

CHRISTOPHER PARSHELUNIS, :  
PETITIONER, :  
V. : COMMISSIONER OF EDUCATION  
NEW JERSEY STATE DEPARTMENT : DECISION  
OF EDUCATION, OFFICE OF :  
CRIMINAL HISTORY REVIEW, :  
RESPONDENT. :

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SYNOPSIS

Petitioner, a licensed substitute teacher, appealed the Department's determination disqualifying him from school employment pursuant to *N.J.S.A. 18A:6-7.1(c)* following his guilty plea to assault by auto or vessel (*N.J.S.A. 2C:12-1(c)(2)*).

The ALJ found that: the crime petitioner was charged with – and pled guilty to – was not a 3<sup>rd</sup> degree crime under *N.J.S.A. 2C:12-1(c)(2)*, which involves serious bodily injury; the disqualification statute enumerates a series of crimes representative of those the Legislature determined involved the use of force or threat of force that are automatic disqualifiers, which includes aggravated assault, stalking, kidnapping, arson and manslaughter; a 4<sup>th</sup> degree crime of assault by auto involving drunk driving and a resulting injury cannot be deemed to approach the level of crimes that are enumerated as automatic disqualifiers; there is no indication that the petitioner intended to use force or threat of force; and the facts in this case do not represent a sufficiently flagrant incident that warrants disqualification of petitioner's substitute teaching certificate. Accordingly, the ALJ recommended reversal of petitioner's disqualification and reinstatement of his substitute certificate.

The Commissioner adopted the Initial Decision as the final decision in this matter, except that the Commissioner deems the ALJ's reference to petitioner's lack of prior criminal offenses to be irrelevant to the application of *N.J.S.A. 18A:6-7.1(c) (1)* to the present matter.

<p>This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.</p>
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November 25, 2008

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The record and initial decision rendered by the Office of Administrative Law (OAL) have been reviewed. The Criminal History Review Unit of the Department of Education (the Department) filed timely exceptions pursuant to the applicable provisions of *N.J.A.C.* 1:1-18.4 , and the respondent filed timely reply exceptions thereto.

At issue is the determination by the Administrative Law Judge (ALJ) that petitioner’s conviction<sup>1</sup> of “Assault by Auto/Vessel in violation of R.S. 39:4-50<sup>2</sup>” (*N.J.S.A.* 2C:12-1(c)(2)) does not constitute grounds, under *N.J.S.A.* 18A: 6-7.1, for disqualification of petitioner Christopher Parshelunis from employment by New Jersey school districts. There appears to be no disagreement that the applicability *vel non* of section (c)(1) of *N.J.S.A.* 18A: 6-7.1 to petitioner’s conviction is the issue placed before the Commissioner.

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<sup>1</sup> Petitioner’s conviction was by way of guilty plea. *See, e.g. State v. Gonzalez*, 142 *N.J.* 618, 630 (1995) (“It is unthinkable that the Legislature would intend that judgments of conviction should be treated differently depending on whether they resulted from guilty pleas or trials.” ) *See also* petitioner’s hearing exhibit, P-1, a copy of petitioner’s “Judgment of Conviction” – arrived at via a guilty plea.

<sup>2</sup> *N.J.S.A.* 39:4-50, prohibits driving while intoxicated. It is not a crime but is, rather, a serious traffic offense. *State v. Cusick*, 110 *N.J. Super.* 149 (App. Div. 1970) No *mens rea* is required as an element of the offense. *State v. Fogarty*, 128 *N.J.* 59 (1992).

The statute petitioner admitted to violating provides, in pertinent part, as follows:

A person is guilty of assault by auto or vessel when the person drives a vehicle or vessel recklessly and causes either serious bodily injury or bodily injury to another. Assault by auto or vessel is a crime of the fourth degree if serious bodily injury results and is a disorderly persons offense if bodily injury results. *N.J.S.A. 2C:12-1(c)(1)*.

Assault by auto or vessel is a crime of the third degree if the person drives the vehicle while in violation of R.S. 39:4-50 . . . and serious bodily injury results and is a crime of the fourth degree if the person drives the vehicle while in violation of R.S. 39:4-50 . . . and bodily injury results. *N.J.S.A. 2C:12-1(c)(2)*.

Thus, the elements of the fourth degree crime with which petitioner was charged were 1) driving a vehicle recklessly, 2) driving while intoxicated, and 3) causing bodily injury to another.

The pertinent language in the statute which sets forth the criteria for disqualification from school employment, *i.e.*, *N.J.S.A. 18A: 6-7.1 (c)(1)*, is:

An individual . . . shall be permanently disqualified from employment or service under this act if the individual's criminal history record check reveals a record of conviction for any crime . . . involving the use of force or the threat of force to or upon a person or property including, but not limited to, robbery, aggravated assault, stalking, kidnapping, arson, manslaughter and murder . . .

(Emphasis added.)

The facts in the record of this case do not suggest the kind of *mens rea* and certain connection between the act and injury that appears to be contemplated by *N.J.S.A. 18A:6-7.1(c)(1)* – as evidenced by the words “use of force or the threat of force to or upon a person or property,” and by the choice of examples provided in the statutory provision, *i.e.* robbery, aggravated assault, stalking, kidnapping, arson, manslaughter, murder. These are all acts in which the actor affirmatively directs (or threatens) force upon a specific person or property. By way of contrast, and as mentioned above, petitioner was convicted of an offense,

the elements of which were driving recklessly while intoxicated and, in the course of so doing, causing injury.

In light of the foregoing, the Commissioner agrees with the ALJ that petitioner's conviction did not fall within the purview of *N.J.S.A. 18A:6-7.1(c) (1)*. Nor can the Commissioner assume that the single offense with which petitioner was charged necessarily signifies, in and of itself, that petitioner cannot perform effectively as a classroom teacher. Finally, the Commissioner agrees with the ALJ – for the reasons set forth in the Initial Decision – that *In the Matter of the Certificate of Bryan Scalzo*, State Board of Examiners Dkt. No. 607-104, March 29, 2007, cannot be dispositive of the issues in this case.<sup>3</sup>

The Initial Decision is adopted, and petitioner's teaching credential shall be reinstated.

IT IS SO ORDERED.<sup>4</sup>

COMMISSIONER OF EDUCATION

Date of Decision: November 25, 2008

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<sup>3</sup> The Commissioner will not reach the ALJ's comment about petitioner's lack of prior criminal history, as it has no bearing on the issues to be decided in this matter or the relevant statutes.

<sup>4</sup> This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36*.