

As required, the Department mailed copies of the Notice of Charges and Motion for Summary Judgment to Respondent at his last-known address. Respondent did not file an answer to either pleading. However, on November 3, 2020, the Commission received a letter from Respondent's daughter enclosing an earlier letter she had addressed to the Department explaining the circumstances surrounding Respondent's conviction.

The Commission heard oral argument at its regularly scheduled meeting on January 11, 2021. Respondent was not present. Respondent's daughter appeared and read from her letter.

SUMMARY JUDGMENT STANDARD

Summary Judgment is appropriate only 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).

MATERIAL FACTS

The material facts are not in dispute. On October 9, 2017, Respondent was convicted of Theft by Unlawful Taking or Disposition, 18 Pa.C.S. § 3921(a), in Erie County, Pennsylvania.

DISCUSSION

The Department seeks the revocation of Respondent's certificate and employment eligibility pursuant to section 9b(a)(2) of the Educator Discipline Act ("Act"). 24 P.S. § 2070.9b(a)(2). That section mandates, in relevant part, that the Commission shall direct the Department to revoke the certificate and employment eligibility of an

educator convicted of a crime involving moral turpitude upon the filing of a certified copy of the verdict, judgment or sentence of the court with the Commission. Id.¹ The Commission's regulations define 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. Similarly, the Commonwealth Court has defined moral turpitude as "anything done knowingly contrary to justice, honesty, or good morals." Gombach v. Department of State, Bureau of Comm'ns, Elections & Legislation, 692 A.2d 1127, 1130 (Pa. Cmwlth. 1997). A crime of moral turpitude requires a reprehensible state of mind or *mens rea*. Bowalick v. Commonwealth, 840 A.2d 519, 523-24 (Pa. Cmwlth. 2004). Crimes in 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).

Here, the Department has presented the Commission with certified court records of Respondent's conviction for Theft by Unlawful Taking or Disposition.² The

1. The term conviction includes a plea of guilty or nolo contendere. 24 P.S. § 2070.9b(a)(2).

2. Theft by Unlawful Taking or Disposition is defined in pertinent part as follows:

(a) *Movable property.* — 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.

Commission has previously determined that Theft by Unlawful Taking or Disposition constitutes a crime of moral turpitude. See Dep't of Education v. Makarevich, PSPC Docket No. DI-05-02. Certainly, this crime requires conduct "contrary to the accepted and customary rule of right and duty," 22 Pa. Code § 237.9(a)(1), and conduct "done knowingly contrary to justice, honesty or good morals," 22 Pa. Code § 237.9(a)(2), and thus a "reprehensible state of mind or *mens rea*." Bowalick, 840 A.2d at 524. Fraud is also an essential ingredient of this crime. The Commonwealth Court has also recognized 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 received); Ancharski v. Bureau of Prof'l & Occupational Affairs, State Bd. of Nursing (Pa. Cmwlth. No. 1765 C.D. 2010, file June 21, 2011) (theft by unlawful taking or disposition); Spence v. Bureau of Prof'l & Occupational Affairs (Pa. Cmwlth. No. 1692 C.D. 2009, filed March 22, 2010) (theft by unlawful taking or disposition).³

In her letter, Respondent's daughter states that Respondent's health has been declining for several years and that he is often confused and forgetful. On the day in question, she states that Respondent found a wallet on the floor of a restaurant and carried it to his car. She further states that the following day, Respondent returned to the restaurant with the wallet and its contents to see if anyone had reported it lost.⁴

18 Pa.C.S. § 3921(a).

3. Ancharski and Spence are cited herein for their persuasive value pursuant to 210 Pa. Code § 69.414(a).

4. The criminal complaint alleged that Respondent took the wallet from the counter of a McDonald's restaurant, placed it in his pocket and walked away when the wallet's owner, an employee of the restaurant, momentarily placed the wallet on the counter and was busy assisting another employee. The

According to his daughter, Respondent was confused when he was accused of stealing the wallet but chose to plead guilty after being told if he did not, he would have to find an attorney. Respondent did not do anything, she asserts, “knowingly contrary to justice, honesty, or good morals” so as to constitute a crime involving moral turpitude. It is well settled that a criminal conviction may not be challenged in a subsequent professional disciplinary proceeding. Burnworth v. State Bd. of Vehicle Mfrs, Dealers & Salespersons, 589 A.2d 294, 297 (Pa. Cmwlth. 1991). Moreover, the determination whether a crime involves moral turpitude is “based solely upon the elements of the crime.” 22 Pa. Code § 237.9(b); *See also* Startzel v. Commonwealth, Department of Education, 562 A.2d 1005, 1007 (Pa. Cmwlth.1989). The underlying facts or details of a conviction are not relevant to the issue of moral turpitude. Therefore, the Commission is bound by Respondent’s guilty plea.

Because Respondent has been convicted of a crime involving moral turpitude, the Commission must direct the Department to revoke Respondent’s certificate and employment eligibility. 24 P.S. § 2070.9b(a)(2); *See also* Bowalick, 840 A.2d at 522 (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, 1234 (Pa. Cmwlth. 1996).⁵

ORDER

AND NOW, this 17th day of February 2021, upon consideration of the Department

criminal complaint further alleged that Respondent removed the contents of the wallet and placed them in his garage and then began using the wallet as his own.

5. Pursuant to section 15 of the Act, an appeal shall not operate as a stay when the discipline is imposed under section 9b. 24 P.S. § 2070.15. Therefore, the revocation of Respondent’s certificate and employment eligibility will be effective immediately.

of Education's Motion for Summary Judgment, it is hereby ORDERED:

1. The Motion for Summary Judgment is Granted.
2. Pursuant to 24 P.S. § 2070.9b(a)(2), the Department is directed to revoke Respondent's certificate and eligibility to be employed as a charter or cyber charter school staff member or a contracted educational provider staff member effective on the date of this Order.
3. Respondent is not eligible to be employed in a school entity in a position requiring certification or as a charter or cyber charter school staff member or contracted educational provider staff member, or eligible for any certificate until his certificate and employment eligibility are reinstated in accordance with the Act.

PROFESSIONAL STANDARDS AND
PRACTICES COMMISSION

By:



Myron Yoder
Chairperson Pro Tempore



Attest:

Shane F. Crosby
Executive Director

Date Mailed: February 17, 2021