

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

DEPARTMENT OF EDUCATION,	:	
Petitioner,	:	
	:	
	:	
v.	:	DOCKET NO. DI-20-107
	:	
DONNA SHERBIN,	:	
Respondent.	:	

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

This matter is before the Professional Standards and Practices Commission (“Commission”) on a Notice of Charges and Motion for Summary Judgment filed by the Department of Education (“Department”). After consideration of the record in this matter and the applicable law, the Commission finds that summary judgment in favor of the Department is appropriate and enters this Order as follows:

BACKGROUND AND PROCEDURAL HISTORY

Donna Sherbin (“Respondent”) holds an Instructional II certificate in the areas of Elementary K-6 and Spanish PK-12. The Department initiated disciplinary proceedings against Respondent with the filing of a Notice of Charges on December 7, 2020. The Notice of Charges alleges that Respondent was convicted of Aggravated Assault. Certified copies of the pertinent court documents are attached to the Notice of Charges. Simultaneous with the filing of the Notice of Charges, the Department filed a Motion for Summary Judgment requesting that the Commission enter summary judgment in its favor and revoke Respondent’s certificate and employment eligibility based upon her conviction.

As required, the Department mailed copies of the Notice of Charges and Motion

for Summary Judgment to Respondent at her last-known address. In response, Respondent submitted three letters. In the letters, Respondent admits that she was convicted of Aggravated Assault, but maintains her innocence and alleges that she did not receive a fair trial. She also requests a hearing.¹

The Commission heard oral argument at its regularly scheduled meeting on January 11, 2021. Respondent was not present.

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 2, 2020, Respondent was convicted in the Court of Common Pleas of Luzerne County, Pennsylvania of, *inter alia*, Aggravated Assault, 18 Pa.C.S. § 2702(a)(4).

DISCUSSION

1. The Commission received the letters after the January 6, 2021 deadline for a response and after the January 11, 2021 meeting. However, even if the Commission were to treat Respondent's letters as a timely response to the Notice of Charges and Motion for Summary Judgment, Respondent would not be entitled to a hearing. The only question before the Commission is whether Respondent was convicted of Aggravated Assault, a fact that she does not dispute. While Respondent maintains that she is innocent of the charges and was wrongly convicted, 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). However, the Commission notes that Respondent's criminal conviction is on appeal. If the conviction is reversed, the Commission will direct the Department to immediately reinstate Respondent's certificate and employment eligibility pursuant to 24 P.S. § 2070.9b(a)(2) upon receipt of certified court documents showing that the conviction was reversed.

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 set forth in section 111(e)(1) through (3) of the Public School Code of 1949 or 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.²

Here, the Department has presented the Commission with certified court records of Respondent's conviction for Aggravated Assault, which is a crime set forth in section 111(e)(1) of the Public School Code of 1949 and a crime involving moral turpitude *per se*. 24 P.S. § 1-111(e)(1); 22 Pa. Code § 237.9(c)(1). Therefore, the Commission must direct the Department to revoke Respondent's certificates and employment eligibility.³ 24 P.S. § 2070.9b(a)(2); *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, 1234 (Pa. Cmwlth. 1996).

ORDER

AND NOW, this 17th day of February 2021, upon consideration of the Department of Education's Motion for Summary Judgment, it is hereby ORDERED:

1. The Motion is granted.

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

3. An appeal of the Commission's adjudication shall not operate as a stay if 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.

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.
4. In accordance with 24 P.S. § 2070.16(c), the Commission shall not reinstate Respondent's certificates and employment eligibility for the time period set forth in 24 P.S. § 1-111(e).

PROFESSIONAL STANDARDS AND
PRACTICES COMMISSION

By:



Myron Yoder
Chairperson Pro Tempore



Attest:

Shane F. Crosby
Executive Director

Date Mailed: February 17, 2021