

**COMMONWEALTH OF PENNSYLVANIA
PROFESSIONAL STANDARDS AND PRACTICES COMMISSION**

IN RE: PETITION FOR REINSTATEMENT :
OF DIANE KASHUBA-MONTELIUS : **DOCKET NO. RE-23-001**
:

ORDER GRANTING PETITION FOR REINSTATEMENT

This matter is before the Professional Standards and Practices Commission (“Commission”) upon the Application and Petition for Reinstatement of Diane Kashuba-Montelius (“Petitioner”) and the Department of Education’s (“Department”) recommendation in response thereto. For the reasons set forth below, the Petition is granted.

Background

Petitioner held an Instructional I certificate in the area of Social Studies 7-12 and a Private School Teacher certificate in the area of Social Studies: Sec. Ed. 9-12.

On August 6, 2020, the Department filed a Notice of Charges and Motion for Summary Judgment seeking the revocation of Petitioner’s certificates and employment eligibility based upon her convictions for Medicaid Fraud, Forgery, and Theft by Deception.

The Commission heard oral argument at its regularly scheduled meeting on March 15, 2021. Respondent appeared *pro se*. While she acknowledged her convictions, she explained the circumstances that led to her poor choices and requested that the Commission consider those circumstances and not revoke her certificates.

By Order dated April 16, 2021, the Commission found that Petitioner had been convicted of crimes involving moral turpitude and directed the Department to revoke her

certificates and employment eligibility pursuant to section 9b(a)(2) of the Educator Discipline Act (“Act”).¹

On January 30, 2023, Petitioner filed an Application and Petition for Reinstatement of her certificates and employment eligibility (“Petition”). She waived her right to a hearing.² As required by the Act, the Commission sought the recommendation of the Department, which filed a response to the Petition on May 12, 2023. The Department does not oppose Petitioner’s reinstatement.

In accordance with the Commission’s bylaws, the Commission published in the *Pennsylvania Bulletin* a notice of opportunity for hearing, which provided thirty days for the filing of protests or petitions for intervention by interested parties. See 22 Pa. Code § 233.123(c). Having received neither such filings nor a request for hearing, the Commission directly considered the Petition at its regularly scheduled meeting on July 17, 2023.

Discussion

In all reinstatement cases, the applicant bears the burden of establishing that the relief sought is just and proper. 22 Pa. Code § 233.123(e)(2). For purposes of determining whether it is just and proper to lift a suspension or reinstate a certificate, the Commission may consider: (1) the conduct which resulted in discipline; (2) other past

1. That section reads, in pertinent part, as follows: “The commission shall [d]irect the department to revoke the certificate and employment eligibility of an educator who has been convicted of...a crime involving moral turpitude...upon the filing of a certified copy of the verdict or judgment or sentence of the court with the commission.” 24 P.S. § 2070.9b(a)(2).

2. Initially, Petitioner requested a hearing. By correspondence dated February 9, 2023, she requested that the Commission consider the Petition directly without a hearing.

conduct of the applicant; (3) the applicant's current attitude toward past conduct; (4) rehabilitation efforts and activities; (5) evidence of compliance with any conditions imposed as part of the discipline; (6) references and letters in support of or in opposition to reinstatement. 24 P.S. § 2070.16.

Within this framework, the Commission carefully reviewed the Petition and has determined that reinstatement of Petitioner's certificates and employment eligibility is just and proper.

Conduct that resulted in discipline:

In 2011, while working as a behavioral specialist consultant and mobile therapist, Petitioner falsified documents to receive payments totaling \$1,825.25 for services she did not provide. As a result, on October 17, 2012, Petitioner was convicted in Schuylkill County, Pennsylvania of two counts of Medicaid Fraud, 62 P.S. § 1407(a)(1) and (4), both felonies of the third-degree, Forgery, 18 Pa.C.S. § 4101(a)(2), graded as a misdemeanor of the first degree, and Theft by Deception, 18 Pa.C.S. § 3922(a)(1), also graded as a misdemeanor of the first degree. She was sentenced to serve twelve (12) months of probation and ordered to perform community service and to pay restitution in the amount of \$1,825.25.³ The remoteness of Petitioner's convictions weighs heavily in

3. Under the Public School Code of 1949, an individual convicted of an offense graded as a felony of the first, second or third degree is eligible for continued or prospective school employment only if a period of ten years has elapsed from the date of expiration of the sentence for the offense. 24 P.S. § 1-111(f.1)(1). While Petitioner's sentence should have expired in October of 2013, she still owes \$257.75 in restitution and remains on probation as a result. Therefore, she is subject to section 111(f.1)(1)'s employment ban. The Commission notes, however, there have been numerous court cases involving successful as applied challenges to the constitutionality of section 111's employment bans. See Johnson v. Allegheny Intermediate Unit, 59 A.3d 10 (Pa. Cmwlth. 2012); Jones v. Penn Delco Sch. Dist., No. 294 M.D. 2012, 2012 Pa. Commw. Unpub. LEXIS 955; Croll v. Harrisburg Sch. Dist., No. 210 M.D. 2012, 2012 Pa. Commw. Unpub. LEXIS 957; Megraw v. Sch. Dist. of Cheltenham Twp., 189 A.3d 26 (Pa. Cmwlth. 2018). As a result, the Department has advised school administrators, in consultation with counsel, to determine whether the ban can be constitutionally applied to an individual and generally will defer to that

her favor, as does the fact that she was not teaching at the time and her crimes were non-violent.

Other past conduct:

On March 24, 2004, the Department initiated disciplinary proceedings against Petitioner after she was convicted on December 3, 2002, of Possessing Instruments of Crime, 18 Pa.C.S. § 907, and Recklessly Endangering Another Person, 18 Pa.C.S. § 2705. The facts underlying these convictions are that on May 9, 2002, Petitioner, who at the time was employed as a teacher by the School District of Philadelphia, intentionally set fire to a trashcan in her classroom when she became frustrated with a student who was reading a newspaper during class, causing one student to seek medical attention at a local hospital. The Department and Petitioner subsequently agreed to resolve the charges with a three-year suspension of Petitioner's certificate beginning on May 9, 2002 and ending on May 9, 2005. To have the suspension lifted, Petitioner agreed to undergo a psychological evaluation, complete any recommended treatment, and submit documentation from a psychologist or psychiatrist certifying that she was fit to return to teaching. The Commission approved the parties' settlement agreement by Order dated December 2, 2004. Petitioner complied with all conditions of

determination. See Act 82: Court Decisions on Lifetime Bans on Employment for Certain Criminal Convictions: <https://www.education.pa.gov/Educators/Clearances/Laws/Pages/Act82.aspx>. The Commission also notes section 111(f.1)(1)'s employment ban does not act as a legal bar to reinstatement. While the Commission considers the existence of an employment ban in determining whether reinstatement is just and proper, it is just one of many factors. The Commission accords less weight to the existence of an employment ban where, in the judgment of the Commission, application of the ban to the applicant raises serious constitutional issues. After reviewing the applicable cases and applying the relevant factors to the matter at hand, the Commission has decided to focus its consideration on other factors.

the agreement, and the suspension of her certificate was lifted.

In its recommendation, the Department also alleges that in 2012, Petitioner submitted clearances that predated her arrest on Medicaid Fraud and related charges when she applied for a substitute position with the Jim Thorpe Area School District and never informed the school district of her subsequent convictions. The Department further alleges that Petitioner misrepresented the facts underlying her convictions for Possessing Instruments of Crime and Recklessly Endangering Another Person by claiming she was convicted after engaging in a protest that endangered bystanders. While troubling, these allegations date back more than ten years and have never been adjudicated. Moreover, the Department has indicated that it does not intend to pursue these allegations further.

Current attitude about past conduct:

While Petitioner appears to challenge the veracity of the criminal charges in her personal statement, she took responsibility by pleading *nolo contendere*, completing community service, and paying restitution.⁴ The Commission accepts as genuine Petitioner's statement that she has learned from her mistakes and that she is a stronger person now.

Rehabilitative Efforts:

Petitioner has been a law-abiding citizen since her arrest in 2011. She is compliant with her mental health treatment and remains in stable condition. Her

4. As noted above, Petitioner still owes \$257.75. However, she has been making consistent monthly restitution payments since April of 2020.

personal statement reflects personal growth and self-awareness, as well as a genuine desire to serve students.

Evidence of Compliance with any Conditions Imposed as part of the Discipline:

No conditions were imposed as part of the discipline in this matter.

References:

Petitioner submitted several letters of support that speak to her good character, intelligence, and strong work ethic.

Conclusion:

The Commission has determined that reinstatement of Petitioner's certificates and employment eligibility is just and proper and accordingly enters the following:

Order

AND NOW, this 25th day of August 2023, upon consideration of Petitioner's Application and Petition for Reinstatement and the Department's recommendation, it is hereby ORDERED:

1. The Petition is granted.
2. The Department is directed to reinstate Petitioner's certificates and eligibility to be employed as a charter or cyber charter school staff member or contracted educational provider staff member effective on the date of this Order.

PROFESSIONAL STANDARDS AND
PRACTICES COMMISSION

By: 

Myron Yoder
Chairperson Pro Tempore



Attest:

Shane F. Crosby
Executive Director

Date Mailed: August 25, 2023