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Professional Standards and
Practices Commission

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION
PROFESSIONAL STANDARDS AND PRACTICES COMMISSION

DEPARTMENT OF EDUCATION :
COMMONWEALTH OF PENNSYLVANIA, :
Petitioner :
 : DOCKET NO. DI-91-17
v. :
 :
ROBERT P. RUSSELL, Respondent :

PROPOSED REPORT
WITHOUT A HEARING

This matter comes before the hearing officer pursuant to 22 Pa. Code §233.13 (e)(1)(iv) providing that if a professional educator timely responds in writing to the notice of charges, but waives the right to an evidentiary hearing by failing to expressly request a hearing, a hearing officer shall be appointed by the Professional Standards and Practices Commission who will accept as true the allegations of fact contained in the Notice of Charges and who will prepare a proposed report without a hearing. The hearing officer also has jurisdiction under 1 Pa. Code §35.37 to issue a proposed order without a hearing where the respondent failed to deny the specific fact of his conviction of Murder I, a crime involving moral turpitude, which was enumerated in the notice of charges.

STATEMENT OF THE CASE

1. Robert P. Russell ("Respondent") was issued a permanent teaching certificate endorsed in the area of mentally and/or physically handicapped in May of 1979 by the Commonwealth of

Pennsylvania, Department of Education ("Petitioner").

2. In 1991, the Respondent was arrested for and subsequently convicted of Murder I in violation of 18 U.S.C. §1111.

3. In May, 1991, the Bureau of Teacher Preparation and Certification ("Bureau") received notice from the Berks County Intermediate Unit that Respondent had been convicted of the first degree murder of his wife.

4. By letter dated July 9, 1991, the Bureau requested that the United States District Court for the Eastern District of Virginia forward copies of all verdicts, judgments or sentences pertaining to Respondent.

5. On July 24, 1991, the Bureau received a letter from the United States Attorney and certified copies of the indictment against Respondent and the warrant for Respondent's arrest.

6. On August 22, 1991, Petitioner's Office of Chief Counsel received a certified copy of the judgment and sentence from the United States District Court, Eastern District of Virginia, finding Respondent guilty of Murder I, and sentencing Respondent to life imprisonment.

7. On September 10, 1991, the Secretary of Education issued to the Respondent a Notice of Charges pursuant to section 13(a) of the Teacher Certification Law, as amended, 24 P.S. §12-1263(a), seeking the revocation of his professional certification pursuant to 24 P.S. §12-1255(a)(11).

8. On or about September 27, 1991, by letter dated September 18, 1991, Respondent replied to the charges. The response did not deny that the Respondent had been convicted of Murder I, not did the Respondent specifically request a hearing.

9. On October 23, 1991, the Petitioner filed a Motion for Entry of Judgment on two alternative grounds. Based on Respondent's failure to specifically request a hearing or to deny that he had been convicted of a crime involving moral turpitude, Petitioner requested that the Professional Standards and Practices Commission consider the merits of the case without a hearing and issue a finding that the Respondent had been convicted of a crime of moral turpitude and an order directing the Petitioner to revoke Respondent's teaching certification. Alternatively, Petitioner requested that the Commission issue summary judgment in its favor and order the revocation of Respondent's teaching certificate under P.S. §12-1255(a)(11) based on Respondent's conviction of a crime of moral turpitude.

10. On February 4, 1992, the Commission appointed a hearing officer to make a recommendation to the Commission.

11. The Petitioner's brief was filed with the Commission and mailed to the Respondent on October 13, 1992.

12. The Respondent's brief was filed with the Commission and mailed to the Petitioner on October 26, 1992.

13. On November 5, 1992, Petitioner filed a reply letter brief with the Commission.

14. On November 17, 1992, Respondent filed a Traverse to Petitioner's Brief with the Commission.

II. FINDINGS OF FACT

The following findings of fact represent the factual allegations provided in Petitioner's Notice of Charges dated September 10, 1991 and are accepted as true by the hearing officer for the purposes of rendering this Proposed Report as provided by 22 Pa. Code §233.13 (e)(1)(iv).

1. Respondent holds a permanent teaching certificate endorsed in the area of mentally and/or physically handicapped issued in May of 1979 by the Commonwealth of Pennsylvania, Department of Education.

2. On May 3, 1991, Respondent was convicted of Murder I in violation of 18 U.S.C. §1111.

3. On August 2, 1991, Respondent was sentenced to life imprisonment by the United States District Court for the Eastern District of Virginia.

4. Respondent is presently serving his sentence of life imprisonment at the Federal Penitentiary in Lewisburg, Pennsylvania.

5. On September 10, 1991, the Department of Education filed a Notice of Charges with the Professional Standards and Practices Commission seeking revocation of Respondent's teaching certificate due to his conviction of Murder I, a crime of moral turpitude.

6. A certified copy of the judgment of the court was attached to the Notice of Charges.

7. The Notice of Charges specifically notified the Respondent of his right to request a hearing in writing. It also stated that the request must include specific admissions or denials of the assertions made in the Notice of Charges, as well as concise reference to the matters of law and facts relied upon.

8. Respondent timely replied to the Notice of Charges by letter dated September 18, 1991.

9. The September 18, 1991 response did not include a specific request for a hearing.

10. The September 18, 1991 response did not include a specific denial of the conviction of Murder I.

11. The September 18, 1991 response did not include a specific denial that the crime of Murder I is a crime of moral turpitude.

III. CONCLUSIONS OF LAW WITH DISCUSSION

1. Respondent failed to deny that he was convicted of Murder I in violation of 18 U.S.C. §1111 and that Murder I is a crime involving moral turpitude. Failure to deny the specific allegations in the Notice of Charges constitutes an admission, and the Commission may order the revocation of the Respondent's certification without a hearing.

The Notice of Charges dated September 10, 1991 which was served on the Respondent by the Department of Education specifically alleges that Respondent was convicted of the crime of Murder I in violation of 18 U.S.C. §1111 and that the crime of Murder I is a crime of moral turpitude. (See

the Department's Notice of Charges). The Notice of Charges also alleges that Respondent is a danger to the health, safety and welfare of the students of the Commonwealth. In accordance with 24 P.S. §12-1263(a), Respondent was informed of his right to contest the charges and to request a hearing. The Notice of Charges also states specifically:

You have a right to request a hearing, in writing, if you contest any assertion made in this notice. ...

Your request for a hearing must include specific admissions or denials of the assertions, as well as concise reference to the facts and matters of law relied upon. ...

Respondent replied to the Notice of Charges in a timely fashion. However, his response failed to specifically request a hearing in writing, or to deny that he had been convicted of Murder I and that Murder I is a crime of moral turpitude.

The Commission's bylaws provide, at 22 Pa. Code §233.13 (e)(1)(iv):

(iv) Right to an evidentiary hearing.

(B) If the professional educator timely responds in writing to the notice of charges but expressly waives the right to an evidentiary hearing ... or fails to comply with 1 Pa. Code S35:37, the Commission may appoint a hearing officer to conduct the proceedings as the Commission or its legal counsel might direct, or, upon motion of a participant, the Commission may proceed directly to consider the matter of discipline based upon the notice of charges, the response to the notice of charges and other documents as might be part of the formal record.

22 Pa. Code §233.13 (e)(1)(iv).

Section 35.37 of 1 Pa. Code Part II provides:

A person upon whom an order to show cause has

been served ... shall, if directed so to do, respond to the same by filing within the time specified in the order an answer in writing. The answer shall be drawn so as specifically to admit or deny the allegations or charges which may be made in the order, set forth the facts upon which respondent relies and state concisely the matters of law relied upon. Mere general denials of the allegations of an order to show cause which general denials are unsupported by specific facts upon which respondent relies, will not be considered as complying with this section and may be deemed a basis for entry of a final order without hearing ... on the ground that the response has raised no issues requiring a hearing or further proceedings. ...

1 Pa. Code §35.37.

In this instance, Respondent did not specifically request a hearing nor contest the fact of his conviction. His letter of September 18, 1991 in response to the Notice of Charges contains a general assertion of his innocence and states that he is unable to request a hearing because he is incarcerated and does not have access to legal representation. The Respondent's failure specifically to deny the allegations set forth in the Notice of Charges and to set forth the facts and the matters of law upon which he relies constitutes failure to comply with the provisions of 1 PA. Code §35.37. Accordingly, the hearing officer may proceed to issue a final order without hearing. 1 Pa. Code §35.37.

Indeed, in this instance, Respondent's failure to specifically deny his conviction of Murder I and that Murder I is a crime involving moral turpitude constitute admissions. Petitioner is seeking summary judgment and an order directing

revocation of Respondent's professional certification pursuant to 24 P.S. §12-1255(a)(11), involving mandatory revocation of an educator's certification upon conviction of a crime involving moral turpitude. Thus, the only issues that would be raised in a hearing are whether the Respondent was convicted of a crime and whether or not the crime is one involving moral turpitude.

Since the Respondent has admitted these allegations in his response to the Notice of Charges, no purpose would be served by conducting a further evidentiary hearing on these matters. Therefore, the Commission may order the revocation of the Respondent's professional certification without a hearing.

2. Petitioner has proven that Respondent has been convicted of Murder I, a crime of moral turpitude. Upon conviction of a crime of moral turpitude, the Professional Standards and Practices Commission must order the Department of Education to revoke a professional educator's teaching certification, 24 P.S. §12-1255(a)(11).

Petitioner seeks to have the Respondent's teaching certification revoked pursuant to the summary revocation procedure set forth in 24 P.S. §12-1255(a)(11). That section provides that the Pennsylvania Standards and Practices Commission is vested with the duty and granted the power to direct the Department of Education to revoke the certificate of any professional educator upon conviction of a crime or misdemeanor involving moral turpitude. While the Commission has discretion in some cases involving revocation of a teaching certification, in those instances involving

conviction of a crime of moral turpitude, revocation of the educator's professional certification by the Commission is mandated. 24 P.S. §12-1255(a)(11).

The revocation process is triggered by filing with the Commission a certified copy of the verdict or judgment or sentence of the court. In this instance, a certified copy of the indictment and sentence was filed with the Commission and attached to the Notice of Charges that was issued to the Respondent on September 10, 1991. (See the Department's Notice of Charges). Furthermore, in his response to the Notice of Charges, Respondent failed to deny that he had been convicted of Murder I. Thus, there is no doubt that Respondent was convicted of Murder I in violation of 18 U.S.C. §1111.

Whether or not such a crime constitutes an offense of moral turpitude is determined by the elements of the crime, not the underlying facts of the case. Startzel v. Commonwealth, Department of Education, 128 Pa. Commw. Ct. 110, ___, 562 A.2d 1005, 1007 (1989), alloc. denied, ___ Pa. ___, 574 A.2d 76 (1990). In this case, the specific statute that Respondent was convicted of violating was §1111 of Chapter 18 of the United States Crimes Code:

§1111. Murder

(a) Murder is the unlawful killing of a human being with malice aforethought. Every murder perpetrated by poison, lying in wait, or any other kind of willful, deliberate, malicious, and premeditated killing; ...

is murder in the first degree.

18 U.S.C. §1111.

Moral turpitude has been defined as:

The act of baseness, vileness, or the depravity in private and social duties which man owes to his fellow man, or to society in general, contrary to accepted and customary rule of right and duty between man and man. Black's Law Dictionary, Fifth Edition, (West Publishing Company, 1979.)

Certainly the willful and malicious taking of a human life violates every standard of morality and the customary rule of right and duty between man and man. Moreover, the offense of Murder I requires premeditation and malice aforethought, and thus renders it an especially base and vile act which is contrary to any type of acceptable social conduct. The Respondent's conduct was not only morally reprehensible, but also contrary to his mission as a professional educator. Clearly, his actions fall squarely within the definition of a crime involving moral turpitude for which revocation of his professional certification by the Commission is mandated. Further, because of the heinous nature of his crime, the hearing officer must conclude that the Respondent poses a danger to the health, safety and welfare of the students of the Commonwealth.

The Petitioner has clearly established that the Respondent was convicted of a crime involving moral turpitude, which mandates that the Commission order the revocation of his professional certification by the Department of Education. Accordingly, the hearing officer

shall recommend the granting of Petitioner's Motion for Entry of Judgment and the revocation of Respondent's professional teaching certification.

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PROPOSED ORDER

AND NOW, this 4th day of May, 1992, upon consideration of the Petitioner's Motion for Entry of Judgment, it is hereby recommended that the motion be GRANTED, and accordingly, the Respondent's certification as a teacher be revoked. It is further recommended that the Professional Standards and Practices Commission find Respondent to be a danger to the health, safety and welfare of students in the schools of this Commonwealth.

May 4, 1993


Kathleen Jones Spilker
Hearing Officer