



AFFIRMED
MOTOR VEHICLE COMMISSION

State of ^{OLPA}New Jersey
OFFICE OF ADMINISTRATIVE LAW Date 5-2-19

INITIAL DECISION

OAL DKT. NO. MVH 01171-19

AGENCY DKT. NO. HXXXX

XXXXX 0372a

**NEW JERSEY MOTOR VEHICLE
COMMISSION,**

Petitioner,

v.

VAN F. HOWELL,

Respondent.

Cassandra E. Berry, Regulatory Officer, for petitioner pursuant to N.J.A.C. 1:1-5.4(a)(2)

Van F. Howell, respondent, pro se

Record Closed: February 22, 2019

Decided: March 18, 2019

BEFORE **SARAH G. CROWLEY**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, Motor Vehicles Commission (MVC or petitioner) seeks to suspend the passenger endorsement for the New Jersey Commercial Driver License (CDL), of Van F. Howell (respondent or Howell) pursuant to N.J.S.A. 39:3-10 et seq., N.J.S.A. 39:5-30, and

N.J.A.C. 13:21-14.5(a) and (c). The MVC asserts that a suspension is warranted because respondent pled guilty to human trafficking, N.J.S.A. 2C:13-8A and Conspiracy, N.J.A.C. 2C:5-2, which petitioner maintains is a disqualifying crime or offense within the meaning of N.J.A.C. 13:21-14.5(c)(12) and violates N.J.A.C. 13:21-14.5(a). Respondent maintains that the offense to which he pled guilty does not constitute a disqualifying offense, pursuant to the statute, and that several mitigating factors justify a waiver of a suspension under N.J.A.C. 13:21-14.5(d).

On or around January 4, 2019, the MVC proposed to suspend respondent's passenger endorsement for the reasons stated above. Respondent requested a hearing and the matter was transmitted to the Office of Administrative Law (OAL) where it was filed on January 22, 2018, as a contested case. A hearing was held on February 22, 2019, and the record closed.

TESTIMONY AND FACTUAL DISCUSSION

Van Howell testified on his own behalf and testified that he needs to provide for his family and he should be permitted to maintain his passenger endorsement. In support of his position, he maintained that he has been out of prison for three years and needs to make money to support his family. He discussed the Intensive Supervision Program, and an Anger Management Program he completed. He served his time and feels that he should not be penalized further. He provided a letter from his wife about his work with the Community day in Chesilhurst.

Rukiah Alwan, Howell's wife testified that he has become a productive member of society and he has worked with the town on their community day. She recommended that he be permitted to have his passenger endorsement, so he can become a productive worker and a meaningful member of society.

FINDINGS OF FACTS

I **FOUND** that all of the testimony was credible and therefore find the foregoing as **FACT**.

Van Howell was served with a Scheduled Suspension Notice concerning his passenger endorsement due to a disqualifying criminal arrest and/or conviction record. Howell was informed that the basis for the proposed suspension of his CDL passenger endorsement was a charge of a N.J.S.A. 2C13-8A:2-6, Human Trafficking and an additional charge of conspiracy, N.J.A.C. 2C:5-2, both felony convictions.

Howell was initially charged with three counts of Human Trafficking and three counts of Promoting prostitution and two counts of conspiracy. The offenses occurred on January 24, 2014. On May 2, 2015, Howell pled guilty to one count of Human Trafficking and one count of conspiracy. In connection with this plea, he served eight months in jail and is currently still on probation.

The Order of Conviction notes that there are no mitigating factors, and notes several aggravating factors, and concluded that the aggravating factors outweighed the mitigating factors, of which none were noted.

The aggravating factors noted by the court were:

- The risk that defendant will commit another offense.
- The extent of the defendant prior criminal record and the seriousness of the offenses of which he has been convicted, including five count of common pleas conviction from Pennsylvania and one municipal court conviction.
- The need for deterring the defendant and others from violating the law.
- Howell was in custody from May 21, 2015 to January 15, 2016. He remains on probation.

LEGAL DISCUSSION AND CONCLUSIONS OF LAW

The question to be determined in this case is whether the respondent's conviction/plea of Human Trafficking and Conspiracy is a disqualifying offense per the

controlling regulation, and if so, whether respondent has demonstrated rehabilitation pursuant to the Rehabilitated Convicted Offenders Act (RCOA), N.J.S.A. 2A:168a-1 et seq. sufficiently to justify a waiver under N.J.A.C. 13:21-14.5.

Under the police authority of the State, the Administrator of the Commission has the right to impose reasonable restrictions on the issuance of licenses for various occupations in order to protect the public health and safety. Sanders v. Div. of Motor Vehicles, 131 N.J. Super. 95, 97 (App. Div. 1974). It further has been said that the primary objective of administrative proceedings before the Director "is to foster safety on the highway." Atkinson v. Parsekian, 37 N.J. 143, 155 (1962).

Under rules promulgated by the MVC, the MVC's authority to withhold, revoke or suspend a passenger endorsement are set forth in N.J.A.C. 13:21-14 et seq., whereby the Chief Administrator of the MVC:

may not issue a passenger endorsement, or may revoke or suspend the passenger endorsement of any person when it is determined that the applicant or holder of such passenger endorsement has:

12. A criminal record that is disqualifying. The phrase "crime or other offense" as used hereinafter shall include crimes, disorderly persons offenses or petty disorderly persons offenses as defined in the "New Jersey Code of Criminal Justice" and any offenses defined by any other statute of this State. A driver has a disqualifying record if:

- i. He or she has been convicted of, or forfeited bond or collateral upon, any of the following:
 - (1) An offense involving the manufacture, transportation, possession, sale or habitual use of a "controlled dangerous substance" as defined in the "New Jersey Controlled Substance Act";
 - (2) A crime or other offense involving deviate or illicit social behavior such as rape, incest, sodomy or carnal abuse;
 - (3) A crime or other offense involving the use of force or the threat of force to or upon a person or property, such as armed robbery, assault and arson;

(4) **Any crime or other offense indicative of bad moral character; . . .**
[N.J.A.C. 13:21-14.5(c).] (emphasis added.)

The term “bad moral character” is not defined in any statute or regulation, and there exists no list or description of those crimes or offenses that would be indicative of bad moral character under this regulation. Moreover, N.J.A.C. 13:21-14.5(a), requires that “Applicants [for passenger endorsements] shall . . . be of good character and physically fit and possess a valid New Jersey drivers license.

Finally, the law vests the Chief Administrator with the discretion to waive any portion of the disqualifying regulation “[i]f sufficient and reasonable grounds are established either upon initial review or at a hearing . . .” N.J.A.C. 13:21-14.5(d). Proof of rehabilitation establishes grounds to waive the regulation. *Id.*; see *Sanders*, 131 N.J. Super. at 98. In this case, where the MVC claims that a license endorsement should be revoked, the agency bears the burden of proof, by a preponderance of the competent and credible evidence, of facts essential to its claim. *Atkinson v. Parsekian*, 37 N.J. 143, 149 (1962).

Howell was forty-two years old when he was charged with multiple counts of human trafficking, conspiracy and promoting prostitution. In addition, Howell had a five-prior convictions in Pennsylvania. The basis for the MVC’s proposed suspension is Howell’s plea to Human Trafficking and Conspiracy are crimes indicative of bad moral character, shows that he is not of good character, and poses a risk to the public safety. The MVC argued that this plea/conviction is a disqualifying offense per N.J.A.C. 13:21-14.5(c). Howell argued that he served his sentence and the endorsement is needed for his livelihood. His wife testified in his behalf that he has been helpful in the community.

After reviewing the evidence presented and the relevant law, I am satisfied that MVC has met its burden of proof by a preponderance of the competent and credible evidence to support the suspension of Howell’s passenger endorsement. First, while “a crime or offense indicative of poor moral character” is an amorphous term not defined anywhere in the applicable regulations or caselaw, I must agree that the crime of human trafficking is one indicative of poor moral character. I also note that the crime was less than five years ago, and

Howell is still on probation, and judge noted in connection with his plea that there were no mitigating facts. While I applaud Howell's efforts to become a productive member of society, I feel that the crime was one of bad moral character and I have not seen any evidence of mitigation.

I **CONCLUDE** that a conviction or plea to Human Trafficking and Conspiracy constitute crimes or offenses indicative of bad moral character per N.J.A.C. 13:21-14. I also **CONCLUDE** that there is a risk to the public safety should respondent maintain his passenger endorsement.

ORDER

Based upon the foregoing, I **ORDER** that the scheduled suspension of Howell's passenger endorsement on his Commercial Driver License be and is hereby **AFFIRMED**.

I hereby **FILE** my initial decision with the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION**, who by law is authorized to make a final decision in this matter. If the Chief Administrator of the Motor Vehicle Commission 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 **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION, 225 East State Street, PO Box 160, Trenton, New Jersey 08666-0160**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

3/18/19
DATE

Sarah G. Crowley
SARAH G. CROWLEY, ALJ

Date Received at Agency:

March 18, 2019 (emailed)

Date Mailed to Parties:

3-19-19

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APPENDIX

WITNESSES

For Petitioner:

None

For Respondent:

Van Howell
Rukiah Alwan

EXHIBITS

For Petitioner:

- P-1 Howell's Fingerprint
 - P-2 MVC Howell's Suspension Notice dated July 20, 2018
 - P-3 MVC Howell's Supplemental Specifications letter dated August 23, 2018
 - P-4 Howell's Judgement of Conviction and Order for Commitment Superior court of New Jersey, Camden County
 - P-5 Letter from Howell's requesting a hearing dated August 1, 2018
 - P-6 Howell's Supplemental Specifications Dispute letter
 - P-7 Howell's Conference Report dates October 15, 2018
 - P-8 Letter from Howell dated September 10, 2018
 - P-9 Intensive Supervision Program Certification for Howell dated June 19, 2017
 - P-10 Certificate of Participations for Howell for Anger Management dated March 22, 2016
 - P-11 Certificate of Participations for Howell for Anger Management dated September 7, 2016
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- P-12 Letter from Howell's wife dated March 2017
 - P-13 New Jersey Department of Corrections website print-out of Howell's Offender Details

For Respondent:

None