
Uricoli v. Bd. of Trustees, Police & Firemen's Retirement System
Cite as 2 *N.J.A.R.* 263

EUGENE J. URICOLI,
Petitioner,
v.
**BOARD OF TRUSTEES, POLICE
AND FIREMEN'S RETIREMENT
SYSTEM OF NEW JERSEY**
Respondent.

Decided May 13, 1980

Initial Decision

SYNOPSIS

Eugene J. Uricoli appealed from a decision of the Board of Trustees, Police and Firemen's Retirement System denying his application for accidental disability retirement on the ground that his criminal conviction rendered his service dishonorable.

The administrative law judge found that Uricoli, who served as chief of the Orange Police Department from 1967 to 1975, had been convicted of malfeasance in 1976 for his destruction of a parking ticket issued to the son of a close friend and that this conviction was inconsistent with the requirement of honorable service, which is a condition precedent to the grant of an accidental disability pension. *Mount v. Trustees*, 133 *N.J. Super.* 72 (App. Div. 1975).

The judge distinguished *Makwinski v. State of N.J.*, 76 *N.J.* 87 (1978), upon which Uricoli had attempted to rely to sustain his position. The judge determined that, unlike *Makwinski*, where the Court concluded that the indiscretion involved had been motivated by a concern for the community, Uricoli's action immeasurably harmed the community and the enforcement of the motor vehicle laws had been frustrated for personal concerns.

The judge determined that *Fromm v. Bd. of Directors*, 81 *N.J. Super.* 138 (App. Div. 1963) controlled this case. In *Fromm*, a police officer was found to be ineligible for his pension based upon a conviction for altering and downgrading traffic tickets. There, the court observed that while moral turpitude could not be defined exactly by rule to fit all cases, it was sufficient that under the facts of the case, the State had been defrauded. The administrative law judge found that in the present case, as in *Fromm*, the officer's conduct had defeated both even-handed justice for all traffic violations and the enforcement of the motor vehicle laws and was thus inconsistent with honorable service.

Accordingly, the judge affirmed the denial of Uricoli's pension application.

Malcolm H. Greenberg, Esq., for Petitioner

Sharon M. Joyce, Law Assistant, for Respondent (John J. Degnan, Attorney General of New Jersey, Attorney).

FOLEY, ALJ:

On April 11, 1980, a hearing was held on the appeal of Eugene J. Uricoli, petitioner, from a decision of the Board of Trustees, Police and Firemen's Retirement System of New Jersey dated September 24, 1979, which denied petitioner's application for accidental disability retirement on the ground that petitioner's conviction of a crime prevented him from meeting the prerequisite of honorable service.

At the hearing the following facts were stipulated:

1. Petitioner's date of birth is December 25, 1929.
2. Petitioner's first date of employment was November 14, 1952.
3. Petitioner's last day of active service was June 13, 1976.
4. Petitioner executed his application for accidental disability pension on June 15, 1979 and it was filed with the respondent on June 19, 1979.
5. On September 24, 1979, the respondent sent petitioner notice of its denial of his application.
6. Petitioner requested an appeal on October 17, 1979 and the matter was referred for a hearing on October 23, 1979.
7. There was a judgment of conviction.

On October 25, 1979, the matter was filed as a contested case.

The following exhibits were marked into evidence at the hearing:

1. Judgment of Conviction of the crime of malfeasance (count three) entered against petitioner on indictment number 2007-74 in Superior Court, Law Division, Essex County, when, on May 18, 1976, after petitioner had been tried with a jury and a verdict of guilty on count three had been rendered, the Honorable Julius A. Feinberg sentenced petitioner to the Essex County Corrections Center, Caldwell, for a term of one year. The execution of the sentence was suspended and petitioner was placed on probation until a fine of \$1000 was paid. The fine was to be paid within a period of two years. Judge Feinberg's reasons for the sentence stated that "Conviction of a crime as to this defendant in itself is punishment. No rehabilitation is necessary nor any need for deterrence. Custodial treatment is not indicated. His loss of standing in the community and subsequent loss of respect should suffice."

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Procedurally, an appeal was taken to the Superior Court, Appellate Division where the judgment of conviction was affirmed. A petition for certification was denied as was a petition for a writ of *habeas corpus* in the United States District Court for the District of New Jersey. No appeal was taken from the denial of the petition for the writ of *habeas corpus*.

2. Application for accidental disability retirement and letter dated June 15, 1979 from Malcolm H. Greenberg, Esq., to the Department of the Treasury, Division of Pensions, Police and Firemen's Retirement System.

3. Certification of Service and final pay of petitioner and letter dated August 7, 1979 from Malcolm H. Greenberg, Esq. to the Department of the Treasury, Division of Pensions, Police and Firemen's Retirement System.

4. Letter dated July 3, 1979 from Col. Saunder Weinstein, Director of Police, Orange, New Jersey, to John P. Harrington, Disability Review Officer, New Jersey State Department of the Treasury, Division of Pensions.

5. Transcript of sentencing of petitioner on May 18, 1976 in Essex County Court, Law Division, Criminal Indictment Number 2007-74 by the Honorable Julius A. Feinberg.

6. Four-page statement dated January 23, 1979 from Steven E. Rosenfeld, Assistant Prosecutor to the Honorable Arthur J. Blake, the petitioner's exhibit being the final paragraph on page one. The balance of the statement was marked into evidence as respondent's exhibit.

7. Copy of indictment number 2007-74 for malfeasance, presented and filed on March 24, 1975.

It was also agreed that the issue was whether the judgment of conviction prevented petitioner from meeting the prerequisite of honorable service.

Eugene J. Uricoli testified he was appointed to the Orange Police Department as a patrolman on November 14, 1952. He became a sergeant on May 13, 1963. He became a lieutenant in April, 1966 and was appointed chief of police on February 18, 1967. From November 14, 1952 until the presentment and filing of the indictment in this matter on March 24, 1975, the witness stated he was never brought up on any type of charges in the police department. He was never reprimanded. His official police record was clean.

Mr. Uricoli stated that he was found guilty of one count of misconduct in office after two trials, the first trial resulting in a hung jury. He was charged with illegally disposing of four copies of one ticket, not for any monies or any kind of economic gain but, "just that these tickets disappeared,

or ticket, copy of - four copies." The ticket which he believed was for careless driving was issued by Patrolman Robert Woods to Joseph Belafato, III the son of a near and dear friend of his. The witness said he did not know the son.

On cross-examination, the witness testified that the duty of every policeman includes the impartial enforcement of the laws.

The balance of the evidence was the exhibits, each of which I have reviewed. Significant among them, in addition to what I have previously recited from the judgment of conviction, are:

Certification of Service and final salary of petitioner, indicating his service in the City of Orange Police Department was terminated on June 13, 1976 and that he was indicted and convicted of malfeasance, April 9, 1976.

The letter dated July 3, 1979 in which Col. Saunder Weinstein wrote to John P. Harrington advising that petitioner was dismissed as a member of the Orange Police Department on June 7, 1976, as a result of criminal indictment and a subsequent finding of guilty.

The sentencing transcript which contains the presentence remarks of Joseph Hayden, Jr., *Esq.*, to Judge Feinberg to the effect that petitioner stood before the court convicted of misconduct in office in 1972 for illegally disposing of a single ticket. He indicated it was not a crime of violence or that petitioner was involved with personal gain and that the theory of the State's case was that there was an error in judgment, that the initiation for the disposition of the ticket came not from petitioner but from Doctor Belafato.

At sentencing, Steven Rosenfeld, Assistant Prosecutor, advised Judge Feinberg that the State took no position whatsoever on sentencing.

Judge Feinberg, before imposing sentence, told petitioner that as chief of police his conduct should have set an example for his officers to follow. Instead, his attitude was "do as I say, not as I do." He was asked how his traffic police could respect him when he prevented them from carrying out their normal duties. The judge stated that this lack of respect amounted to betrayal of petitioner's oath of office. He then imposed the non-custodial sentence set forth in the judgement of conviction.

The four page statement of Assistant Prosecutor Rosenfeld to Judge Blake, specifically the final paragraph on page one, indicated that on April 9, 1976, petitioner was convicted on count three of indictment number 2007-74 charging him with malfeasance in that he illegally quashed a traffic summons issued to the son of a close friend for no economic gain.

The third count of indictment number 2007-74 states:

The Grand Jurors of the State of New Jersey, for the County of

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Essex, upon their oath present that:

EUGENE URICOLI

between, on or about the 1st day of October 1972, through, on or about the 1st day of November 1972, was a public officer, to wit: Chief of Police of the City of Orange, in the County of Essex aforesaid duly appointed and qualified to and for the said public office.

And the Grand Jurors aforesaid, upon their oath do further present that as such chief of police the said **EUGENE URICOLI** during all the times aforesaid was vested, among other things, with the public duty of using and exercising all lawful, proper and reasonable means for preserving the public peace and insuring good order in the said City, including, but not limited to, enforcing all laws of the said State and said City.

And the Grand Jurors aforesaid, upon their oath do further present that between the dates aforesaid, contriving and intending to violate the powers and duties of said public office and to betray the trust and confidence thereby reposed in him, in the said City and County, aforesaid, and within the jurisdiction of this Court, the said **EUGENE URICOLI** unlawfully, willfully, knowingly and corruptly did cause a certain traffic summons that had been lawfully issued between, on or about the 1st day of October 1972, through, on or about the 1st day of November 1972 to Joseph A. Belafato, III by Orange Police Officer Robert Woods, to be illegally and unlawfully voided, dismissed and otherwise disposed of between, on or about the 1st day of October 1972, in a manner other than in the due course of justice.

And the Grand Jurors aforesaid, upon their oath do further present that then, there and thereby the said **EUGENE URICOLI**, as chief of police of the City of Orange, in the County of Essex, aforesaid did willfully and corruptly violate and betray the duties of his said public office and the public trust and confidence reposed in him, contrary to the provisions of *N.J.S.* 2A:85-1, and against the peace of this State, the government and dignity of the same.

JOSEPH P. LORDI
ESSEX COUNTY PROSECUTOR

Petitioner has the burden of proving his case by a preponderance of the believable evidence, *Atkinson v. Parsekian*, 37 *N.J.* 143, 149 (1962). I have listened to the testimony at the hearing, have reviewed the exhibits and the briefs submitted by counsel. In my judgment, petitioner has failed to prove that the decision appealed from was erroneous and that he is entitled to accidental disability retirement, *N.J.S.A.* 43:16A-7.

Rather, I **FIND** as facts those that were stipulated at the hearing those which are contained in the joint exhibits. I further **FIND** that this judgment of conviction is inconsistent with honorable service which is a condition precedent to the grant of an accidental disability pension.

Petitioner principally relies on *Makwinski v. State*, 76 N.J. 87 (1978) to sustain his position. In *Makwinski*, the chief of police in the Borough of Carteret was convicted of misconduct in office on April 21, 1975 and, on July 2, 1975, his application for retirement was denied by the Consolidated Police and Firemen's Pension Fund Commission on the ground that the requisite of "honorable service" had not been met. The Appellate Division affirmed and, following the granting of Makwinski's petition for certification, the Supreme Court reversed and remanded the case to the Commissioner with directions to grant Makwinski's application, the amount to be based on his service to the date his misconduct in office commenced.

In *Makwinski*, the Supreme Court found the case to be unique on its facts and, on them, the Court found Makwinski's actions did not constitute dishonorable service within the intendment of the statute and cases interpreting it. As in the instant matter, although Makwinski's conduct touched the administration of his office, there was no personal gain involved. Makwinski was a member of the Knights of Columbus, which owned and used a building in Carteret. Numerous community groups used the building's meeting hall free of charge on a regular basis as did the Carteret Police Department and Middlesex County Prosecutor's Office for in-service training.

In 1970, a fire damaged a rear portion of the building and meeting hall and Makwinski became chairman of the rebuilding committee. In the course of repairs to the building, a Carteret police officer performed some carpentry work without compensation, but some of the work was performed while he was on duty as a police officer. Makwinski was aware that the police officer was doing the work and that some of it was being performed on borough time. Makwinski was charged with misconduct in that he used an employee under his command for private gain at public expense.

The Court indicated further that the repair work was considered a community project and that many persons, members as well as nonmembers of the Knights, pitched in. Although Makwinski conceded his conduct was improper, he contended that his indiscretion was caused by his concern for the community and the betterment of Carteret. The Court concluded that Makwinski's motive and intent must be weighed in the balance. In limiting its ruling to what it said were the unique facts and circumstances of the case, the Court concluded that while Makwinski was guilty as charged, his misguided actions did not involve moral turpitude and could not be held to

be dishonorable service so as to require a forfeiture of his pension rights.

The instant matter is clearly distinguishable from *Makwinski*. Petitioner occupied a unique position in the City of Orange as its chief of police. He stood in the public eye and in the eyes of his fellow officers as an upholder of that which is morally and legally correct. The result of his conduct was to defraud the State, defeat the concept of even-handed justice for all traffic violators and undermine the enforcement of our motor vehicle laws.

Petitioner admitted on cross-examination that his duties included the impartial enforcement of the laws. Instead, he flagrantly disregarded his sworn duty to uphold the law. To grant him accidental disability retirement would result in the vanishing of discipline and the crippling and decline of morale and, unlike *Makwinski* where there was concern for the community and the betterment of Carteret, the community of Orange was immeasurably harmed and its municipal court's adjudicative process was completely frustrated by the misconduct of petitioner whose concern was not for the community, or the city of which he was chief of police, but rather it was that the son of a friend escape and not answer the judicial process.

Additionally, as further distinguishing *Makwinski*, Judge Feinberg, immediately prior to the imposition of sentence, told petitioner that the people of Orange were entitled to his best efforts and they had every right to expect that the trust they reposed in him as chief of police would be justified. Further, as to his fellow officers, Judge Feinberg told him his conduct should have set an example for them to follow. His attitude was "do as I say, not as I do." He was asked how his traffic police could respect him when he prevented them from carrying out their normal duties. He was told that this lack of respect amounted to a betrayal of his oath of office.

In my judgment, petitioner's case is not unique on its facts and his reliance on *Makwinski* is misplaced. Rather, it is governed by *Fromm v. Board of Directors of the Police and Firemen's Retirement System*, 81 *N.J. Super.* 138, 141-145 (App. Div. 1963). Fromm appealed a decision of the Board of Trustees of the Police and Firemen's Retirement System, which denied him further pension payments for a service-connected disability sustained while a member of the Westfield Police Department because of a conviction on two counts of an indictment charging Fromm, the violations clerk of the Westfield Municipal Court, with altering and downgrading traffic tickets. Fromm was fined \$100 on each count.

Judge Goldmann, in affirming the decision appealed from, and in writing for a unanimous court, stated that the heart of the appeal was Fromm's contention that he is not disqualified from receiving service-connected disability payments under *N.J.S.A.* 43:16A-7 merely because he was convicted of a crime. He rejected Fromm's contention that a service-connected disability

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pension is not conditioned upon honorable service, and he concluded that a policeman's pension rights may be forfeited if he is convicted of a crime. The court quoted from *Walter v. Police and Fire Pension Commission of the City of Trenton*, 120 *N.J.L.* 39 (Sup. Ct. 1938), where a chief of police was held to have forfeited his right to a pension by reason of his conviction for malfeasance in office, to the following effect:

Deductions from salary, moreover, create no vested right to a pension A pension is, in effect, but the taxpayers' reward, given pursuant to legislative mandate, for honest and efficient service. . . . To bestow that reward upon one whose record of public service is marred by a conviction for malfeasance in office would be to place a premium upon dishonesty and inefficiency; to burden the taxpayer with the necessity of providing for one who has betrayed the trust imposed upon him. Such a result will never be countenanced by any word, act, or judgment of this court.

Judge Goldmann went on to state that clearly and without a doubt a conviction for altering and downgrading traffic tickets is inconsistent with honorable service. In conclusion, the court found no merit in Fromm's claim that the statute, which he was convicted of violating, did not involve moral turpitude. In recognizing that moral turpitude cannot be exactly defined by a rule to fit all cases, that it may be or may not be said to exist, depending on the facts, conditions and circumstances, the court merely said it was sufficient for the purpose that under the facts of the case the result of altering and downgrading traffic tickets was to defraud the State. Even-handed justice for all traffic violators was defeated and the enforcement of our motor vehicle laws undermined. That which Judge Goldmann wrote in *Fromm* applies with equal force and effect to the instant matter.

Petitioner also argues that respondent erred in applying the prerequisite of honorable service, as no such requirement exists in the pertinent section of the disability statute. He contends that the first paragraph of *N.J.S.A.* 43:16-2, effective January 1, 1965, which deals with an accidental disability pension equal to two-thirds of the member's average salary, is silent as to the requirement of honorable service, whereas the second paragraph of the same statute, dealing with a nonaccident disability pension equal to one-half of the member's average salary, speaks in terms of honorable service. The argument is frivolous.

In *Mount v. The Trustees of the Public Employees' Retirement System of the State of New Jersey*, 133 *N.J. Super.* 72 (App. Div. 1975), the court at pages 80 and 81 stated:

A public employee qualifies for a pension upon satisfying three basic requirements: age, length of service, and *honorable service*. Honorable service is a *sine qua non* of the grant of a pension. It is that service

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which is characterized by or in accordance with principles of honor, and one so serving 'is scrupulously upright, and shows a fine regard for obligations as to conduct.' A pension is an inducement to conscientious, efficient and honorable service. To bestow it upon one 'whose record of public service is marred by a conviction for malfeasance in office would be to place a premium upon dishonesty and inefficiency' and 'burden the taxpayer with the necessity of providing for one who has betrayed the trust imposed upon him.'

That the statute here involved does not by its terms make honorable service a condition precedent to the grant of a pension is of no consequence. It is settled law that such requirement is implicit therein. (all citations omitted). (emphasis added)

I therefore **CONCLUDE** that petitioner's actions resulting in his conviction of malfeasance and misconduct in office constituted dishonorable service so as to require a forfeiture of his pension rights and **I ORDER** that the decision appealed from be **AFFIRMED**.

After reviewing the Initial Decision
the Board of Trustees, Police and
Firemen's Retirement System on May 20, 1980
issued the following Final Decision:

The Board of Trustees, Police and Firemen's Retirement System, hereby adopts the findings of fact and conclusions of law as contained in the administrative law judge's report consistent with its original determination and further adopts the recommendations contained in the administrative law judge's report and incorporates the same herein by reference.