate when there are more than three felonies or crimes of moral turpitude within a fifteen-year span. (Testimony of Paul Phillips.)

Conclusions of Law

1.

Petitioner as an applicant bears the burden of proof. Ga. Comp. R. & Regs. 616-1-2-.07. The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21.

2.

The Commission has adopted a Code of Ethics for Educators, which defines the professional behavior of educators and serves as a guide to ethical conduct. Ga. Comp. R. & Regs. r. 505-6-.01(1). Furthermore, the Code of Ethics for Educators defines unethical conduct which justifies disciplinary action against educators¹. *Id.* Importantly, the Code “provides guidance for protecting the health, safety, and general welfare of students.” *Id.* The Commission may deny a certificate for the same grounds that it may sanction an educator who currently holds a certificate.² Ga. Comp. R. & Regs. 505-6-.01(5)(a). Here, the Commission asserted that Petitioner violated Rule 505-6-.01(3)(a) [Legal Compliance] and Rule 505-6-.01(5)(a)(7) [any other good and sufficient cause that renders an educator unfit].

¹ The term “educator” includes teachers, school or school system administrators, or other education personnel who hold a certificate or who have applied for but have not yet received a certificate. Ga. Comp. R. & Regs. r. 505-6-.01(2)(d) (2018).

² The term “certificate” includes “any teaching, service, or leadership certificate, license, or permit” issued by the Commission. Ga. Comp. R. & Regs. 505-6-.01(2)(b)(2018).

3.

The Commission cited Commission Rule 505-6-.01(3)(a) as a ground for the issuance of a reprimand. Standard 1 of the Code of Ethics for Educators states, in pertinent part:

(a) Standard 1: 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.

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

4.

As noted in the Findings of Fact, Petitioner was charged with theft crimes in 2002, 2003, 2009, and 2010. A nolle prosequi was entered as to the charges regarding the 2002 theft by shoplifting, the 2003 felony theft by receiving stolen goods, and the 2009 theft by conversion. However, Petitioner was required to pay restitution for the 2003 and 2009 charges. He pleaded guilty to the 2010 misdemeanor theft by taking. Theft is a crime of moral turpitude. *Sapp v. State*, 271 Ga. 446, 448 (1999); *In re Lenoir*, 265 Ga. 403 (1995). Therefore, Petitioner's previous conduct is a violation of Standard 1 of the Code of Ethics. Violation of the Code of Ethics amounts to unethical conduct and grounds upon which the Commission may deny a certificate or issue a sanction. Ga. Comp. R. & Regs. 505-6-.01(5)(a)(1).

5.

Petitioner, through his counsel, argued that the Commission does not have the authority to grant Petitioner a certificate and simultaneously reprimand him based on past criminal conduct. The basis of the Petitioner's argument is the definition of "educator," which includes those who have a certificate and those who have applied for a certificate. Ga. Comp. R. & Regs.

r. 505-6-.01(2)(d). Thus, according to Petitioner, because he did not apply for his certificate until 2018, he was not an educator at the time he committed any crimes (i.e., between 2002 and 2010). While this argument may have some surface appeal, the undersigned ultimately concludes that it is without merit and not in keeping with the overall purpose of the Code of Ethics.

6.

The rules are clear. The Commission has the authority to deny a certificate to an applicant who has violated the Code of Ethics. Thus, any such violation would have to occur before the individual received a certificate. As noted above, the Code of Ethics “provides guidance for protecting the health, safety, and general welfare of students.” Ga. Comp. R. & Regs. 505-6-.01(1). Given this purpose, it is not likely that the legislature or the Commission intended to limit the Commission’s ability to deny a certificate for criminal conduct to those crimes committed during the time between the application and the issuance of a certificate. To do so would severely hamstring the Commission from protecting the health, safety, and welfare of students. One could envision a scenario where an applicant had committed heinous crimes for years up to, and including, the day before he submitted his application, but then committed no crimes between the time of the application and when his certificate was issued. To give such an individual a certificate would not serve the purpose of the Code of Ethics.

7.

A major purpose of the statutes and regulations governing the professional standards of educators is to “attract the highest possible number of qualified personnel to become educators in Georgia.” O.C.G.A. § 20-2-982(2). If the Commission was limited only to denying a certificate for an individual who had a relatively remote criminal history, the pool of qualified personnel would be limited. The Commission’s ability to issue a certificate and reprimand an educator for

his past conduct strikes a balance between the goals of protecting the health, safety, and welfare of students and attracting qualified educators. For these reasons, the undersigned concludes that the Commission is entitled to issue a certificate and simultaneously issue a reprimand based on crimes committed before an application for a certificate.


8.

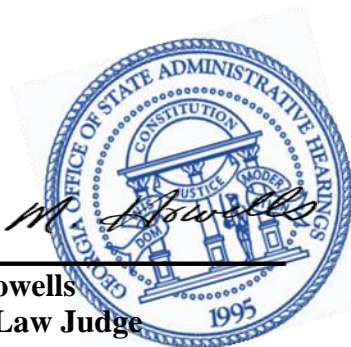
Notwithstanding, even if Rules 505-6-.01(2)(d) and 505-6-.01(3)(a) do not authorize the Commission to issue a certificate and a reprimand at the same time, for crimes committed before an application was submitted, which the undersigned has not concluded, the Commission also cited Rule 505-6-.01(5)(a)(7) as a ground for its decision to issue the reprimand. Rule 505-6-.01(5)(a)(7) gives the Commission the authority to deny or sanction a certificate for “any other good and sufficient cause that renders an educator unfit for employment as an educator.” Ga. Comp. R. & Regs. 505-6-.01(5)(a)(7). This provision cannot be seen to have a temporal limitation. Rather, when Petitioner applied for a certificate, he became subject to the Commission’s rules. Thus, his history of crimes of moral turpitude becomes a relevant cause for concern. Issuing a certificate and a reprimand serves the goals of protecting students and attracting qualified personnel.

Decision

In accordance with the foregoing Findings of Fact and Conclusions of Law, the Commission’s decision to issue Petitioner a certificate and a reprimand for his past criminal conduct is **AFFIRMED**.

SO ORDERED this 3rd day of February, 2021.


Stephanie M. Howells
Administrative Law Judge





NOTICE OF FINAL DECISION

Attached is the Final Decision of the administrative law judge. The Final Decision is not subject to review by the referring agency. O.C.G.A. § 50-13-41. A party who disagrees with the Final Decision may file a motion with the administrative law judge and/or a petition for judicial review in the appropriate court.

Filing a Motion with the Administrative Law Judge

A party who wishes to file a motion to vacate a default, a motion for reconsideration, or a motion for rehearing must do so within 10 days of the entry of the Final Decision. Ga. Comp. R. & Regs. 616-1-2-.28, -.30(4). All motions must be made in writing and filed with the judge's assistant, with copies served simultaneously upon all parties of record. Ga. Comp. R. & Regs. 616-1-2-.04, -.11, -.16. The judge's assistant is Kevin Westray - 404-656-3508; Email: kwestray@osah.ga.gov; Fax: 404-656-3508; 225 Peachtree Street NE, Suite 400, South Tower, Atlanta, Georgia 30303.

Filing a Petition for Judicial Review

A party who seeks judicial review must file a petition in the appropriate court within 30 days after service of the Final Decision. O.C.G.A. §§ 50-13-19(b), -20.1. Copies of the petition for judicial review must be served simultaneously upon the referring agency and all parties of record. O.C.G.A. § 50-13-19(b). A copy of the petition must also be filed with the OSAH Clerk at 225 Peachtree Street NE, Suite 400, South Tower, Atlanta, Georgia 30303. Ga. Comp. R. & Regs. 616-1-2-.39.