



Before the Education Practices Commission
of the State of Florida

SEP 14 1992
CLERK OF THE COMMISSION

BETTY CASTOR, as
Commissioner of Education,

Petitioner,

vs.

Final Order

ALTON J. ROBERTS,

Respondent.

EPC CASE NO. 91-235-RT
DOAH CASE NO. 91-7257
EPC INDEX NO. 92-020-FOF

Respondent, ALTON J. ROBERTS, holds Florida educator's certificate no. 584629. Petitioner filed an Administrative Complaint seeking suspension, revocation, permanent revocation or other disciplinary action against the certificate.

Respondent requested a formal hearing which was held before a hearing officer of the Division of Administrative Hearings. A Recommended Order was forwarded to the Commission pursuant to Section 120.57(1), F.S., which is attached to and made a part of this Order.

A panel of the Education Practices Commission (EPC) met on August 7, 1992, in Melbourne, Florida, to take final agency action. Petitioner was represented by John Gilroy, Attorney at Law; Respondent was represented by William DuFresne, Attorney at Law. The panel reviewed the entire record in the case.

Petitioner's first exception was accepted by the panel without objection of Respondent to modify the Conclusions of Law to delete the third and fourth sentence of the fourth paragraph of the Conclusions of Law of the Recommended Order because there were no findings of fact or legal precedent to support such conclusions.

Petitioner's second exception was solely to the recommended penalty of the Recommended Order and was therefore considered as argument in the penalty phase of the hearing.

Final Order
Alton J. Roberts
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The panel adopts the Hearing Officer's Findings of Fact as set forth in the Recommended Order. The Conclusions of Law of the Recommended Order were adopted as the Conclusions of Law of this Order with the exception of the third and fourth sentences of the fourth paragraph.


The recommended penalty of the Hearing Officer was adopted by the panel. Wherefore it is ORDERED that Respondent be issued a letter of Reprimand for his violations of law and rule cited in the Conclusions of Law, and that the Respondent serve a period of probation continuing through the five years of his employment as a Florida educator following the effective date of this Order. The terms of probation shall be that upon employment in a position requiring a Florida educator's certificate, Respondent shall notify EPC immediately upon employment as an educator in any public or private school in the State of Florida; arrange for his immediate supervisor to submit performance reports to the EPC at least every three months; submit true copies of all formal observation/evaluation forms within ten days of issuance; do not consume, inject, or ingest any controlled substance unless prescribed or administered for legitimate medical purposes; submit to random blood and urine testing, for the purposes of ascertaining compliance with conditions of probation, at the direction of the EPC and authorize direct reporting of results to the EPC; all costs incurred in fulfilling terms of probation shall be borne by the Respondent. This Order takes effect upon filing.

This Order may be appealed by filing notices of appeal and a filing fee, as set out in Section 120.68(2), F.S., and Florida Rule of Appellate Procedure 9.110(b) and (c), within 30 days of the date of filing.

DONE AND ORDERED, this 2nd day of September, 1992.

COPIES FURNISHED TO:

Jerry Moore, Program Director
Professional Practices Services


KEITH VARBROUGH, Presiding Officer

Final Order
Alton J. Roberts
Page Three

Daniel Bosanko, Esquire
Attorney General's Office

Sydney McKenzie, III
General Counsel

Florida Admin. Law Reports

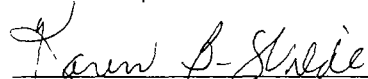
Octavio J. Visiedo, Supt.
Dade County Schools
1450 N. E. 2nd Avenue
Miami, Florida 33132

Dr. Patrick Gray
Executive Asst. Superintendent
Office of Professional Standards
Dade County Schools
1444 Biscayne Blvd., Suite 215

William R. Dorsey, Hearing Officer
Division of Admin. Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550

Margaret O'Sullivan, Esquire
Department of Education
1701, The Capitol
Tallahassee, Florida 32399

I HEREBY CERTIFY that a copy of the foregoing Order in the matter of BC vs. Alton J. Roberts was mailed to William DuFresne, Esquire 2929 Southwest Third Avenue, Suite One, Miami, Florida 33129, this 11th day of September 1992, by U. S. Mail.


KAREN B. WILDE, Clerk



FLORIDA DEPARTMENT OF EDUCATION

Betty Castor

Commissioner of Education

Karen Wilde
Executive Director
Education Practices Commission

September 21, 1992

Mr. Alton J. Roberts
1540 North West 203rd Street
Miami, Florida 33169

RE: Betty Castor vs. Alton J. Roberts
EPC #91-235-RT

Dear Mr. Roberts:

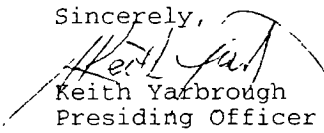
The teacher panel of the Education Practices Commission, as you know, reviewed the matter pending against you on August 7, 1992. The panel concluded that you failed to practice your profession according to acceptable standards in that you attempted to conceal a small amount of cocaine while a passenger in a vehicle that was stopped for a traffic violation.

This panel, composed of your peers, believes that as a teacher you are required to exercise a measure of leadership beyond reproach. By your actions, you have lessened the reputation of all who practice our profession. Your actions cannot be condoned by the profession nor by the public who employ us.

The Education Practices Commission sincerely hopes it is your intention to never allow this situation to occur again or indeed, to violate any professional obligation in fulfilling your responsibility as an educator. To violate the standards of the profession will surely result in further action being taken against you.

This letter of reprimand is being placed in your state certification file and a copy sent to the Dade County School Board for placement in your personnel file.

Sincerely,


Keith Yarbrough
Presiding Officer

KY/kwa

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

RECEIVED

APR 30 1992

BETTY CASTOR, as Commissioner
of Education,

Petitioner,

vs.

ALTON J. ROBERTS,

Respondent.

Education Practices Commission
FILED
Education Practices Commission

CASE NO. 91-7257
SEP 14 1991

Kenn B. Stude, Clerk

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was conducted in this case at Miami, Florida, on March 3, 1992, before Michael M. Parrish, a duly designated Hearing Officer of the Division of Administrative Hearings. Appearances for the parties at the hearing were as follows:

APPEARANCES

For Petitioner: John F. Gilroy, Esquire
Department of Education
352 Florida Education Center
325 West Gaines Street
Tallahassee, Florida 32399-0400

For Respondent: William Du Fresne, Esquire
2929 S.W. Third Avenue, Suite One
Miami, Florida 33129

STATEMENT OF THE ISSUES

This is a case in which the Petitioner seeks to take disciplinary action against the Respondent on the basis of allegations that the Respondent is guilty of misconduct involving the possession of cocaine. There is very little dispute regarding the facts in this case. The primary dispute concerns the determination of the appropriate penalty to be imposed.

PRELIMINARY STATEMENT

At the hearing on March 3, 1992, the Petitioner presented the testimony of one of the arresting officers and also offered three exhibits, all of which were received in evidence. The Respondent testified on his own behalf and also presented the testimony of his father. At the conclusion of the formal hearing, the parties were allowed 10 days from the filing of the transcript within which to file their proposed recommended orders. A transcript of the proceedings was filed with the Hearing Officer on March 25, 1992. Thereafter, all parties filed timely proposed recommended orders containing proposed findings of fact and conclusions of law. The parties' proposals have been carefully considered during the preparation of this Recommended Order. Specific rulings on all findings of fact proposed by the parties are contained in the appendix hereto.

FINDINGS OF FACT

1. The Respondent, Alton J. Roberts, holds teaching certificate number 584629 issued by the Florida Department of Education. His certificate is in the area of Physical Education and is valid for the period 1991-1996.

2. At all times relevant and material to this proceeding, the Respondent has been, and continues to be, employed as a school teacher with the Dade County School System. He has been teaching in this capacity as a Physical Education teacher for approximately four years.

3. On or about July 21, 1990, the Respondent and another

adult male were in the process of driving from Miami to New York to return a van that belonged to the Respondent's brother. While the Respondent was sleeping and the other man was driving, law enforcement officers stopped the van for a traffic violation in the vicinity of Fort Pierce, Florida. As the van was coming to a stop, the driver woke the Respondent and told him that they were being stopped by law enforcement officers. When the van came to a stop, the driver got out first and went to speak to the officers.

4. After the driver had gotten out of the car, the Respondent saw a small plastic container that he knew was the type of container customarily used for storing and sifting powdered cocaine. In an effort to conceal the container from the law enforcement officers, the Respondent picked up the container and put it in one of his back pockets. A few minutes later when the Respondent was asked to step out of the van, the law enforcement officers discovered the container in the Respondent's back pocket.

5. Further examination of the container removed from the Respondent's back pocket revealed that it contained a small amount of white powder. The white powder was not weighed, but was perhaps as much as a gram in total weight. Described otherwise, the volume of the powder in the container removed from the Respondent's pocket was less than the volume of powder that would result from a crushed aspirin. The white powder was field tested and it tested positive for cocaine. As a result of the events described above, the Respondent was arrested and charged with felony possession of cocaine and possession of drug paraphernalia.

6. On February 25, 1991, the Respondent entered a plea of nolo contendere to the charge of possession of cocaine and the other charge was dismissed. Adjudication was withheld and the Respondent was placed on probation for a period of two years. The Respondent was also required to perform 150 hours of community service, to pay \$725.00 in court costs and fines, to pay \$50.00 per month toward the cost of his probation supervision, and to receive a substance abuse evaluation. The Respondent has complied with all of the court-ordered requirements.

7. The Respondent does not use cocaine. There is no evidence that the Respondent has been involved in any way with cocaine or any other illegal drugs at any time before or after the incident on July 21, 1990.

8. The Respondent's arrest and subsequent court proceedings did not receive any notoriety in the Dade County area. The Respondent reported the matter to the principal of the school where he is employed. The principal reported the matter to administrators of the Dade County School System. After review of the matter, the administrators of the Dade County School System allowed the Respondent to continue to be employed as a teacher.

9. Between the date of his arrest and the date of the hearing, the Respondent has taught all of one school year and most of a second school year. No evidence was offered of any problems or irregularities in his teaching during that period, nor was any evidence offered of any lack of effectiveness as a teacher during that period.

CONCLUSIONS OF LAW

1. The Division of Administrative Hearings has jurisdiction over the subject matter of and the parties to this proceeding. Sec. 120.57(1), Fla. Stat.

2. In a case of this nature, the Petitioner bears the burden of proving the violations charged by clear and convincing evidence. Ferris v. Turlington, 510 So.2d 292 (Fla. 1987). The Respondent concedes that the Petitioner has met its burden.¹ The dispute centers on the issue of what penalty should be imposed.

3. The Respondent argues that the appropriate penalty in this case should consist of a written reprimand and a five year period of probation with conditions of probation providing for monitoring of the Respondent's professional conduct and random drug testing. The Petitioner argues that a more severe penalty is appropriate. In addition to a reprimand and a period of probation, the Petitioner argues that the Respondent's teaching certificate should be suspended for a period of six months. In support of its position, the Petitioner argues as follows at page 10 of its Proposed Recommended Order:

Suspension or revocation of a teaching certificate is not only justified, but virtually required by substantial precedent in drug possession cases. A review of the Final Orders of the Education Practices Commission during the last three (3) years reveals that cocaine possession has resulted in no less than a suspension of the Respondents' teaching certificates in all but a single case. In the large majority of holdings, the EPC has

¹ See Paragraph 3 of the proposed conclusions of law in the Respondent's Proposed Recommended Order.

imposed a revocation of the teaching certificate, either permanently, or for a period of years, in accordance with the circumstances.

4. It is difficult to compare the circumstances of this case with the circumstances of the cases relied upon by the Petitioner because the prior cases relied upon by the Petitioner are not cited in its Proposed Recommended Order, nor were they the subjects of a request for official recognition. Nevertheless, assuming the accuracy of the Petitioner's argument regarding the nature of the penalties that have been imposed in typical drug possession cases, it must be noted that this is not a typical drug possession case. The typical drug possession case involves facts that either clearly demonstrate, or that warrant an inference, that the possession was for personal use. Such is not the case here. There is no persuasive evidence in this case that the Respondent ever used or intended to use illegal drugs. To the contrary, I have credited his testimony to the effect that he does not use illegal drugs. His actions on July 21, 1990, described in the findings of fact constitute an act involving moral turpitude within the meaning of Section 231.28(1)(c), Florida Statutes, and constitute a serious offense that warrants some disciplinary action. But that offense is less serious, and provides less reason for concern as to the appropriateness of allowing the Respondent to remain in a classroom setting, than an offense that demonstrates personal use, or an intent to engage in personal use, of illegal drugs. A further mitigating circumstance in this case is that from the date of the Respondent's arrest until the date of the formal

hearing in this case, the Respondent had taught school for all of one school year and for most of another without any evidence of any problems or lack of effectiveness.

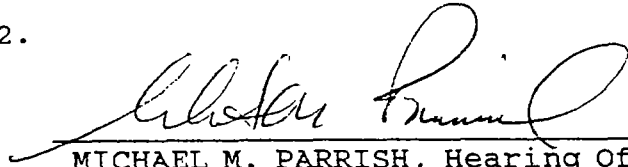
RECOMMENDATION

On the basis of all of the foregoing, it is RECOMMENDED that a Final Order be issued in this case concluding that the Respondent is guilty of a violation of Section 231.28(1)(c), Florida Statutes, as charged in the Administrative Complaint, and imposing a penalty consisting of the following:

(a) Issuance of a written reprimand from the Education Practices Commission to be placed both in the Respondent's certification file and in the Respondent's personnel file with the Dade County School System, and

(b) Placement of the Respondent on probation for a period of five years, the probation period to begin upon issuance of the Final Order and to include such terms as may appear necessary and appropriate to the Education Practices Commission to monitor the Respondent's performance as a teacher during the period of probation, including a provision for random drug testing of the Respondent at the request of the Education Practices Commission and at the expense of the Respondent.

DONE AND ENTERED at Tallahassee, Leon County, Florida, this 26th day of April, 1992.


MICHAEL M. PARRISH, Hearing Officer
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550
904/488-9675

Filed with the Clerk of the Division
of Administrative Hearings this 28th
day of April, 1992.

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS: All parties have the right to submit written exceptions to this Recommended Order. All agencies allow each party at least 10 days in which to submit written exceptions. Some agencies allow a larger period within which to submit written exceptions. You should contact the agency that will issue the final order in this case concerning agency rules on the deadline for filing exceptions to this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.

Copies furnished to:

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Sidney H. McKenzie, Esquire
General Counsel
Department of Education
The Capitol, PL-08
Tallahassee, Florida 32399-0400

Case No. 91-7257

APPENDIX TO RECOMMENDED ORDER
IN CASE NUMBER 91-7257

The following are my specific rulings on all proposed findings of fact submitted by all parties.

Findings submitted by Petitioner:

All of the proposed findings of fact submitted by the Petitioner have been accepted in substance.

Findings submitted by Respondent:

Paragraphs 1 through 5: Accepted in substance.

Paragraph 6: Rejected as constituting a legal conclusion rather than a finding of fact.

Paragraphs 7 through 10: Accepted in substance.

Paragraph 11: Rejected as constituting argument or a legal conclusion rather than a finding of fact.

Case No. 91-7257

STATE OF FLORIDA
EDUCATION PRACTICES COMMISSION

BETTY CASTOR, as Commissioner
of Education,

Petitioner,

vs.

CASE NO. 91027-J

ALTON J. ROBERTS,

Respondent.

_____ /

ADMINISTRATIVE COMPLAINT

Petitioner, BETTY CASTOR, as Commissioner of Education, files this Administrative Complaint against ALTON J. ROBERTS, Respondent. The Petitioner seeks the revocation or suspension of the Respondent's teaching certificate, or other administrative penalty, pursuant to Sections 120.60, 231.261, 231.262, 231.28, 231.36(2), and 231.546(2), Florida Statutes.

The Petitioner alleges:

1. The Respondent holds Florida teaching certificate 584629, covering the area of physical education, which is valid through June 30, 1991.

2. The act or acts alleged hereinafter were committed while the Respondent held a teaching certificate as determined through an investigation of the complaint filed by the school district. At all times pertinent hereto, the Respondent was employed as a teacher at Southwest Miami High School in the Dade County School District.

3. On or about August 21, 1990, the Respondent was a passenger in a vehicle that was stopped for a traffic violation by a St. Lucie County Sheriff's officer. The Respondent was found to have a small container of cocaine in his possession and was arrested and charged with possession of cocaine and possession of drug paraphernalia. The charge of possession of drug paraphernalia was subsequently dropped. On or about February 25, 1991, the Respondent

entered a plea of nolo contendere to the charge of possession of cocaine in St. Lucie County Circuit Court. The court withheld adjudication of the charge and placed the Respondent on two (2) years probation. The court ordered the Respondent to pay \$725.00 in court costs, participate in a substance abuse program, submit to random drug testing, and perform 150 hours of community service.

4. The allegations of misconduct set forth herein are subject to investigation and action pursuant to Section 231.262(1)(a), Florida Statutes, which authorizes the Department of Education to investigate or continue to investigate and take action on a complaint filed against a person whose teaching certificate has expired, if the act or acts which are the basis for the complaint were allegedly committed while that person possessed a teaching certificate.


The Petitioner charges:

FIRST COUNT: The allegations of misconduct set forth herein are in violation of Section 231.28(1)(c), Florida Statutes, in that the Respondent has been guilty of gross immorality or an act involving moral turpitude.

WHEREFORE, the Petitioner recommends that the Education Practices Commission impose an appropriate penalty pursuant to the authority provided in Sections 231.262(6) and 231.28(1), Florida Statutes, which penalty may include a reprimand, probation, restriction of the authorized scope of practice, administrative fine, suspension, revocation, or permanent revocation of the teaching certificate, or combination thereof, or any other penalty provided by law, for the reasons set forth herein, and in accordance with the Explanation and Election of Rights forms which are attached to and made a part of this Administrative Complaint.

BEST AVAILABLE COPY

EXECUTED on this 8 day of October, 1991.


BETTY CASTOR, as Commissioner
of Education
State of Florida