October 2013

Tavis Rutherford vs. State Board of Education

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BEFORE THE TENNESSEE STATE BOARD OF EDUCATION

IN THE MATTER OF:

TAVIS D. RUTHERFORD,

Respondent.

DOCKET NO:  07.01-120632A

INITIAL ORDER

This matter was heard on October 4, 2013, at the Offices of the State Board of Education in Nashville, Tennessee, before Administrative Judge Kim Summers assigned by the Secretary of State, Administrative Procedures Division, to sit for the Tennessee State Board of Education (the Board). The Board was represented at the hearing by General Counsel Dannelle Walker, Esq. The Grievant represented himself, having waived the right to legal counsel.

The issue presented in this matter is whether the Board properly denied the Respondent a Tennessee teacher’s license. After consideration of the evidence and argument of the Parties, it is determined that the Board has failed to prove by a preponderance of the evidence that the license was properly denied. This decision is based upon the following Findings of Fact and Conclusions of Law.

SUMMARY OF EVIDENCE

The following individuals presented live testimony at the hearing – the Respondent, Tavis D. Rutherford; and Dr. David Sevier, Deputy Executive Director, Tennessee State Board of Education.

The Respondent provided the following testimony – he was twenty-three at the time of his felony conviction; he got involved with the wrong crowd and became a middleman for cocaine transactions for about four months; each drug transaction was worth about $20 – 40; he
was incarcerated for about four months and was then on probation for five years; prior to his incarceration he was an advertising sales rep with a local newspaper and returned to this job upon his release; he knows that he made a mistake but has become a different person; he understands that some parents may be uncomfortable with his conviction but believes that it provides a means of relatability for at-risk youth in the Memphis area.

Dr. Sevier testified to the following – when he was a school administrator, he would not have hired a teacher with a felony conviction; hiring a teacher with a felony conviction would likely precipitate complaints from parents.

The following two exhibits were entered into evidence – EXHIBIT 1, Application for Tennessee Teacher’s License; Collective EXHIBIT 2, Documents from 1991 criminal conviction from Missouri.

**FINDINGS OF FACT**

1. The Respondent obtained his Bachelor’s Degree in 1991 and is now seeking his Masters Degree from Union University in Jackson Tennessee.

2. The Respondent is currently employed as a physical education teacher at Cornerstone Prep in Memphis, Tennessee.

3. In June 1991, the Respondent pled guilty to two counts of delivery of cocaine.

4. In December 2012, the Respondent applied for a Tennessee teacher’s license. The Respondent disclosed his prior conviction on his license application.

5. The Respondent has had no other criminal convictions.

6. The Respondent has been working with youth since 1996, both as a coach and as a teacher.

7. The Respondent has two daughters in college that he has raised on his own.
8. The Respondent started a non-profit organization called Drills & Skills which focuses on reducing obesity in young people.

**RELEVANT LAW**

1. Mr. Rutherford, as the party seeking to “change the present state of affairs,” has the burden of proof, pursuant to TENN. COMP. R. & REGS. 1360–4–1–.02(7), to prove by a preponderance of the evidence that the Board’s denial of a Tennessee teacher’s license should be overturned.

2. Pursuant to TENN. COMP. R. & REGS. 0520-2-4-.01(9)(b), the State Board of Education may revoke, suspend, reprimand formally, or refuse to issue or renew a license for the following reasons:

   1. Conviction of a felony,
   2. Conviction of possession of narcotics,
   3. Being on school premises or at a school-related activity involving students while documented as being under the influence of, possessing or consuming alcohol or illegal drugs,
   4. Falsification or alteration of a license or documentation required for licensure,
   5. Denial, suspension or revocation of a license or certificate in another jurisdiction for reasons which would justify denial, suspension or revocation under this rule, or
   6. Other good cause. Other good cause shall be construed to include noncompliance with security guidelines for TCAP or successor tests pursuant to Tenn. Code Ann. § 49-1-607, default on a student loan pursuant to Tenn. Code Ann. § 49-5-108(d)(2) or failure to report under part (e).

(Emphasis added).

**ANALYSIS AND CONCLUSIONS OF LAW**

1. Under the rules of the Tennessee Board of Education, denial of a teacher’s license for a felony conviction is permissible but not required.
2. Because denial of a license is not mandatory under the rules, extenuating circumstances should be taken into consideration when deciding whether a teacher’s license should be granted or denied. It is difficult to imagine a better candidate for such consideration than the Respondent.

3. The Respondent has done an extraordinary job rehabilitating his life and circumstances over the twenty-two years since his conviction. He has done more than just refrain from further involvement with illegal drugs and has given more than just lip-service to his claim that he is now a different person. His life for the past twenty-years, and his demeanor during the hearing, have more than substantiated his claim.

4. Notwithstanding the Respondent’s efforts at rehabilitation, the Tennessee Board of Education denied the Respondent’s application for a teacher’s license based solely on the prior conviction from twenty-two years ago.

5. Without any consideration of the Respondent’s extenuating circumstances, it appears that denial of a teacher’s license following a felony conviction is automatic. This approach is inconsistent with the rules which allow for the possibility of redemption from past bad choices.

6. The State introduced into evidence no other good cause for denial of the Respondent’s teacher’s license.

7. There is nothing in the rules which makes licensing decisions dependent upon the applicant’s employment potential.

8. Based upon the preponderance of the evidence entered in this matter, the Board’s discretion to grant a Tennessee Teacher’s License notwithstanding a prior felony conviction should have been exercised in favor of the Respondent.
Accordingly, it is ORDERED that the Respondent’s appeal is GRANTED, and the denial of the Respondent’s teacher’s license is hereby OVERTURNED.

The policy reasons for this decision are to uphold the laws of the State of Tennessee while providing appropriate protections for its citizens.

It is so ORDERED.

This INITIAL ORDER entered and effective this the _____ day of _____________ 2013.

__________________________
KIM SUMMERS
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the _____ day of _________________ 2013.

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J. RICHARD COLLIER, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE