

395-11R (OAL Decision: http://lawlibrary.rutgers.edu/oal/html/initial/edu4145-09_1.html
Commissioner Decision: <http://lawlibrary.rutgers.edu/oal/final/edu04145-09.pdf>)

OAL DKT. NO. EDU 4145-09
AGENCY DKT. NO. 26-2/09
APP. DIV. DKT. NO. A-2969-09T2

REMOND PALMER, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 NEW JERSEY STATE DEPARTMENT OF : DECISION
 OF EDUCATION, CRIMINAL :
 HISTORY REVIEW UNIT :

For the Petitioner: Raymond L. Hamlin, Esq.
Hunt, Hamlin & Ridley

For the Respondent: Jennifer L. Campbell, Deputy Attorney General
(Paula T. Dow, Attorney General of New Jersey)

This controversy arose when petitioner challenged the 2008 determination of the Criminal History Review Unit of the New Jersey Department of Education (respondent) that, pursuant to *N.J.S.A.* 18A: 6-7.1, petitioner's 1989 South Carolina conviction for possession of cocaine disqualified him for school employment in New Jersey. On January 12, 2010, the Commissioner upheld respondent's determination. Petitioner filed an appeal with the Appellate Division of the Superior Court on February 25, 2010, and on April 28, 2011 respondent moved for a remand of the case to the Commissioner for supplementation of the record. The Appellate Division responded with an order granting remand on May 13, 2011.

On June 28, 2011, respondent submitted its brief. The only supplementation to the record to be found therein appears to be citations to certain South Carolina Statutes

governing pardons. After being granted two extensions to file opposition papers, petitioner has failed to reply to respondent's brief.

The legal issue currently before the Commissioner is the same as it was in 2009, *i.e.*, whether petitioner's South Carolina conviction bars him from school employment in New Jersey. The controlling statute – *N.J.S.A.* 18A: 6-7.1 – provides, in pertinent part, that:

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 . . .**

- b. an offense involving the manufacture, transportation, sale, possession, distribution or habitual use of a “controlled dangerous substance” as defined in the Comprehensive Drug Reform Act of 1987 . . .**
(Emphasis added.)

Since petitioner has a record of conviction for cocaine possession, *N.J.S.A.* 18A:6-7.1 bars him from employment in New Jersey schools.

In his 2009 arguments to the Commissioner, petitioner had contended that a 2002 pardon for the possession offense that he had received from the South Carolina Department of Probation, Parole and Pardon removed him from the reach of *N.J.S.A.* 18A: 6-7.1. The Commissioner, however, rejected that argument. Citing *Donald v. Jones*, 445 F. 2d, 601 (5th Cir), *cert. den.* 404 U.S. 992 (1971), the Commissioner noted that a pardon is an act of executive clemency – as opposed to a judicial determination of innocence – and does not render a person innocent of the offense for which he or she was convicted; nor does a pardon eliminate the record of conviction. *Remond Palmer v. New Jersey State Department of Education, Criminal History Review Unit*, Commissioner's Decision No. 8-10, decided January 12, 2010, at 1-2. *See, also*, Opinion of the South Carolina Attorney General, dated November 18, 1988 and entitled “Effect of Pardoned Conviction on Multiple Offender Acts.” 1988 S.C. AG LEXIS 220.

Moreover, the Commissioner noted that South Carolina does not allow expungement of convictions for possession of such controlled dangerous substances as cocaine. *Palmer, supra*, at 2. Indeed, in South Carolina, where an individual has been pardoned, the underlying conviction still exists and will not be expunged. *See*, Opinion of the South Carolina Attorney General, *supra*, citing 1984 *OP.ATTY.GEN.* 268; 1980 *OP.ATTY.GEN.* 110. Petitioner consequently still has a record of conviction for drug possession, which New Jersey courts have no jurisdiction to expunge. That record of conviction triggers *N.J.S.A.* 18A: 6-7.1(b) and bars petitioner from employment in New Jersey Schools.

Thus, the record – as supplemented by respondent – still upholds the determination of the Criminal History Review Unit of the Department of Education that, pursuant to *N.J.S.A.* 18A: 6-7.1(b), petitioner’s South Carolina conviction disqualifies him from obtaining a teaching certificate in New Jersey. The Commissioner once again determines that the petition must be dismissed.¹

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: September 22, 2011

Date of Mailing: September 22, 2011

¹ It appears that in its May 13, 2011 remand order, the Appellate Division dismissed petitioner’s appeal without prejudice. The Commissioner infers from said dismissal that the Appellate Division elected not to retain jurisdiction.

² This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L.* 2008, *c.* 36.