

STATE OF NORTH CAROLINA
COUNTY OF FORSYTH

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13 EDC 11604

Isaac F. Pitts, Jr. Petitioner, v. North Carolina Department of Public Instruction Respondent.	<u>FINAL DECISION</u>
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This matter came on to be heard before Administrative Law Judge Beecher R. Gray on October 4, 2013, in High Point, North Carolina. In a consent order issued on January 8, 2014, the parties stipulated that the matter would be reassigned to Administrative Law Judge Craig Croom following Administrative Law Judge Gray's appointment as a Special Superior Court Judge for the State of North Carolina. Thereafter, this matter came on for a second day of hearing before Administrative Law Judge Craig Croom on February 19, 2014, in Raleigh, North Carolina. Both parties filed Proposed Final Decisions on June 9, 2014.

APPEARANCES

For the Petitioner: Stephon J. Bowens
 Bowens Law, PLLC
 3434 Edwards Mill Rd., Ste 112-254
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For the Respondent: Tiffany Y. Lucas
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ISSUE

Whether Petitioner was improperly denied a North Carolina teaching license?

APPLICABLE STATUTES AND RULES

N.C. Gen. Stat. § 115-296

16 N.C.A.C. 6C .0305
16 N.C.A.C. 6C .0312
16 N.C.A.C. 6C .0602

WITNESSES

For Petitioner: Isaac Pitts
John Simon

For Respondent: June Atkinson
Katie Cornetto
Jim Kirkpatrick

EXHIBITS ADMITTED INTO EVIDENCE

For Petitioner: Exhibits 1 – 2

For Respondent: Exhibits 1 – 5

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the Undersigned makes the following findings of fact. In making the findings of fact, the Undersigned has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witnesses, any interest, bias, or prejudice the witnesses may have, the opportunity for the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witnesses is reasonable, and whether the testimony is consistent with all other believable evidence in the case. Wherefore, the Undersigned makes the following Findings of Fact, Conclusions of Law and Final Decision:

FINDINGS OF FACT

1. Petitioner applied for a license to teach in North Carolina on or about January 31, 2013. On his license application, Petitioner indicated that he had been convicted of a crime other than a minor traffic violation. (Resp. Exhibit 2)

2. Upon request from the Department of Public Instruction (DPI) for a written explanation of the “incident[s]” resulting in criminal conviction and court documents indicating the disposition of the criminal case, Petitioner submitted a brief statement to DPI in which he indicated that he had “resolved all legal obligation to the State of North Carolina...by serving an active sentence and completing all probation stipulations.” Petitioner also submitted a six-page criminal background check to DPI. (Resp. Exhibit 2)

3. On January 20, 1984, Petitioner pled guilty to two misdemeanor breaking/entering charges in case numbers 83CR074075 and 83CR074076 for offenses that occurred on October 27, 1983. (Resp. Exhibit 2)

4. On December 4, 1984, Petitioner pled guilty to three misdemeanor trespass without a license charges in case numbers 84CR048871, 84CR048872 and 84CR048875 for offenses that occurred on November 8, 1984. (Resp. Exhibit 2)

5. On July 5, 2000, Petitioner pled guilty to five felony common law robbery charges in case numbers 90CRS033648, 90CRS033649, 90CRS033650, 90CRS033651 and 90CRS033736. (Resp. Exhibit 2).

6. On July 5, 2000, Petitioner pled guilty to a felony attempted common law robbery charge in case number 90CRS033737. (Resp. Exhibit 2).

7. Petitioner was over the age of 18 at the time of the commission of each of the offenses set forth in paragraphs 3-6 above. (T. p. 310).

8. Petitioner was called in to be interviewed by the Superintendent's Ethics Advisory Committee on or about March 15, 2013 to discuss his teaching license application. The Superintendent's Ethics Committee is made up of professional educators appointed by Superintendent June Atkinson to review applications for a teaching license where the applicant has indicated he or she has a prior conviction and/or has had a license revoked or suspended. (T. p. 8).

9. Petitioner was interviewed by members of the Ethics Committee regarding the circumstances surrounding his arrests and criminal convictions. (T. pp. 12-17) Petitioner admitted during the interview that he had pled guilty to charges of breaking and entering and robbery, and that he had served approximately three years in prison as a result of his criminal convictions. When questioned by the Ethics Committee, Petitioner was unable to recall in detail the circumstances surrounding each and every incident resulting in his arrest and conviction. (T. p.18) Petitioner did not have a copy of the criminal background check document before him; therefore he could not recall all the details of each incident. (T. pp. 304, 307, 312, 314-318).

10. Petitioner further admitted in the interview before this Ethics Committee that he was using illegal drugs and alcohol during the time he committed the crimes for which he pled guilty. Petitioner abused marijuana and alcohol, and he became addicted to narcotics. Petitioner committed robberies to support his drug habit. Petitioner received drug counseling while in prison, and he was able to overcome his addiction. (Resp. Exhibit 3; T. pp. 310-311, 314-316).

11. Tanya Turner, Petitioner's principal, spoke to the Ethics Committee in support of the Petitioner's request for a teaching license. (T. pp. 19, 91).

12. Petitioner provided Respondent with six strong letters of recommendations from two high school principals for whom he had worked, a state legislator and a former chairman of the Forsyth County Board of Education, a head basketball coach and a parent. (Pet. Exhibit 5).

13. After reviewing the documents and information presented by the Petitioner and Ms. Turner, the Ethics Committee deliberated and voted unanimously to recommend to Dr. June

Atkinson, the Superintendent of Public Instruction, that Petitioner's application for a teaching license be denied. (Resp. Exhibit 3; T. pp. 20-22, 96).

14. Katie Cornetto, in-house counsel to the SBE, delivered the recommendation to the Superintendent of Public Instruction, who agreed with the Ethics Committee's recommendation that Petitioner should not be granted a teaching license. (T. p. 21).

15. Petitioner appealed the decision not to grant him a teaching license to the Office of Administrative Hearings (OAH).

16. At the hearing in this matter, Jim Kirkpatrick, a 15-year teacher and a member of the Ethics Committee that interviewed the Petitioner, testified. His recommendation to deny the Petitioner a teaching license was based on various factors including the Petitioner's extensive criminal history; the nature of the crimes committed by the Petitioner; the Petitioner's age when he committed the crimes; the Petitioner's substance abuse history and the impact those factors have on the Petitioner's ability to be a role model for students. (T. pp. 82-87).

17. The Superintendent of Public Instruction also testified at the hearing in this matter. Dr. Atkinson based her decision to deny the Petitioner a teaching license on various factors including the Petitioner's past addiction to cocaine, the nature of the crimes that the Petitioner committed, and the prison time that the Petitioner served. Dr. Atkinson relied heavily on the professional judgment of her appointed advisory committee who had met the Petitioner in person and asked him questions about his criminal background, past misconduct, and his pending application for licensure. Dr. Atkinson indicated that there is no hard-and-fast rule regarding whether a convicted felon can ever get a teaching license in North Carolina, but that each case must be considered on its own merits on a case-by-case basis. Dr. Atkinson took into account multiple factors when considering Petitioner's application, giving great weight to the recommendation of the panel that interviewed the Petitioner and considered all the information and documentation presented by the Petitioner. Ultimately, Dr. Atkinson concluded that the Petitioner's application for a license should be denied in light of all the circumstances presented, both positive and negative, and in her professional judgment. (T. pp. 213-216; 244-245; 251, 262, 269, 272-273).

18. Petitioner also had his present employer, Simon Johnson, testify on his behalf. Simon Johnson is Executive Director of Quality Education Academy. Mr. Johnson indicated that the public charter school would not have signed-off on his application if they did not believe he was prepared to educate young people consistent with the expectations of the high moral standards established for the teaching profession. (T. Vol. II, p 441).

19. Petitioner has multiple convictions in North Carolina for breaking and entering, common law robbery and attempted robbery from approximately 1983 to 2000. Petitioner served an approximately 3-year prison term in the State of North Carolina.

20. Petitioner admitted at the hearing in this matter that he committed robbery in Ohio. As a result, he served approximately 7 years in prison in Ohio before being brought to North Carolina to serve time for offenses previously committed in this state. Petitioner failed to

disclose to the Ethics Advisory Committee that he had committed robbery in the state of Ohio and served a 7-year prison term there. Petitioner also failed to submit any documentation to the Respondent regarding the robbery and prison time in Ohio. Petitioner was addicted to cocaine during the time he committed robberies in North Carolina and Ohio. (Resp. Exhibit 5; T. pp. 331-338).

21. In this case, Petitioner sought a temporary lateral entry teacher's license for the 2013-14 school year. If approved, Petitioner would be allowed to teach U.S. History and Social Studies while he prepares to take the required state exam within the required time. Petitioner is currently employed as a high school basketball coach for Quality Education Academy. (T. Vol. II, p 382). Petitioner serves as the head basketball coach, facilities manager, and as a substitute teacher at Quality Education Academy and is actively educating students. (T. Vol. II, p 444). Petitioner has been employed by Quality Education Academy in some capacity since 2008. Prior to employment with Quality Education Academy, Petitioner was employed by the Forsyth County School System from 2003 through 2008 as an assistant basketball coach and teacher assistant. As a condition of employment with Forsyth County Schools, Petitioner consented to random drug testing during the five year period of employment for which he never failed. (T. Vol. II, p 181 -182).

22. Petitioner met all the requirements of 16 NCAC 6C .0305 for lateral entry. He has a bachelor's degree in Sociology from a regionally accredited school, has been recommended for lateral entry by a public charter school, and maintained a minimum grade point average above 2.5. (T. Vol. II, p 177 -178).

23. Respondent presented evidence at the hearing that the primary reason for the denial was that Petitioner violated 16 NCAC 6C .0312(a)(3) and (a)(8). (T. Vol. p 24, and T. Vol. II, p 228).

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. The parties received proper notice of the hearing in this matter. To the extent the Findings of Fact contain conclusions of law, or that the Conclusions of Law are findings of fact, they should be so considered without regard to their given labels.

2. In order to be eligible for a lateral entry license, a person shall have a bachelor's degree in the license area from a regionally-accredited IHE, be recommended for a lateral entry license by the employing LEA, and have had a minimum cumulative grade point average of at least a 2.5. 16 NCAC 6C 0305(b).

3. The burden is on Petitioner to demonstrate, by a preponderance of the evidence that the Respondent erred in denying his request for a teaching license. *Peace v. Employment Sec. Comm'n*, 349 N.C. 315, 507 S.E.2d 272 (1988).

4. Teachers are required in this State to maintain the highest level of ethical and moral standards and to serve as a positive role model for children. 16 N.C.A.C. 6C .0602(b)(2); *Faulkner v. New Bern-Craven Bd. of Educ.*, 311 N.C. 42, 59, 316 S.E.2d 281, 291 (1984).

5. As our Supreme Court observed in *Faulkner*:

Our inquiry focuses on the intent of the legislature with specific application to teachers who are entrusted with the care of small children and adolescents. We do not hesitate to conclude that these men and women are intended by parents, citizenry, and lawmakers alike to serve as good examples for their young charges. *Their character and conduct may be expected to be above those of the average individual not working in so sensitive a relationship as that of teacher to pupil.* It is not inappropriate or unreasonable to hold our teachers to a *higher standard of personal conduct*, given the youthful ideals they are supposed to foster and elevate.

Id. (emphasis added)

6. The State Board of Education may revoke or deny a teaching license for conviction of a crime, including a plea of guilty to a crime, if there is a reasonable and adverse relationship between the underlying crime and the continuing ability of the person to perform any of his/her professional functions in an effective manner. 16 N.C.A.C. 6C 0312(a)(3). The State Board of Education may also revoke or deny a teaching license for any illegal, unethical or lascivious conduct if there is an adverse relationship between that conduct and the continuing ability of the person to be an effective teacher. 16 N.C.A.C. 6C 0312(a)(8).

7. Petitioner's criminal convictions and other illegal, unethical and/or lascivious conduct bear a "reasonable and adverse relationship" to the Petitioner's ability to perform his professional duties in an effective manner.

8. The undersigned commends Petitioner for his effort to rehabilitate himself and become a productive member of our society. Furthermore, I applaud petitioner for his desire to serve our youth. However, Petitioner's past criminal behavior is not consistent with the high standards of conduct expected of teachers in this State. Petitioner can serve our youth in other capacities. He can impress upon our youth how his past has prevented him from achieving his dream of being a teacher. He can instill in our youth the need to avoid drugs and make good decisions in order to achieve their dreams.

9. While Petitioner meets the basic requirements of 16 NCAC 6C .0305(b), Petitioner's past behavior does not demonstrate the high standard of integrity, character and conduct expected of teachers in this State. Parents are entitled to have their children entrusted to individuals of the highest moral character, personal conduct, and professional ethics. Because of special concerns for the safety and welfare of children, a person convicted of seven robberies resulting in two stints in prison totaling ten years simply does not meet the threshold requirement demanded by communities and parents. While time has passed, the number and serious nature of the crimes are significant. School teachers are expected to be examples and role models for

our children. Furthermore, Petitioner's failure to make full disclosure of his felony conviction history and related prison time in Ohio to the Respondent, which is charged with issuing teaching licenses in this State, further demonstrates that the Petitioner does not meet the "role model" standard required to receive a North Carolina teaching license.

10. Respondent did not substantially prejudice Petitioner's rights. Respondent did not exceed its authority, did not act erroneously, did not fail to use proper procedure, did not act arbitrarily or capriciously, or did not fail to act as required by law or rule in denying Petitioner a license to teach in North Carolina.

10. Petitioner has not met his burden by a preponderance of the evidence that Respondent erred in denying his request for a teaching license.

DECISION

The Petitioner has not met his burden of proof by the preponderance of the evidence and therefore the denial of his teaching license is **UPHELD**.

NOTICE

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

IT IS SO ORDERED.

This the ____ day of _____, 2014.

Craig Croom
Administrative Law Judge

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **PROPOSED DECISION** was served upon petitioner by depositing the same in the United States mail, first class postage prepaid, and addressed to:

Stephon Bowens
Bowens Law, PLLC
3434 Edwards Mill Rd., Ste 112-254
Raleigh, NC 27612

This the _____ day of June, 2014.

ROY COOPER
Attorney General

Tiffany Y. Lucas
Assistant Attorney General