

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

CHARLES BULLOCK,

Petitioner,

vs.

Case No. 14-2616

STATE BOARD OF ADMINISTRATION,

Respondent.

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RECOMMENDED ORDER

Administrative Law Judge John D. C. Newton II, of the Division of Administrative Hearings (DOAH), heard this case on August 8, 2014, in Tallahassee, Florida.

APPEARANCES

For Petitioner: Richard A. Greenberg, Esquire  
Rumberger, Kirk and Caldwell  
Suite 702  
215 South Monroe Street  
Tallahassee, Florida 32301-1858

For Respondent: Brian A. Newman, Esquire  
Brandice D. Dickson, Esquire  
Pennington, P.A.  
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Post Office Box 10095  
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STATEMENT OF THE ISSUE

Should the benefits of the Petitioner, Charles Bullock, under the Florida Retirement System Investment Plan, be forfeited

due to his plea of no contest and adjudication of guilt to two felony counts of child abuse?

PRELIMINARY STATEMENT

The Respondent, State Board of Administration (Board), seeks to forfeit Mr. Bullock's rights and benefits under the Florida Retirement System Investment Plan because of his plea of no contest and adjudication of guilt to two felony counts of child abuse. Mr. Bullock timely requested a hearing. The Board referred the matter to the Division of Administrative Hearings. The undersigned conducted the hearing on August 8, 2014.

The Board presented testimony from Mr. Bullock. Board Exhibits 1 through 5 were admitted into evidence.

Mr. Bullock's Exhibits 1 through 5, deposition transcripts, were accepted into evidence.

The parties provided a transcript, which was filed on August 25, 2014. Both parties timely filed proposed recommended orders, which have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. The Collier County Sheriff's Office employed Mr. Bullock as a law enforcement officer from 1994 through 2010. Due to his employment, Mr. Bullock was a member of the Florida Retirement System Investment Plan.

2. Mr. Bullock worked in the sheriff's office's civil process unit. He and the other civil process deputies routinely met for coffee in the afternoon about 2:00 p.m., to discuss business. They usually met at the Starbucks in the Coastland Mall in Collier County. Sometimes they met at other locations to avoid drawing public attention and adverse comments. For the same reason, after some unfavorable television coverage, they often dispersed their cars in the parking lot, instead of parking together.

3. Mr. Bullock usually did not wear a uniform, badge, gun, or anything else identifying him as a Collier County deputy or a law enforcement officer.

4. On at least three occasions between November 2009 and February 2010, while on duty, Mr. Bullock went to the food court bathroom after these meetings. The evidence does not establish that Mr. Bullock was wearing a uniform, badge, gun, or anything else identifying him as a Collier County deputy or law enforcement officer on those occasions.

5. On the first two of those occasions, Mr. Bullock sexually molested a male, under the age of 16, by forcing him to allow Mr. Bullock to perform oral sex.

6. On the third occasion, Mr. Bullock was approaching the male minor by looking under and over the bathroom stall divider, when he was interrupted by a mall employee.

7. The evidence does not establish that the minor knew on any of the occasions that Mr. Bullock was a deputy or law enforcement officer.

8. The evidence does not otherwise establish that Mr. Bullock's position as a Collier County deputy facilitated, contributed to, provided the opportunity for, or otherwise played a role in his ability to commit the acts described on those three occasions. He committed the offenses in a public place during normal operating hours. His position as a deputy did not provide access to the food court bathroom that any citizen would not have had.

9. As a result of the interruption of the third encounter and the information the mall employee was able to provide, law enforcement conducted an investigation of Mr. Bullock's conduct in the mall bathroom.

10. The investigation culminated on April 19, 2010, in a warrant to arrest Mr. Bullock. The warrant charged Mr. Bullock with lewd or lascivious battery (violation of section 800.04(4)(a), Florida Statutes (2010)), a second-degree felony, and official misconduct (violation of section 838.022, Florida Statutes (2010)), a third-degree felony.

11. On March 10, 2014, Mr. Bullock entered a plea of no contest to a different charge based upon his sexual molestation of the male under the age of 16.

12. The offense to which Mr. Bullock entered a plea of no contest was child abuse, a violation of section 827.03, Florida Statutes (2010), a third-degree felony. At the time of his plea and in this proceeding, Mr. Bullock maintained that he was not guilty of the charges, but chose to plead no contest because of concerns that the nature of the charges would inflame jurors.

13. The court adjudicated Mr. Bullock guilty of the charges to which he pled no contest. It imposed a sentence of two years' probation, prohibited contact with the victim, required payment of \$151.00 in court costs, and required Mr. Bullock to give up his law enforcement certification.

14. On March 20, 2014, the Board notified Mr. Bullock that his rights and benefits under the Florida Retirement System were forfeited as a result of his no contest plea to child abuse. This proceeding followed.

#### CONCLUSIONS OF LAW

15. DOAH has jurisdiction over the parties and the subject matter of this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes (2014).<sup>1/</sup>

16. The Board maintains that Mr. Bullock has forfeited his rights and benefits under the retirement system pursuant to section 112.3173, Florida Statutes. The Board bears the burden of proving its charges by a preponderance of the evidence.

Wilson v. Dep't of Admin., Div. of Ret., 538 So. 2d 139, 141-142

(Fla. 4th DCA 1989); Dep't of Transp. v. J.W.C. Co., 396 So. 2d 778, 788 (Fla. 1st DCA 1981).

17. The retirement system is a public retirement system as defined by Florida law. The proposed forfeiture is subject to administrative review. See § 112.3173(5) (a), Fla. Stat.

18. Article II, Section 8(d), of the Florida Constitution provides:

SECTION 8. Ethics in government.--A public office is a public trust. The people shall have the right to secure and sustain that trust against abuse. To assure this right:

\* \* \*

(d) Any public officer or employee who is convicted of a felony involving a breach of public trust shall be subject to forfeiture of rights and privileges under a public retirement system or pension plan in such manner as may be provided by law.

19. Section 112.3173(3) codifies this constitutional provision and provides in relevant part:

(3) FORFEITURE.--Any public officer or employee who is convicted of a specified offense committed prior to retirement . . . shall forfeit all rights and benefits under any public retirement system of which he or she is a member, except for the return of his or her accumulated contributions as of the date of termination.

20. Section 112.3173 provides in part:

(1) INTENT.--It is the intent of the Legislature to implement the provisions of s. 8(d), Art. II of the State constitution.

(2) DEFINITIONS.--As used in this section, unless the context otherwise requires, the term:

(a) "Conviction" and "convicted" mean an adjudication of guilty by a court of competent jurisdiction; a plea of guilty or of nolo contendere [no contest]; a jury verdict of guilty when adjudication of guilt is withheld and the accused is placed on probation; or a conviction by the Senate of an impeachable offense.

21. The forfeiture statute defines a "specified offense" to include any felony under chapter 838 (except sections 838.15 and 838.16), as well as certain felonies relating to bribery, embezzlement, theft of public funds or an impeachable offense. See § 112.3173(2) (e), Fla. Stat.

22. The forfeiture statute also contains a so-called "catch-all" provision. It states:

(2) (e) "Specified offense" means:

\* \* \*

6. The committing of any felony by a public officer or employee who, willfully and with intent to defraud the public or the public agency for which the public officer or employee acts or in which he or she is employed of the right to receive the faithful performance of his or her duty as a public officer or employee, realizes or obtains, or attempts to realize or obtain, a profit, gain, or advantage for himself or herself or for some other person through the use or attempted use of the power, rights, privileges, duties, or position of his or her public office or employment position.

§ 112.3173(2)(e)6., Fla. Stat. In other words, the elements of section 112.3173(2)(e)6. are: (a) any felony; (b) committed by a public employee; (c) willfully and with intent to defraud the public or the employee's public employer of the right to receive the faithful performance of the employee's duty; (d) to obtain a profit, gain or advantage for the employee or some other person; and (e) by use of the power, rights, privileges, duties, or position of the employment position.

23. In this case, Mr. Bullock is a former public employee and a member of a public retirement system. He pled no contest to a crime committed before retirement, child abuse, a third-degree felony, in violation of section 827.03(1), Florida Statutes (2010).

24. The specified offenses listed in section 112.3173(2)(e) do not apply. The only issue here is whether the elements of section 112.3173(2)(e)6. are satisfied by the acts that Mr. Bullock pled no contest to committing and of which he was adjudicated guilty.

25. The crime to which Mr. Bullock pled no contest is a felony. He committed it while on duty. His actions were plainly willful and deprived the public of the right to expect that a law enforcement officer would obey the law. Sexual gratification amounts to a personal gain, benefit, or advantage. Bollone v. Dep't of Mgmt. Servs., 100 So. 3d 1276 (Fla. 1st DCA 2012);



Holsberry v. Dep't of Mgmt. Servs., Case No. 09-0087 (Fla. DOAH July 24, 2009; DMS Oct. 19, 2009).

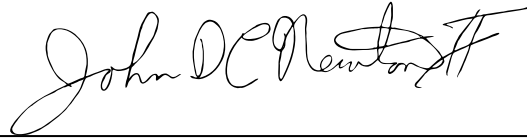
26. The weight of the evidence does not prove that the "use of the power, rights, privileges, duties, or position of" Mr. Bullock's position played any part in the commission of the offenses. He did not identify himself as a law enforcement officer. He did not exercise the power of a law enforcement officer. The victim did not know Mr. Bullock was a law enforcement officer.

27. Mr. Bullock committed the acts in a public place. The Board has not proven by a preponderance of the evidence that Mr. Bullock committed an offense which forfeits his retirement system rights and benefits.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Respondent, State Board of Administration, enter a final order finding that the Petitioner, Charles Bullock, was not convicted of a specified offense as identified in section 112.3173, Florida Statutes, and directing that he not forfeit his rights and benefits under the Florida Retirement System.

DONE AND ENTERED this 30th day of September, 2014, in  
Tallahassee, Leon County, Florida.



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JOHN D. C. NEWTON, II  
Administrative Law Judge  
Division of Administrative Hearings  
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1230 Apalachee Parkway  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 30th day of September, 2014.

ENDNOTE

<sup>1/</sup> All citations to the Florida Statutes are to the 2014  
codification of the Florida Statutes, unless otherwise noted.

COPIES FURNISHED:

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and Chief Investment Officer  
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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.