

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LUIS AMARANTE,

Petitioner,

vs.

Case No. 18-5314

RICHARD CORCORAN, AS
COMMISSIONER OF EDUCATION,^{1/}

Respondent.

_____ /

RECOMMENDED ORDER

This case was heard on December 10, 2018, in Tallahassee, Florida, before E. Gary Early, an Administrative Law Judge assigned by the Division of Administrative Hearings ("DOAH").

APPEARANCES

For Petitioner: Luis Amarante, pro se
Apartment 229
1 Condominio Los Naranjales
Carolina, Puerto Rico 00985-5879

For Respondent: J. David Holder, Esquire
J. David Holder, P.A.
300 Fox Meadow Lane
Thomasville, Georgia 31757

STATEMENT OF THE ISSUE

Whether Petitioner demonstrated entitlement to issuance of a Florida Educator's Certificate.

PRELIMINARY STATEMENT

On February 13, 2017, the Commissioner of Education entered a five-count Notice of Reasons setting forth the determination that Petitioner was not entitled to issuance of a Florida Educator's Certificate and identifying the statutory and regulatory violations warranting the Commissioner's determination, all of which were related to a 1999 federal conviction for Conspiracy to Commit Money Laundering, and Petitioner's subsequent failure to disclose the conviction on his 2016 application for a Florida Educator's Certificate.

On March 17, 2017, Respondent filed an election of rights by which he requested a formal hearing. The record is silent as to when the Notice of Reasons was served on Respondent, though there has been no suggestion that the request for hearing was not timely filed. The election of rights requested a period within which to explore settlement before the matter was referred to DOAH for a formal hearing.

On October 4, 2018, this case was referred to the Division of Administrative Hearings for a formal administrative hearing. The referral included an excerpt of a meeting of the Education Practices Commission in which Petitioner's application was being considered. It was apparently determined that the matter involved disputed issues of fact, thus warranting its referral to DOAH. The final hearing was noticed for December 10, 2018.

On November 26, 2018, Respondent filed its witness and exhibit lists, and a Joint Statement of Undisputed Facts. The final hearing was, thereafter, held as scheduled.

At the final hearing, Petitioner testified on his own behalf. Respondent offered the testimony of Morgan Thompson, program director for the Department of Education. Respondent's Exhibits 1 through 11 were received in evidence.

On December 13, 2018, Petitioner filed several documents reflecting his performance as a teacher in Puerto Rico. Those documents, having been filed after the close of the record, have not been considered.

A one-volume Transcript of the proceedings was filed on December 14, 2018. Respondent filed its Proposed Recommended Order on December 26, 2018, which has been duly considered by the undersigned in the preparation of this Recommended Order. Petitioner did not file a post-hearing submittal.

Petitioner's application for licensure is governed by the law in effect at the time the final licensure decision is made. See Lavernia v. Dep't of Prof'l Reg., 616 So. 2d 53, 54 (Fla. 1st DCA 1993). Therefore, all statutory references shall be to Florida Statutes (2018), unless otherwise indicated.

FINDINGS OF FACT

1. Respondent, as Commissioner of the Florida Department of Education, is charged with the duty to issue Florida

Educator's Certificates to persons seeking authorization to become school teachers in the State of Florida.

2. Petitioner is a current resident of Puerto Rico. Petitioner was convicted of federal conspiracy to commit money laundering on October 26, 1999, and sentenced to a term of imprisonment of 46 months, with credit for time served. Petitioner was released from prison in April 2001. He began teaching physical education in Puerto Rico, starting in August 2001. He has taught continuously in Puerto Rico for the past 17 years without incident.

Stipulated Facts

3. Petitioner was charged with multiple criminal offenses in the case of United States of America v. Luis Amarante, a/k/a Chiqui, a/k/a El Grandote, et al., Criminal Case No. 98-189(HL).

4. Petitioner pled guilty to one count of conspiracy to commit money laundering in the case of United States of America v. Luis Amarante, a/k/a Chiqui, a/k/a El Grandote, et al., Criminal Case No. 98-189(HL).

5. Petitioner was found guilty of one count of conspiracy to commit money laundering in the case of United States v. Luis Amarante, a/k/a Chiqui, a/k/a El Grandote, et al., Criminal Case 98-189(HL).

6. Petitioner was sentenced to serve 46 months in prison based upon his plea agreement entered in the case of United

States of America v. Luis Amarante, a/k/a Chiqui, a/k/a El Grandote, et al., Criminal Case 98-189(HL).

7. Petitioner submitted an application for a Florida Educator's Certificate on July 13, 2016. On the application, Petitioner answered "no" to the questions:

"Have you ever been convicted of a criminal offense?"

"Have you ever been found guilty of a criminal offense?"

"Have you ever pled guilty to a criminal offense?"

8. The answer of "no" to each of these questions was false.

9. Petitioner submitted written responses to Respondent's Request for Admissions on November 6, 2018, in which he affirmed in writing his statements set forth above.

Facts Adduced at Hearing

10. Immediately below Petitioner's electronic signature on his application was the following:

WARNING: GIVING FALSE INFORMATION IN ORDER TO OBTAIN OR RENEW A FLORIDA EDUCATOR'S CERTIFICATE IS A CRIMINAL OFFENSE UNDER FLORIDA LAW. ANYONE GIVING FALSE INFORMATION ON THIS AFFIDAVIT IS SUBJECT TO CRIMINAL PROSECUTION, AS WELL AS DISCIPLINARY ACTION BY THE EDUCATION PRACTICES COMMISSION.

11. Petitioner was not able to convincingly explain why he would have checked "no" for three separate questions regarding

his criminal conviction on the electronic application. His testimony ranged from an unsuccessful attempt to change his answer to the question before he submitted it via his telephone, to a misunderstanding as to the period of time for which information was being requested.

12. There was no evidence that Petitioner contacted the Department of Education to correct, amend, or withdraw his application.

13. Petitioner gave no indication of an inability to perform the duties of a physical education teacher. The crime for which he was convicted was non-violent in nature, and occurred more than 20 years ago. He testified that he "talk[s] with young people and I explain what I did, you know, trying to -- they don't do the same, you know, that they continue in the right path." Petitioner appeared to be sincere in his desire to teach with the benefit of his experience.

14. Despite the foregoing, it is Petitioner's burden to demonstrate his entitlement to an Educator's Certificate. Petitioner testified as to his 17 years of teaching in Puerto Rico -- which testimony is entitled to some degree of weight, as the passage of time can be persuasive evidence of rehabilitation and good character. The application includes the jurisdiction, certificate numbers, and dates of expiration for his Puerto Rico Teacher's Certificate. The evidence that Petitioner has been

certified to teach and has been employed as a physical education teacher in Puerto Rico was not disputed by Respondent.

15. The testimony offered by Petitioner at the formal hearing failed to provide any explanation or contrition for his criminal conduct. He offered no specific proof of his good moral character in the form of admissible references from employers or coworkers to substantiate his testimony.

CONCLUSIONS OF LAW

A. Jurisdiction.

16. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties thereto. §§ 120.569 and 120.57(1), Fla. Stat.

17. The Department of Education is the state agency responsible for licensure of instructional personnel for the public schools. § 1012.55, Fla. Stat.

18. The Commissioner of Education is the state officer responsible for investigating and prosecuting allegations of misconduct against teachers and applicants for Educator's Certificates. See § 1012.796(6), Fla. Stat.

B. Burden of Proof

19. As the party seeking issuance of an Educator's Certificate, Petitioner has the burden of proving by a preponderance of evidence that he satisfies the applicable

standards and requirements. Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996).

20. Petitioner's ultimate burden notwithstanding, Respondent has the burden of presenting evidence of any statutory or regulatory violations alleged in the Notice of Reasons as sufficient to warrant denial of the application. Osborne Stern & Co., 670 So. 2d at 934; Comp. Med. Access, Inc. v. Off. of Ins. Reg., 983 So. 2d 45 (Fla. 1st DCA 2008).

21. The criteria for an Educator's Certificate are established in section 1012.56(2), Florida Statutes. Except for the requirement in section 1012.56(2)(e) that a certificate holder "be of good moral character," there has been no allegation that Petitioner does not meet the basic requirements.

22. There is little dispute as to the offenses that form the basis for Counts 1 through 5 of the Notice of Reasons. The application of the licensing standards to those facts remains for disposition.

C. Analysis

Count 1

23. As a basis for the denial of Petitioner's application for an Educator's Certificate, Count 1 of the Notice of Reasons alleges that:

The Applicant is in violation of section 1012.56(2)(e), Florida Statutes, which requires that the holder of a Florida

Educator's Certificate be of good moral character.

24. The difficulty in fairly applying a subjective and imprecise standard as "good moral character" has been recognized by the Florida Supreme Court, which has held that:

The inherent defects of a standard of "good moral character" standing alone, and the saving grace of a history of judicial construction have each been recognized by the United States Supreme Court. In Konigsberg v. State Bar of California, 353 U.S. 252, 77 S. Ct. 722, 1 L. Ed. 2d 810 (1957), the court described the term "good moral character" as "unusually ambiguous" and held in pertinent part: It can be defined in an almost unlimited number of ways for any definition will necessarily reflect the attitudes, experiences, and prejudices of the definer.

Such a vague qualification, which is easily adapted to fit personal views and predilections, can be a dangerous instrument for arbitrary and discriminatory denial of the right to practice law.

In re Fla. Bd. of Bar Exam'rs, 373 So. 2d 890, 891 (Fla. 1979).

25. The imprecision of the "good moral character" standard does not, however, restrict its application. In Florida Board of Bar Examiners, 364 So. 2d 454, 458 (Fla. 1978), the Florida Supreme Court held that:

[A] finding of a lack of "good moral character" should not be restricted to those acts that reflect moral turpitude. A more appropriate definition of the phrase requires an inclusion of acts and conduct which would cause a reasonable man to have substantial doubts about an individual's

honesty, fairness, and respect for the rights of others and for the laws of the state and nation.

26. In applying the term "good moral character," a number of recommended and final orders in educator certification cases have relied upon the standard set forth in Zemour, Inc. v. State Div. of Beverage, 347 So. 2d 1102, 1105 (Fla. 1st DCA 1977), which stated:

Moral character, as used in this statute, means not only the ability to distinguish between right and wrong, but the character to observe the difference; the observance of the rules of right conduct, and conduct which indicates and establishes the qualities generally acceptable to the populace for positions of trust and confidence. An isolated unlawful act or acts of indiscretion wherever committed do not necessarily establish bad moral character. But, as shown by the evidence here, repeated acts in violation of law wherever committed and generally condemned by law abiding people, over a long period of time, evinces the sort of mind and establishes the sort of character that . . . should not be entrusted

Cappi Arroyo v. Dr. Eric J. Smith, as Comm'r of Educ., Case No. 11-2799 (Fla. DOAH May 31, 2012; Fla. EPC Nov. 13, 2012); Natasha Hodge v. Dr. Eric J. Smith, as Comm'r of Educ., Case No. 11-3318 (Fla. DOAH Sept. 29, 2011; Fla. EPC Jan. 11, 2012); Anitra Grant v. John Winn, as Comm'r of Educ., Case No. 06-5297 (Fla. DOAH Aug. 30, 2007; Fla. EPC Dec. 7, 2007); Ana Santana v. John Winn, as Comm'r of Educ., Case No. 05-1302 (Fla. DOAH Aug 22, 2005; Fla. EPC Feb. 21, 2006).

27. Section 1012.56(2)(e), which requires that a person seeking certification "[b]e of good moral character" is written in the present tense. Thus, the issue for determination under section 1012.56(2)(e) is whether Petitioner is presently of good moral character, not whether he committed acts that would suggest a lack of moral character at the time of their commission.

28. As set forth in the findings of fact herein, the only crime committed by Petitioner occurred more than 20 years ago. There is nothing in the record to suggest that it was more than an isolated chapter in his life. He paid his "debt to society," and there is no evidence of any subsequent acts or conduct that would negatively reflect on Petitioner's character.

29. The evidence adduced at the hearing regarding Petitioner's failure to disclose his conviction on the application suggested some degree of confusion. Though his testimony was not particularly persuasive, it was not totally unbelievable. In any event the circumstances were not so egregious as to suggest an overall inability to distinguish right from wrong.

30. Based on the record developed in this proceeding, Petitioner has demonstrated that he is currently of good moral character as that term is used in section 1012.56(2)(e). Thus,

the allegations in Count 1 do not warrant denial of Petitioner's application for an Educator's Certificate.

Count 2

31. As a basis for the denial of Petitioner's application for an Educator's Certificate, Count 2 of the Notice of Reasons alleges that:

The Applicant is in violation of Section 1012.56(12)(a), Florida Statutes, which provides that the Department of Education may deny an Applicant a certificate if the department possesses evidence satisfactory to it that the Applicant has committed an act or acts, or that a situation exists for which the Education Practices Commission would be authorized to revoke a teaching certificate.

32. Although listed as a separate count, it is clear that no specific act is alleged as a part of Count 2 itself. Rather, Count 2 takes those acts listed as grounds for revocation in section 1012.795(1), which acts were made the bases for denial in Counts 3 through 5, and adopts them as grounds for denial of an application. Thus, the substance of Count 2 is as set forth in Counts 3 through 5.

33. The basis for Count 2 being those standards set forth in Counts 3 through 5, the analysis of the substance of Counts 3 through 5 shall stand as being applicable to Count 2.

34. Although Counts 3 through 5 allege that Petitioner violated section 1012.795(1)(a), (d), and (f), an applicant who

does not hold an Educator's Certificate cannot violate those provisions, but rather is subject to denial of an application through the adoption of the revocation standards in section 1012.56(12) (a). Although Counts 3 through 5 may be technically deficient for failing to individually incorporate section 1012.56(12) (a), the substance of the bases for denial were clear, particularly in light of the recitation of section 1012.56(12) (a) in Count 2, and Petitioner was not prejudiced in preparing his defense.

Count 3

35. As a basis for the denial of Petitioner's application for an Educator's Certificate, Count 3 of the Notice of Reasons alleges that:

The Applicant is in violation of section 1012.795(1) (a), Florida Statutes, in that Applicant obtained or attempted to obtain a teaching certificate by fraudulent means.

36. In general, misrepresentation requires an element of intent. See, e.g., Fla. Bar v. Forrester, 818 So. 2d 477, 483 (Fla. 2002) ("This Court has held that 'in order to find that an attorney acted with dishonesty, misrepresentation, deceit, or fraud, the Bar must show the necessary element of intent.'" Further, this Court has held that 'in order to satisfy the element of intent it must only be shown that the conduct was deliberate or knowing.'" (internal citations omitted).

37. Petitioner's explanation for failing to disclose his criminal conviction, despite the explicit instruction that he do so, was not convincing. Thus, the allegation in Count 3 warrants denial of Petitioner's application for an Educator's Certificate.

Count 4

38. As a basis for the denial of Petitioner's application for an Educator's Certificate, Count 4 of the Notice of Reasons alleges that:

The Applicant is in violation of Section 1012.795(1)(d), Florida Statutes, in that Applicant has been guilty of gross immorality or an act involving moral turpitude as defined by rule of the State Board of Education.

39. Florida Administrative Code Rule 6A-10.083, in pertinent part, defines "gross immorality" and "moral turpitude" as follows:

(1) For the purpose of section 1012.795(1)(d), F.S., the term gross immorality shall be defined as conduct that is inconsistent with the standards of public conscience and good morals. It is conduct that is serious, rather than minor in nature, and which constitutes a flagrant disregard for proper moral standards. Further, the conduct brings the individual concerned or the education profession into public disgrace or disrespect and impairs the individual's service in the community.

(2) Without limiting the conduct here defined, conduct listed below in paragraphs (2)(a)-(c), shall prompt review for gross

immorality. In determining whether the conduct, act or omission meets the definition of gross immorality, the factors found in subsection (4) shall be considered.

(a) An act or omission, regardless of whether the individual is charged with or convicted of any criminal offense, which would constitute a felony or a first degree misdemeanor under the laws of the State of Florida or equivalent law in another state or U.S. Territory, or laws of the United States of America.

(b) An act or omission which results in the intentional falsification of any document or information submitted by an educator for the purpose of inducing the Florida Department of Education to issue, reissue, or renew a Florida educator's certificate.

* * *

(3) For the purpose of sections 1012.795(1)(d) and 1012.796, F.S., an act of moral turpitude shall be defined as a crime, regardless of whether the individual is charged or convicted, that is a felony or a first degree misdemeanor under the laws of the State of Florida or equivalent law in another state or U.S. Territory, or laws of the United States of America, that is evidenced by an act of baseness, vileness or depravity in the private and social duties, which, according to the accepted standards of the time, a man owes to his or her fellow man or to society in general, and the doing of the act itself and not its prohibition by statute fixes the moral turpitude.

(4) The following factors shall be considered in determining whether an act or omission rises to the level of gross immorality or moral turpitude under subsections (1), (2), and (3):

- (a) The educator's dishonesty or deception;
- (b) The educator's use, attempted use or threatened use, of violence;
- (c) The educator's malice or cruelty;
- (d) The educator's deliberation, premeditation, or contemplation of an act;
- (e) The educator's repeated behavior that displays a disregard for law, order, or human safety;
- (f) The harm, injury or insult to the victim;
- (g) The age, ability or limitation of the victim;
- (h) The benefit derived by the educator;
- (i) The presence or absence of mitigating factors, such as the educator's age, experience, mental illness, or actions in self-defense.

40. The evidence supports a conclusion that Petitioner falsified the application for the purpose of inducing Respondent to issue the Florida Educator's Certificate. Based on the foregoing, Petitioner was "guilty of gross immorality . . . as defined by rule of the State Board of Education," i.e., "conduct that is inconsistent with the standards of public conscience and good morals."

41. "Moral turpitude" involves a different and, in the view of the undersigned, more egregious standard than "gross immorality." The crime in this case was "conspiracy to commit

money laundering." A review of the Second Superseding Indictment demonstrates that Petitioner played a minor role in the overall scheme. Although he pled guilty to the crime, and was sentenced accordingly, Petitioner was not "guilty of . . . an act involving moral turpitude as defined by rule of the State Board of Education," i.e., "an act of baseness, vileness or depravity."

42. The conclusion that Petitioner engaged in conduct that meets the definition of gross immorality -- both in the late 1990s and in conjunction with the submission of his application for an Educator's Certificate -- warrants denial of Petitioner's application for an Educator's Certificate.

Count 5

43. As a basis for the denial of Petitioner's application for an Educator's Certificate, Count 5 of the Notice of Reasons alleges that:

The Applicant is in violation of Section 1012.795(1)(f), Florida Statutes, in that the Applicant has been convicted or found guilty of, or entered a plea of guilty to, regardless of adjudication of guilt, a misdemeanor, felony, or any other criminal charge, other than a minor traffic violation.

44. Respondent proved that Petitioner was found guilty of the federal felony offense of conspiracy to commit money

laundering for which he was sentenced to serve 46 months in prison.

45. Petitioner did not argue or prove that his conviction were the result of threats, coercion, or fraudulent means. Thus, the allegations in Count 5 warrant denial of Petitioner's application for an Educator's Certificate under the broad auspices of section 1012.795(1)(f).

D. Conclusion

46. Section 1012.56(12)(a) provides that the Department of Education may deny an Educator's Certificate for offenses described in section 1012.795(1), not that it must do so.

47. Petitioner's demonstration of fitness was based entirely on the passage of time which, though not insignificant, is not sufficient by itself to establish his fitness for an Educator's Certificate.

48. For the reasons set forth herein, Respondent is warranted in its decision to deny Petitioner's application for a Florida Educator's Certificate.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Education enter a final order denying Petitioner, Luis Amarante's application for a Florida Educator's Certificate.

DONE AND ENTERED this 14th day of January, 2019, in
Tallahassee, Leon County, Florida.



E. GARY EARLY
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 14th day of January, 2019.

ENDNOTE

^{1/} This case was previously styled with Pam Stewart as
Commissioner of Education. On January 8, 2019, Richard Corcoran
assumed the office of Commissioner of Education, and the style
has been amended accordingly.

COPIES FURNISHED:

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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.