

**COMMONWEALTH OF PENNSYLVANIA
PROFESSIONAL STANDARDS AND PRACTICES COMMISSION**

**DEPARTMENT OF EDUCATION,
Petitioner,**

v.

**JULIA S. AGNEW,
Respondent.**

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DOCKET NO. DI-19-187

MEMORANDUM AND ORDER

This matter is before the Professional Standards and Practices Commission (“Commission”) upon the Department of Education’s (“Department”) Motion for Summary Judgment. For the reasons set forth below, the Motion is granted.

On October 16, 2019, the Department filed a Notice of Charges alleging that Respondent has been convicted of a crime involving moral turpitude, namely Criminal Attempt-Theft by Unlawful Taking or Disposition-Movable Property (18 Pa.C.S. § 901(a)/18 Pa.C.S. § 3921(a)). Simultaneous with the filing of the Notice of Charges, the Department filed a Motion for Summary Judgment requesting the Commission to immediately revoke Respondent’s Pennsylvania educator certification¹ and employment eligibility pursuant to section 9b(a)(2) of the Educator Discipline Act (“Act”). Section 9b(a)(2) of the Act requires the Commission to direct the Department to revoke the certification and employment eligibility of an educator convicted of a crime involving moral turpitude or the attempt, solicitation or conspiracy to commit such a crime upon the filing of a certified copy of the verdict, judgment or sentence of the court with the

1. Respondent was issued a Day-to-Day Substitute Emergency Permit in the area of All Instructional Areas PK-12.

Commission. 24 P.S. § 2070.9b(a)(2). In support of its motion, the Department attached certified copies of the pertinent court documents reflecting Respondent's conviction.

On November 20, 2019, Respondent timely filed a Reply to Notice of Charges, Reply to Motion for Summary Judgment, and New Matter, wherein she admitted her conviction but asserted that her confession was coerced by police and that her guilty plea was involuntary. She also asserted that an adjudication on the Motion for Summary Judgment without a hearing would constitute a deprivation of her due process rights and raised the affirmative defenses of laches, statute of limitations, and estoppel. Respondent requested a hearing.

On December 3, 2019, the Department filed a Reply to Respondent's New Matter. By letter dated December 10, 2019, the Commission notified Respondent that her case would be considered at its January 13, 2020 meeting. On January 9, 2020, Respondent filed a motion requesting that consideration of her case by the Commission be postponed, that a hearing officer be appointed to conduct an evidentiary hearing, and, alternatively, that any adverse decision be stayed pending an appeal to the Commonwealth Court. The Department filed a response in opposition to Respondent's motion. The Commission heard oral argument as scheduled on January 13, 2020.

As noted above, once the Commission receives a certified copy of a conviction of a crime of moral turpitude, it is bound by section 9b(a)(2) of the Act to revoke an educator's certification and employment eligibility. 24 P.S. § 2070.9b(a)(2). The Commission has defined moral turpitude in relevant part as follows:

(a) *Definition.* Moral turpitude includes the following:

(1) That element of personal misconduct in the private and social duties which a person owes to his fellow human beings or to society in general, which characterizes the act done as an act of baseness, vileness or depravity, and contrary to the accepted and customary rule of right and duty between two human beings.

(2) Conduct done knowingly contrary to justice, honesty or good morals.

22 Pa. Code § 237.9(a)(1)-(2). The Commonwealth Court has similarly defined moral turpitude as “anything done knowingly contrary to justice, honesty or good morals.”

Gombach v. Dep’t, Bureau of Comm’ns, Elections & Legislation, 692 A.2d 1127, 1130 (Pa. Cmwlth. 1997). The determination of whether a crime involves moral turpitude is based solely upon the elements of the crime. The facts underlying the charges are not relevant to the issue of moral turpitude. 22 Pa. Code § 237.9(b); Startzel v. Commonwealth, Department of Education, 652 A.2d 1005, 1007 (Pa. Cmwlth.1989).

Here, the Department has presented the Commission with certified court records of Respondent’s conviction for Criminal Attempt-Theft by Unlawful Taking or Disposition-Movable Property. Section 3921(a) of the Crimes Code provides: “A person is guilty of theft if he unlawfully takes, or exercises unlawful control over, movable property of another with intent to deprive him thereof.” 18 Pa.C.S. § 3921(a). The deprivation or taking of another’s property without authorization is clearly “contrary to the accepted and customary rule of right and duty” and “conduct done knowingly contrary to justice, honesty or good morals.” 22 Pa. Code § 237.9(a)(1)-(2). The Commonwealth Court has held that crimes involving theft are crimes of moral turpitude. See Krystal Jeep Eagle, Inc. v. Bureau of Prof’l & Occupational Affairs, 725 A.2d 846 (Pa. Cmwlth. 1999) (theft by deception and theft by failure to make required disposition

of funds constitute crimes involving moral turpitude for purposes of statute allowing Board of Vehicle Manufacturers, Dealers, and Salespersons to revoke vehicle dealer license); Ancharski v. Bureau of Prof'l & Occupational Affairs, State Bd. of Nursing (Pa. Cmwlth. No. 1765 C.D. 2010, filed June 21, 2011) (upholding the nursing board's determination that a nurse's conviction for theft by unlawful taking or disposition constituted a crime of moral turpitude). Moreover, crimes of which fraud is an ingredient have always been regarded as involving moral turpitude. Moretti v. State Board of Pharmacy, 277 A.2d 516 (Pa. Cmwlth.1971); *citing* Jordan v. DeGeorge, 341 U.S. 223, 71 S.Ct. 703 (1951) (fraud is the touchstone of moral turpitude). Accordingly, the Commission concludes that Theft by Unlawful Taking or Disposition constitutes a crime involving moral turpitude.

Notably, Respondent does not argue that Theft by Unlawful Taking or Disposition is not a crime involving moral turpitude. Rather, Respondent opposes summary judgment on two grounds. First, Respondent argues that she should be granted a hearing so she can place into the record evidence attacking her confession and subsequent guilty plea. This argument is without merit. Respondent may not challenge her conviction in this disciplinary proceeding. Burnworth v. State Board of Vehicle Manufacturers, Dealers and Sales Persons, 589 A.2d 294 (Pa. Cmwlth. 1991). The Commission is bound by her guilty plea.

Second, Respondent argues that section 9b(a)(2) of the Act violates due process because it creates an irrebuttable presumption that all educators who have been convicted of crimes of moral turpitude should have their educator certification and employment eligibility revoked. Respondent relies principally on the Commonwealth

Court's decision in Peake v. Commonwealth, 132 A.3d 506 (Pa. Cmwlth. 2015).

Respondent's reliance on Peake is misplaced. Unlike the statutory conviction-based lifetime employment ban at issue in Peake, the Act provides a mechanism by which educators can seek reinstatement of their revoked teaching certificates. Pursuant to section 16 of the Act, the Commission shall reinstate a revoked certificate upon petition by the educator if the Commission determines that reinstatement would be just and proper. 24 P.S. § 2070.16. For purposes of determining whether it would be just and proper to reinstate a certificate, the Commission considers several factors that bear upon the educator's fitness to teach. Id. The Commonwealth Court has determined that this two-step decertification/reinstatement process comports with due process. Startzel v. Dep't of Educ., 562 A.2d 1005, 1007-08 (Pa. Cmwlth. 1989); *See also* Bowalick v. Dep't of Educ., 840 A.2d 519, 522 (Pa. Cmwlth. 2004) (revocation of a teaching certificate on summary judgment is appropriate upon proof of a conviction of a crime of moral turpitude); *citing* Kinniry v. Professional Stds. & Practices Comm'n, 678 A.2d 1230 (Pa. Cmwlth. 1996). Accordingly, Respondent's argument that she has been denied due process is without merit.

We can grant summary judgment when, after examining the whole record in the light most favorable to the non-moving party, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Snyder v. Department of Environmental Resources, 588 A.2d 1001 (Pa. Cmwlth. 1991). In this case, there is no genuine issue as to any material fact and the Department is entitled to judgment in

its favor as the Act mandates revocation.² Therefore, we will grant the Department's Motion for Summary Judgment.

Finally, Respondent requests that the revocation of her educator certification and employment eligibility be stayed pending appeal of this decision to the Commonwealth Court. However, our General Assembly has determined that in those cases where an educator is convicted of an offense compelling revocation under section 9b of the Act, an appeal from the Commission's adjudication will not delay the imposition of discipline. 24 P.S. § 2070.15. Therefore, the revocation of Respondent's certification and employment eligibility will be effective immediately.

Accordingly, we enter the following:

2. As noted above, in her response, Respondent asserted the affirmative defenses of statute of limitations, laches, and estoppel. Initially, we note that the Act provides no statute of limitations. Furthermore, Respondent failed to plead any facts whatsoever to support her claims of laches and estoppel. These naked affirmative defenses are violative of section 35.37 of the General Rules of Administrative Practice and Procedure, which requires a respondent to set forth the facts upon which a defense relies. 1 Pa. Code § 35.37. Respondent's failure to satisfy the requirements of section 35.37 is a basis for a final order without a hearing. Id.

ORDER

AND NOW, this 10th day of February 2020, upon consideration of the Motion for Summary Judgment filed by the Department of Education, and the response thereto, it is hereby ORDERED that the educator certification and eligibility to be employed as a charter or cyber charter school staff member or a contracted educational provider staff member of Respondent JULIA S. AGNEW shall be REVOKED by the Department pursuant to 24 P.S. § 2070.9b(a)(2). This Order is effective IMMEDIATELY.

PROFESSIONAL STANDARDS AND
PRACTICES COMMISSION

By: 

Myron Yoder
Chairperson Pro Tempore

Attest: 

Shane F. Crosby
Executive Director

Date Mailed: February 10, 2020