256-23

New Jersey Commissioner of Education

Final Decision

Michael Bazerman,

Petitioner,

v.

New Jersey Department of Education, Office of Student Protection,

Respondent.

Synopsis

Petitioner appealed the determination of the respondent New Jersey Department of Education, Office of Student Protection (OSP), permanently disqualifying him – pursuant to *N.J.S.A.* 18A:6-7.1 – from performing electrical work in New Jersey school facilities after a background check revealed a conviction in New York State for official misconduct. The issue in this case is whether petitioner's New York official misconduct offense, a Class A misdemeanor crime codified at *N.Y.P.L.* 195.00, is substantially equivalent to New Jersey's official misconduct offense, a second-degree crime codified at *N.J.S.A.* 2C:30-2. The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: there are no material facts at issue and the matter is ripe for summary decision; petitioner works as a low voltage electrician; he was required to submit to a criminal background check when his employer applied for an installation job at a New Jersey (NJ) public school; the background check revealed a 2013 conviction under N.Y.P.L. 195.00 for official misconduct in New York (NY); the conviction stemmed from an audit wherein petitioner was unable to account for $5,811 that the New York Police Department (NYPD) reimbursed him for surveillance and wiretap equipment he purchased while employed as a detective for the NYPD; although both N.Y.P.L. 195.00 and *N.J.S.A.* 2C:30-2 use the same language, the offenses were not substantially equivalent because they subject the offender to different penalties. The ALJ concluded that because the NY and NJ statutes are not substantially equivalent, the petitioner should not be permanently barred from employment on NJ school projects; accordingly, petitioner's motion for summary decision was granted.

Upon review, the Commissioner rejected the Initial Decision, finding the appeal to be untimely. The Commissioner noted that, even assuming the petition was timely filed, petitioner's position – adopted by the ALJ – that *N.Y.P.L.* 195.00 and *N.J.S.A.* 2C:30-2 are not substantially equivalent because the penalties imposed for each offense differ, is unavailing. Instead, the Commissioner found, *inter alia*, that *N.Y.P.L.* 195.00 and *N.J.S.A.* 2C:30-2 are substantially equivalent crimes, and a plain language reading of *N.J.S.A.* 18A:6-7.1(d) makes clear that the appropriate inquiry is whether the crimes or offenses are substantially equivalent, not whether the penalties associated with them are substantially equivalent. Accordingly, OSP's motion for summary decision was granted and the petition was dismissed.

256-23
OAL Dkt. No. EDU 05310-22
Agency Dkt. No. 92-4/22

New Jersey Commissioner of Education

Final Decision

Michael Bazerman,

Petitioner,

v.

New Jersey Department of Education, Office of Student Protection,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), the exceptions filed by respondent pursuant to *N.J.A.C.* 1:1-18.4, and petitioner's reply thereto have been reviewed and considered.

This matter concerns whether *N.J.S.A.* 18A:6-7.1 permanently disqualifies petitioner from performing electrical work at public school facilities after a background check revealed that he was convicted of official misconduct in New York. At issue is whether New York's official misconduct offense, a Class A misdemeanor crime codified at *N.Y.P.L.* 195.00, is substantially equivalent to New Jersey's official misconduct offense, a second-degree crime codified at *N.J.S.A.* 2C:30-2.

N.J.S.A. 18A:6-7.1 provides, in relevant part:

> A facility, center, school, or school system under the supervision of the Department of Education and board of education which cares for, or is involved in the education of children under the age of 18 shall not employ for pay or contract for the paid services of any teaching staff member . . . or any other person serving in a position which involves regular contact with pupils unless the employer has first determined consistent with the requirements and

> standards of this act, that no criminal history record information exists . . . which would disqualify that individual from being employed or utilized in such capacity or position. . . .

The statute mandates that, absent limited exceptions not applicable here, individuals convicted of "any crime of the first or second degree" are "permanently disqualified from employment or service." *Ibid.* Moreover, "[f]or the purposes of this section, a conviction exists if the individual has at any time been convicted under the laws of this State or under any similar statutes of the United States or any other state for a substantially equivalent crime or other offense." *N.J.S.A.* 18A:6-7.1(d). Under New York law, misdemeanors are considered crimes. *See N.Y.P.L. §* 10.00(6).

The relevant facts are undisputed. In 2013, petitioner was convicted of official misconduct pursuant to *N.Y.P.L.* 195.00 while employed by the New York City Police Department (NYPD) as a detective. According to petitioner, he was authorized to purchase equipment related to surveillance and wiretap activities with his own money and would receive reimbursement for same upon submission of receipts. During an audit, he was unable to account for equipment for which he had received reimbursement and was subsequently charged with official misconduct. He pled guilty, served no jail time, received a conditional discharge after one-year, paid restitution in the amount of $5,811, and was barred from future employment as a public official.[1]

In 2021, petitioner, now employed as an electrician and data technician in New Jersey with NetQ Multimedia Company, was assigned to work on a project at a public school building in Toms River and underwent a criminal background check. Upon learning of petitioner's official misconduct

[1] In 2015, the State of New York issued petitioner a "certificate of relief from disabilities" which relieves him "of all disabilities and bars to employment, excluding the right to be eligible for public office" based upon his conviction. However, the certificate states that it "shall NOT prevent any judicial, administrative, licensing, or other body, board, or authority from relying upon the conviction specified . . . as the basis for the exercise of its discretionary power to suspend, revoke, refuse to issue or renew any license, permit or other authority or privilege." *See also In re Winston*, 438 *N.J. Super*. 1, 8 (App. Div. 2014) ("A New York certificate of relief from disabilities does not alter or affect the criminal conviction to which it relates.").

conviction, respondent barred petitioner from employment at public school facilities pursuant to *N.J.S.A.* 18A:6-7.1. Respondent reasoned that New York's official misconduct offense was substantially equivalent to New Jersey's official misconduct offense, a second-degree crime. Consequently, since *N.J.S.A.* 18A:6-7.1 provides that all convictions for first- and second-degree crimes are disqualifying offenses, respondent determined that petitioner was therefore permanently disqualified.

Petitioner appealed, and the matter was transmitted to the Office of Administrative Law (OAL). Respondent initially moved to dismiss the petition as untimely, but later withdrew the motion. Because none of the material facts were disputed, the parties moved for summary decision. The Administrative Law Judge (ALJ) granted petitioner's cross-motion for summary decision upon concluding that *N.Y.P.L.* 195.00 and *N.J.S.A.* 2C:30-2 were not substantially equivalent offenses. Although the ALJ found that "[b]oth statutes use the same language," he reasoned that the offenses were not substantially equivalent because they subject the offender to different penalties. Initial Decision at 5. Specifically, the ALJ determined that the maximum term of imprisonment for a Class A misdemeanor in New York is 364 days, while the maximum term of imprisonment for a second-degree offense in New Jersey is ten years. *Ibid.*

In its exceptions, respondent argues that the ALJ erroneously focused his analysis on the penalties that courts may impose at sentencing for each offense instead of the nearly identical statutory language defining the elements of each offense. Respondent maintains that because *N.Y.P.L.* 195.00 and *N.J.S.A.* 2C:30-2 are substantially equivalent crimes, petitioner is permanently disqualified from working at public school facilities pursuant to *N.J.S.A.* 18A:6-7.1. Respondent also contends that the ALJ went beyond the four corners of *N.J.S.A*. 18A:6-7.1 when he found that

petitioner's conviction did not reflect the level of dishonesty "required for disqualification under *N.J.S.A.* 18A:6-7.1 suggested by the enumerated crimes." Initial Decision at 5.

In his reply, petitioner requests that the Commissioner adopt the ALJ's Initial Decision. He maintains that a comparative analysis of the two crimes reveals that they are not substantially equivalent and that the ALJ had the discretion to consider, as part of his analysis, that the sentences imposed for each crime differ. Furthermore, petitioner disagrees with respondent that the ALJ went beyond the four corners of *N.J.S.A*. 18A:6-7.1 when he found that "the record of deceit in petitioner's conviction is lacking" and that petitioner simply "failed to account" for money. Initial Decision at 5. Finally, although this issue was neither addressed by the ALJ nor discussed in respondent's exceptions, petitioner contends that his misdemeanor conviction "cannot be considered a prior conviction for comparative analysis and disqualification purposes" because *N.J.S.A.* 2C:44-4(c), a statute governing the sentencing of criminal offenders, states that "[a] conviction in another jurisdiction shall constitute a prior conviction of a crime if a sentence of imprisonment in excess of one year was authorized under the law of the other jurisdiction."[2]

Upon review, the Commissioner rejects the Initial Decision of the OAL. First, although this issue was not addressed by the ALJ, the Commissioner finds and concludes that petitioner's appeal was untimely. *N.J.A.C.* 6A:3-1.3(i) provides that petitions must be filed "no later than the 90th day from the date of receipt of the notice of a final order, ruling, or other action" by an agency. "The "ninety-day limitation period" is a "reasonable procedural requirement" that "provides finality in education matters" while affording litigants a "meaningful opportunity to file [a] petition." *Kaprow v. Bd. of Educ. of Berkeley Twp.*, 131 *N.J.* 572, 583 (1993).

[2] *N.J.A.C.* 1:1-18.4(d) provides that replies "may address the issues raised in the exceptions filed by the other party."

Respondent issued its determination on September 13, 2021. As such, petitioner should have filed his petition on or before December 13, 2021. However, his petition was not received by the Office of Controversies and Disputes (Office) until April 26, 2022. Even if the Office had received petitioner's purported email submissions of January 19 and February 25, 2022, they would have been untimely as well. While the record reflects that an employee of respondent mistakenly told petitioner via email on September 22, 2022, that there was no timeline for the filing of an appeal, the limitation period is established by regulation and applies regardless of any statement to the contrary by an employee. Moreover, the employee also provided petitioner with the Office's email address. The onus was on petitioner to inquire with the Office, which is responsible for the processing of petitions, if he had questions. For these reasons, petitioner's appeal should be dismissed as untimely.

But even assuming his petition was timely filed, petitioner's position—adopted by the ALJ—that *N.Y.P.L.* 195.00 and *N.J.S.A.* 2C:30-2 are not substantially equivalent because the penalties imposed for each offense differ, is unavailing. Instead, the Commissioner finds and concludes that *N.Y.P.L.* 195.00 and *N.J.S.A.* 2C:30-2 are substantially equivalent crimes and that, consequently, petitioner is permanently disqualified from employment on public school projects pursuant to *N.J.S.A.* 18A:6-7.1.

At the outset, the Appellate Division has determined that "*N.J.S.A.* 2C:30-2 is based upon New York Penal Law § 195.00." *State v. Brady*, 452 *N.J. Super*. 143, 162 (App. Div. 2017). That finding is bolstered by a comparative review of the statutes' plain language. As illustrated below, the elements of each offense are nearly identical.

N.Y.P.L. 195.00, Official Misconduct, states:

> A public servant is guilty of official misconduct when, with intent to obtain a benefit or deprive another person of a benefit:

1. He commits an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act is unauthorized; or

2. He knowingly refrains from performing a duty which is imposed upon him by law or is clearly inherent in the nature of his office.

Official misconduct is a class A misdemeanor.

By comparison, *N.J.S.A.* 2C:30-2 states:

> A public servant is guilty of official misconduct when, with purpose to obtain a benefit for himself or another or to injure or to deprive another of a benefit:
>
> a. He commits an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act is unauthorized or he is committing such act in an unauthorized manner; or
>
> b. He knowingly refrains from performing a duty which is imposed upon him by law or is clearly inherent in the nature of his office.
>
> Official misconduct is a crime of the second degree. If the benefit obtained or sought to be obtained, or of which another is deprived or sought to be deprived, is of a value of $200.00 or less, the offense of official misconduct is a crime of the third degree.

The Commissioner rejects the ALJ's attempt to distinguish the two offenses by relying on the penalties associated with them. When construing a statute, the best indicator of legislative intent is a statute's plain language. *In re Ridgefield Pk. Bd. of Educ.*, 244 *N.J.* 1, 18 (2020). A plain language reading of *N.J.S.A.* 18A:6-7.1(d) makes clear that the appropriate inquiry is whether the crimes or offenses are substantially equivalent, not whether the penalties associated with them are substantially equivalent. *See N.J.S.A.* 18A:6-7.1(d) ("[A] conviction exists if the individual has at any time been convicted under the laws of this State or under any similar statutes of the United States or any other state for a substantially equivalent crime or other offense.") (emphasis added). The

penalties associated with each crime are neither dispositive nor relevant when determining whether the two crimes are substantially equivalent to one another under *N.J.S.A.* 18A:6-7.1(d).

Furthermore, the ALJ's approach in this matter runs contrary to precedent. *See Kelly v. New Jersey State Department of Education, Criminal History Review Unit*, Commissioner Decision No. 396-18R (December 18, 2018) (holding that because the petitioner's conviction under Pennsylvania law Pa.C.S.A. § 907 for the first-degree misdemeanor of possessing instruments of a crime was substantially equivalent to *N.J.S.A.* 2C:39-4(a), a second-degree crime, he was permanently disqualified from employment pursuant to *N.J.S.A.* 18A:6-7.1). In *Kelly*, the ALJ's analysis, adopted by the Commissioner, centered around the statutory elements of each crime and not their degree or the penalties associated with them. *Kelly v. New Jersey State Department of Education, Criminal History Review Unit*, OAL Dkt. No. EDU 12761-16 (EDU 5753-12 on remand), Initial Decision (November 16, 2018), at 7-13, *aff'd*, Commissioner Decision No. 396-18R (December 18, 2018). In the end, the different penalties imposed in Pennsylvania and New Jersey had no bearing upon the comparative analysis of the statutory elements of each crime for purposes of determining whether they were substantially equivalent to one another.

In addition, the ALJ's finding that petitioner's conviction did not reflect the level of dishonesty "required for disqualification under *N.J.S.A.* 18A:6-7.1 suggested by the enumerated crimes," Initial Decision at 5, is misplaced. Respondent did not permanently disqualify petitioner based upon a conviction of one of the enumerated crimes at *N.J.S.A.* 18A:6-7.1(a), (b), or (c). On the contrary, respondent's determination was based upon the plain language of *N.J.S.A.* 18A:6-7.1, which mandates that individuals convicted of <u>any</u> first- or second-degree crime "shall be permanently disqualified from employment or service." As written, the statute does not allow for consideration of the level of dishonesty involved in the commission of the offense. Neither the ALJ nor the

Commissioner is permitted to "rewrite a statute or add language that the Legislature omitted." *State v. Munafo*, 222 *N.J.* 480, 488 (2015).

Finally, petitioner's reliance on *N.J.S.A.* 2C:44-4(c) is unavailing because that statute governs the sentencing of criminal offenders and is inapplicable to the present civil matter. As noted, *N.J.S.A.* 18A:6-7.1(d) expressly provides that "[f]or the purposes of this section, a conviction exists if the individual has at any time been convicted under the laws of this State or under any other similar statutes of the United States or any other state for a substantially equivalent crime or other offense." By its plain language, subsection (d) clearly establishes the definition of conviction to be utilized for purposes of *N.J.S.A.* 18A:6-7.1. To instead apply the definition of conviction found at *N.J.S.A.* 2C:44-4(c), which specifically pertains to criminal sentencing, would ignore the plain language of subsection (d) and undermine the Legislature's intent. *See generally Aronberg v. Tolbert*, 207 N.J. 587, 605 (2011) (holding that one "cannot ignore the relevant statutory language to reach a more sympathetic result for [petitioner]").

Accordingly, respondent's motion for summary decision is granted, petitioner's cross-motion for summary decision is denied, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.[3]

Kathleen Ehling

ACTING COMMISSIONER OF EDUCATION[4]

Date of Decision: August 29, 2023
Date of Mailing: August 30, 2023

[3] This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A.* 18A:6-9.1. Under *N.Y.C.* 2:4-1(b), a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.

[4] Pursuant to N.J.S.A. 18A:4-34, this matter has been delegated to Kathleen Ehling.

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
GRANTING SUMMARY DECISION
OAL DKT. NO. EDU 05310-22
AGENCY DKT. NO. 92-4/22

MICHAEL BAZERMAN,
Petitioner,
v.
NEW JERSEY DEPARTMENT OF EDUCATION,
OFFICE OF STUDENT PROTECTION,
Respondent.

Michael Bazerman, petitioner, pro se

David L. Kalisky, Deputy Attorney General, for respondent (Matthew J. Platkin, Attorney General of New Jersey, attorney)

Record Closed: June 2, 2023 Decided: July 17, 2023

BEFORE: **EDWARD J. DELANOY**, **JR**., Deputy Director and ALAJ:

STATEMENT OF THE CASE

Petitioner Michael Bazerman (Bazerman) appeals the New Jersey Department of Education ("respondent" or "DOE") determination that petitioner's New York conviction is

"substantially equivalent" to a first- or second-degree crime in New Jersey, thereby barring petitioner from employment in New Jersey schools.

Petitioner and respondent have filed cross motions for summary decision. The respondent argues that petitioner's conviction for official misconduct in New York disqualifies him from working in New Jersey schools pursuant to N.J.S.A. 18A:6-7.1. In response, petitioner argues that his New York conviction is not "substantially equivalent" to those crimes that bar employment under 18A:6-7.1.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Petitioner is a low voltage electrician and data technician. Resp. Brief p. 2. On August 18, 2021, petitioner applied for an installation job in one of the Toms River School District's school buildings, requiring him to submit fingerprints for a criminal background check. Ibid.

On September 13, 2021, petitioner was notified that under N.J.S.A. 18A:6-7.1, individuals convicted of first- or second-degree crimes in New Jersey or "substantially equivalent" crimes in other jurisdictions are permanently barred from employment, and, due to his violation of N.Y.P.L 195.00 in 2013, petitioner would be barred from employment. Id. at 3.

Petitioner was convicted of "Official Misconduct: Public Servant Performing Illegal Function," N.Y.P.L. 195.00, because he could not account for $5,811 that the New York Police Department reimbursed him for buying equipment while working for the Department in 2013. Id. at 4. Respondent found that N.Y.P.L. 195 is "substantially equivalent" to N.J.S.A. 2C:30-2, "Official Misconduct." Both statutes use the same language. N.Y.P.L. 195.00 provides:

> A public servant is guilty of official misconduct when, with intent to obtain a benefit or deprive another person of a benefit:

> 1. He commits an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act is unathorized; or
>
> 2. He knowingly refrains from performing a duty which is imposed upon him by law or is clearly inherent in the nature of his office.

Official misconduct is a class A misdemeanor.

N.J.S.A. 2D:30-2 provides:

> A public servant is guilty of official misconduct when, with purpose to obtain a benefit for himself or another or to injure or to deprive another of a benefit:
>
> > a. He commits an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act is unauthorized or he is committing such act in an unauthorized manner; or
> >
> > b. He knowingly refrains from performing a duty which is imposed upon him by law or is clearly inherent in the nature of his office.

Official misconduct is a crime of the second degree. If the benefit obtained or sought to be obtained, or of which another is deprived or sought to be deprived, is of a value of $200 or less, the offense of official misconduct is a crime of the third degree.

On April 8, 2022, petitioner filed a petition appealing respondent's decision to bar him from employment. Resp. Brief p. 3.

On March 21, 2023, respondent filed a Motion for Summary Decision, and on April 11, 2023, petitioner filed a Cross Motion for Summary Decision. The last pleading was received on June 2, 2023, and the record closed on that day.

The issue is whether N.Y.P.L. 195 is "substantially equivalent" to N.J.S.A. 2C:30-2.

LEGAL ANALYSIS AND CONCLUSION

I. Standard for Summary Decision

Under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, "[a] party may move for summary decision upon all or any of the substantive issues in a contested case." N.J.A.C. 1:1-12.5(a). Such motion "shall be served with briefs and with or without supporting affidavits" and "[t]he decision sought may be rendered if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." N.J.A.C. 1:1-12.5(b). When the motion "is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding." Ibid.

N.J.S.A. 18A:6-7.1 creates a bar to employment for individuals whose "criminal history record check reveals a record of conviction for any crime of the first or second degree" or for specific enumerated crimes. See Id. N.J.S.A. 18A:6-7.1 elaborates that "[f]or the purposes of [the] section, a conviction exists if the individual has at any time been convicted under the law of this State or under any similar statutes of the United States or any other state for a substantially equivalent crime or other offense." Id.

Most of the enumerated crimes involve actions that place others in physical danger or the threat of harm. See N.J.S.A. 18A:6-7.1(c) (listing "recklessly endangering another person," "burglary," and "threat and other improper influence" among the disqualifying crimes). Indeed, the majority of cases where convictions in other states were deemed "substantially equivalent" fall into this category. See e.g., David Kelly v. New Jersey State Board of Education, EDU 12761-16, initial decision, (Nov. 16, 2018), adopted, (Dec. 18, 2018), https://njlaw.rutgers.edu/collections/oal/html/initial/edu12761-16_1.html (man who recklessly endangered children in PA barred from employment).

In John Caucino v. Department of Education, EDU 6213-04, initial decision, (Feb. 10, 2005), adopted, (March 11, 2005),

https://njlaw.rutgers.edu/collections/oal/html/initial/edu06213-04_1.html., a schoolteacher was found to have defrauded a bank of more than $150,000. Id. N.J.S.A. 18A:6-7.1 also lists perjury among the enumerated crimes, a crime of dishonesty, but also a rather severe one.

Here, petitioner was not convicted of a violent crime. Nor does the level of dishonesty rise to the level required for disqualification under N.J.S.A. 18A:6-7.1 suggested by the enumerated crimes. The benefit petitioner received, approximately $5,000, does not approach that of the more than $150,000 gained in Caucino. Moreover, the record of deceit in petitioner's conviction is lacking. It is simply stated that he "failed to account" for the money, not that he defrauded the NYPD, or perjured himself under oath.

Notably, respondent does not seek petitioner's disqualification based on one of the enumerated crimes, but rather the more general bar of individuals who have been convicted for "any crime of the first or second degree." Resp. Brief p. 13. The more relevant inquiry, therefore, is not whether the elements of the New York crime are comparable to one of the enumerated offenses, but rather whether the class of crime for which petitioner was convicted is "substantially equivalent" to that of the class of first or second-degree crimes in New Jersey.

Petitioner was convicted of a Class A misdemeanor in New York, a classification that carries with it imprisonment that "shall not exceed three hundred sixty-four days." N.Y.P.L. 70.15.1. In contrast, a second-degree crime in New Jersey carries with it a prison term "between five years and ten years." A New York Class A misdemeanor, therefore, is clearly not "substantially equivalent" to a second-degree crime in New Jersey.

To create the substantial equivalence, respondent is essentially arguing that, due to the similarity of the language between N.Y.P.L. 195.00 and N.J.S.A. 2C:30-2, it can be inferred that petitioner would have been convicted under N.J.S.A. 2C:30-2 had he been tried for the same actions in New Jersey. Such an argument, however, ignores the actualities of sentencing in different jurisdictions. Similar language may lead to two very

different legal standards in application. Moreover, petitioner plead guilty to the charge of official misconduct based on the penalty the charge holds. Resp. Brief Ex. F. Had petitioner been facing five to ten years under N.J.S.A. 2C:30-2, the result may have been very different.

The only reliable comparison that can be drawn, therefore, is based on the classification of the crimes. N.Y.P.L. 195.00 is not a crime that involves "the use of force or the threat of force" like those enumerated under N.J.S.A. 18A:6-7.1, and respondent does not argue that N.Y.P.L. 195.00 is equivalent to one of these enumerated crimes. Instead, respondent argues petitioner's crime is "substantially equivalent" to the general category of first-and second-degree crimes in New Jersey. These categories are defined not by the elements of crimes, but by the sentences they carry. Thus, the proper comparison is not the elements of the crimes but the sentence classifications. Here, we have a Class A Misdemeanor in New York which, based upon classification, is a much less serious crime than a first- or second-degree crime in New Jersey.

CONCLUSION

I **CONCLUDE** that based on the undisputed facts and the documents presented by the parties, N.Y.P.L. 195.00 is not "substantially equivalent" to N.J.S.A. 2C:30-2, and petitioner's Cross Motion for Summary Decision should be granted.

ORDER

I hereby **ORDER** that the petitioner's motion for summary decision is **GRANTED**, and respondent's motion for summary decision is **DISMISSED**.

I hereby **FILE** my initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified, or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION,** who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of

Education does not adopt, modify, or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500,** marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

July 17, 2023 Edward J Delanoy Jr

DATE **EDWARD J. DELANOY, JR.**,
Deputy Director and ALAJ

Date Received at Agency: _____

Date Mailed to Parties: _____

EJD/cb

APPENDIX

EXHIBITS

For petitioner

- Response to Motion for Summary Decision, dated April 9, 2023
- Response to May 30, 2023, Reply, dated May 15, 2023

For respondent

- Letter Brief and Certification in Support of Motion for Summary Decision, dated March 20, 2023
- Reply Brief in Support of Motion for Summary Decision, dated May 8, 2023