
Division of Gaming v. Hannah
Cite as 10 *N.J.A.R.* 75

**DIVISION OF GAMING
ENFORCEMENT,**
Petitioner,
v.
DAVID HANNAH,
Respondent.

Initial Decision: April 21, 1986

Final Agency Decision: June 20, 1986

Superior Court, Appellate Division Decision

Appears at: 221 *N.J. Super* 98

SYNOPSIS

The Division filed a complaint with the Casino Control Commission recommending revocation of respondent's casino hotel employee registration. Respondent requested a hearing and the matter was transmitted to the Office of Administrative Law.

The basis of the Division's recommendation was three incidents which it contended constituted prior convictions and unprosecuted conduct disqualifying respondent from continued employment in the casinos. In 1984, respondent was indicted on charges of unlawful possession of a weapon, *N.J.S.A.* 2C:29-5d, possession of cocaine, *N.J.S.A.* 24:21-20a(4), and possession of cocaine with intent to distribute, *N.J.S.A.* 24:21-19a(1). He pled guilty to possession of cocaine and the other two counts were dismissed. In 1982, respondent was charged with aggravated assault, *N.J.S.A.* 2C:12-1(b), in connection with a stabbing incident. He was found guilty of simple assault. In 1983, charges against respondent were dismissed when pills he was suspected of intending to sell were found not to be a controlled dangerous substance.

The administrative law judge assigned to the case found as follows. In the 1984 incident, the Division established both the distribution and the weapons charges. In the 1982 matter, the Division's proofs established aggravated assault. However, the Division failed to meet its burden with respect to the 1983 incident, since it did not support its theory that respondent intended to sell the pills as counterfeit drugs in violation of *N.J.S.A.* 24:21-19.1.

Because the 1984 and 1982 incidents involved statutorily disqualifying offenses and respondent did not present substantial evidence of

rehabilitation, it was ordered that respondent's registration be revoked pursuant to *N.J.S.A.* 5:12-129.

Upon review, this initial decision was modified by the Casino Control Commission. The Commission agreed that disqualifying offenses occurred in 1984 and 1982, but recharacterized the 1984 offense as aggravated assault in the third degree rather than the second degree and also found that the 1982 incident involved only possession with intent to distribute. Although the Commission disqualified respondent for those reasons, the disqualification was waived pursuant to *N.J.S.A.* 5:12-91(e). It was further ordered that respondent could not apply for any other license, registration, qualification or approval except pursuant to the provisions of *N.J.A.C.* 19:41-8.8.

Paul Vagianos, Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)
David Hannah, respondent, *pro se*

METZGER, ALJ:

This matter arises out of a complaint filed by petitioner with the Casino Control Commission recommending the revocation of respondent's casino hotel employee registration, pursuant to *N.J.S.A.* 5:12-1 *et seq.* and regulations promulgated thereunder. Respondent requested a hearing, and the matter was transmitted to the Office of Administrative Law as a contested case, pursuant to *N.J.S.A.* 52:14F-1 *et seq.*

Petitioner seeks to establish that certain prior convictions and unprosecuted conduct disqualify respondent from continued employment in the casinos. *N.J.S.A.* 5:12-129. Respondent seeks to establish rehabilitation. *N.J.S.A.* 5:12-91.d.

Many of the facts are undisputed. On March 1, 1984, respondent was indicted on charges of unlawful possession of a weapon, *N.J.S.A.* 2C:39-5d, possession of controlled dangerous substance (CDS), to wit, cocaine, *N.J.S.A.* 24:21-20a(4), and possession of cocaine with intent to distribute, *N.J.S.A.* 24:21-19a(1). Respondent pled guilty to possession of cocaine, and the other two counts of the indictment were dismissed. On December 30, 1982, respondent was arrested and was charged with aggravated assault, *N.J.S.A.* 2C:12-1(b). He was found guilty of simple assault in connection with this incident and was sentenced to 20 days in the Atlantic County Jail. On May 12, 1983, respondent was arrested and was charged with possession of CDS, to wit, methamphetamine and barbiturates, and possession with intent

to distribute in violation of *N.J.S.A.* 24:21-20 and 24:21-19, respectively. Laboratory analysis of these materials proved negative, and the charges were dismissed.

Petitioner presented three witnesses. Officer Gerald Singer is an Atlantic City Police Officer of 13 years' experience. He testified concerning the 1984 incident. On February 10, 1984, he was dispatched to a bar to investigate an individual who was being sought on an outstanding warrant. After identifying respondent as that individual, he patted him down. As he did so, a "folding" knife fell out of his jacket pocket. (Officer Singer's report indicates that it had a ten-inch blade.) A further check of respondent's jacket revealed two plastic bags containing green vegetation and seventeen glassine envelopes (all the same size) containing another material. The green vegetation field-tested positive for marijuana, and the other material field-tested positive for cocaine. It was Officer Singer's opinion that these drugs were intended for sale.

Sergeant James A. Garbutt, an officer of 19 years' experience on the Pleasantville Police Force, also testified. On December 30, 1982, he was called to the scene of a stabbing. He found the victim, Donald Robinson, lying on the ground; he was bleeding from his back. After the ambulance arrived, Sergeant Garbutt went into the house to which Mr. Robinson had directed him and brought respondent out. At that time, Mr. Robinson, who was awaiting transport in the ambulance, hollered: "that's the man that stabbed me."

Officer Bressler Wilkinson is a patrolman of six years' experience on the Atlantic City Police Force. On May 12, 1983, while on routine patrol, he was flagged down by the doorman of a local bar who told him that a black man had just pulled out a knife and threatened him. He came upon respondent and patted him down. He found a folding knife and various envelopes with different types of pills in them. There was a total of 37 pills found on respondent's person and in his knapsack. Although the pills appeared to be CDS, it develops that they were not and the charges were dismissed. Nevertheless, Officer Wilkinson testified that it was his belief that these were counterfeit CDS and were intended for sale by respondent. Petitioner seeks here to show intent to distribute counterfeit CDS in violation of *N.J.S.A.* 24:21-19.1.

Though respondent generally acknowledged responsibility for some of the offenses charged by petitioner, when asked specifically about each incident during cross-examination, he denied involvement. He testified that he did not stab Mr. Robinson and that he did not

intend to distribute counterfeit CDS. Indeed, he asserted that he had only three pills with him when Officer Wilkinson stopped him and stated that these pills were for back pain.

Respondent testified that he has been employed as a cook for about six years by Resorts International and has had no difficulty with his employer. He submitted character letters from his immediate supervisors, reflecting on his good record and attitude as an employee. He is 32 years old, married, and is the father of three children.

This is the substance of the record. With respect to the most recent incident in 1984, it appears to me that petitioner has established both the distribution and the weapon's charges. The analysis here begins with the guilty plea to possession of cocaine. This, taken together with the equal size and number of bags found, the positive field test, the testimony of an experienced officer that the cocaine was intended for distribution, and the absence of a credible denial, establishes the intent to sell by a preponderance of the evidence. The knife found in respondent's possession had a ten-inch blade, according to Officer Singer's report, and this fact was not denied. *N.J.S.A.* 2C:39-5d, "Unlawful possession of weapons," provides:

Any person who knowingly has in his possession any other weapon under circumstances not manifestly appropriate for such lawful uses as it may have is guilty of a crime of the fourth degree.

Respondent did not testify to any lawful purpose for the knife and the circumstances under which it was discovered certainly suggests none. *See generally, State v. Lee*, 96 *N.J.* 156 (1984).

Petitioner's proofs also establish aggravated assault with regard to the incident in December 1982. *N.J.S.A.* 2C:12-1b provides that a person is guilty of aggravated assault if he:

- (1) Attempts to cause serious bodily injury to another or causes such injury purposely or knowingly, or under circumstances manifesting extreme indifference to the value of human life recklessly causes such injury . . .

Sergeant Garbutt was entirely credible and his testimony is adopted. He came upon the scene and observed a man bleeding from the back. That man then pointed to respondent as his assailant, and respondent was convicted of simple assault in the matter. While we do not know the extent of Mr. Robinson's injuries, there is a preponderance of evidence that respondent attempted to cause him serious injury with a knife. Respondent simply denied involvement in the incident.

Petitioner has not met its burden with respect to the charge that

respondent attempted to pass off placebos as counterfeit drugs. Despite respondent's unconvincing testimony that he had only three pills with him that day, the evidence established only that respondent had thirty-seven pills in different envelopes. There is no additional conduct which indicates any intent with respect to the pills.

Though respondent has been a satisfactory employee with Resorts, he committed all of the infractions discussed herein while so employed and cannot establish rehabilitation.

Based on the foregoing, it is my conclusion that petitioner has established the 1984 distribution and weapon's charges, and the 1982 charge of aggravated assault. The statutorily disqualifying offenses, each sufficient for the proposed action, taken together with the remaining offenses and the lack of any substantial evidence of rehabilitation, requires the revocation of respondent's casino hotel employee registration. It is so **ORDERED**.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter.

FINAL DECISION BY THE CASINO CONTROL COMMISSION:

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meetings of June 4, and June 11, 1986,

IT IS on this 20th day of June, 1986, **ORDERED** that the initial decision is modified as follows:

1. The Commission finds that the respondent's conduct on December 30, 1982, constituted the offense of aggravated assault, third degree, in violation of *N.J.S.A.* 2C:12-1b(2) rather than aggravated assault, second degree, and warrants his disqualification pursuant to *N.J.S.A.* 5:12-86(c)(1) and (g);
2. The Commission adopts the administrative law judge's finding that in February 1984, the respondent possessed controlled dangerous substance (cocaine) with intent to distribute in violation of *N.J.S.A.* 24:21-19a(1), and concludes that such conduct warrants the respondent's disqualification pursuant to *N.J.S.A.* 5:12-86(c)(3) and (g); and
3. The respondent is disqualified for the foregoing reasons; however, that disqualification is waived pursuant to *N.J.S.A.* 5:12-91(e) and the respondent therefore is permitted to retain a casino hotel employee registration.

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IT IS FURTHER ORDERED that the respondent is prohibited from applying for any other license, registration, qualification or approval required under the Casino Control Act except pursuant to provisions of *N.J.A.C.* 19:41-8.8;

IT IS FURTHER ORDERED that copies of this final order be served upon David Hannah, the Division of Gaming Enforcement, the Office of Administrative Law, and all operating casinos within ten (10) days of the date hereof.

You must check the New Jersey Citation Tracker in the companion looseleaf volume to determine the history of this case in the New Jersey courts.