

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
FROM THE ALASKA POLICE STANDARDS COUNCIL**

In the Matter of)
)
 FRED P. LAMONT, JR)
 _____)

OAH No. 16-0554-POC
APSC No. 2016-12

DECISION

I. Introduction

Village police officers must obtain certification from the Alaska Police Standards Council (APSC) within one year of hire.¹ APSC may not issue a village police officer certificate to a person convicted of a felony during the 10 years before application.² Fred Lamont, Jr. was convicted of a felony in 2012.³ Although his conviction was later set aside, Mr. Lamont's conviction currently prevents him from being certified as a village police officer.

II. Facts

The facts of this case are not in dispute. Fred Lamont, Jr. pleaded guilty to a Class C Felony on October 30, 2012.⁴ Mr. Lamont received a Suspended Imposition of Sentence (SIS) and successfully completed the terms of his probation.⁵ The court set aside his conviction on November 19, 2013.⁶

The City of St. Mary's hired Mr. Lamont as a village police officer in September 2013.⁷ St. Mary's was unaware of the requirement that it notify APSC within 30 days of hiring a village police officer.⁸ APSC first learned of Mr. Lamont on March 4, 2016, when a St. Mary's resident lodged a complaint, stating that Mr. Lamont did not qualify to serve as a village police officer.⁹ APSC's Executive Director, Bob Griffiths, reviewed court records, discovered the felony conviction, and notified St. Mary's that Mr. Lamont was ineligible for employment as a village police officer.¹⁰

¹ 13 AAC 89.020(b).

² 13 AAC 89.010(a)(4); 13 AAC 89.070(a)(3).

³ R.11-14.

⁴ R.11-14.

⁵ R.15.

⁶ R.15.

⁷ Mr. Lamont previously worked as a St. Mary's village police officer and village public safety officer. R.1.

⁸ R. 25; *See* 7 AAC 89.080(a).

⁹ R.2.

¹⁰ R.22-24.

St. Mary's City Manager, Walton Smith, responded to the Executive Director's letter and requested that Mr. Lamont be found eligible for village police officer employment.¹¹ Mr. Smith extolled Mr. Lamont's reputation in the community and with local State Troopers.¹² He also indicated that Mr. Lamont had received poor legal advice when he entered his 2012 plea agreement.¹³ Lastly, he argued that a successfully completed SIS does not count as a felony conviction.¹⁴

On April 18, 2016, the Executive Director notified Mr. Lamont that he is ineligible to serve as a village police officer.¹⁵ Mr. Lamont appealed to the APSC, which upheld the Executive Director's ineligibility determination.¹⁶ Mr. Lamont next appealed to the Office of Administrative Hearings.¹⁷

On July 22, 2016, the Executive Director filed a motion for summary adjudication, arguing that Mr. Lamont's felony conviction precludes him from being certified as a village police officer. Oral argument on the motion was held on August 17, 2016. John Novak, Assistant Attorney General, argued on behalf of the Executive Director. Mr. Lamont and Mr. Smith presented Mr. Lamont's position. Mr. Lamont argued that his attorney led him to believe that a successful SIS, once set aside, would have little lasting impact and would no longer be considered a "conviction."

III. Discussion

The APSC may not issue a village police officer certification to a person who has been convicted of a felony during the 10 years before application.¹⁸ Mr. Lamont argues that a set aside conviction should no longer be considered a conviction. Mr. Lamont's theory cannot prevail under Alaska law.

First, under Alaska law, a person with a completed SIS "has been convicted" for licensing determination purposes.¹⁹ In *Division of Corporations, Business, and Professional Licensing v. Platt*, 169 P.3d 595, 598-600 (Alaska 2007).

¹¹ R.25-26.

¹² R.25-26.

¹³ R.25-26.

¹⁴ R.25-26.

¹⁵ R. 27-28.

¹⁶ R. 29-30.

¹⁷ R.31.

¹⁸ 13 AAC 89.020(b).

¹⁹ *State, Division of Corporations, Business, and Professional Licensing v. Platt*, 169 P.3d 595, 598-600 (Alaska 2007).

Platt, the Alaska Supreme Court held that setting aside a conviction “does not change the fact that an individual was previously found guilty of committing a crime.”²⁰

Second, an SIS is considered a conviction under 13 AAC 85.900(5), which defines “felony” for purposes of certifying Police, Probation, Parole, Correctional, and Municipal Correction Officers.²¹ Mr. Lamont correctly notes that village police officer requirements are governed by chapter 89, not chapter 85. The Executive Director argues that the APSC considers the chapter 85 definitions to govern all officer certification classes.

If the APSC wishes to rely on 13 AAC 85.900’s definitions for all certifications, it must do so via regulation.²² APSC’s policy of relying on chapter 85 definitions for all officers does not have the force of law and the policy must be scrutinized.²³ Here, Mr. Lamont did not offer any rationale for defining “felony” differently for village police officers than for other licensed officers, and there does not appear to be any reason to do so. Therefore, in the this instance, the APSC’s policy passes scrutiny and APSC appropriately considered Mr. Lamont’s SIS as a “felony” for purposes of his certification under chapter 89.

IV. Conclusion

Mr. Lamont was given inaccurate advice as to the potential lasting effect of his felony guilty plea and SIS.²⁴ Alaska law is clear that an SIS is considered a conviction for licensing purposes. Therefore, the Executive Director’s motion for summary adjudication is granted. APSC’s decision finding Mr. Lamont currently ineligible for certification is upheld.²⁵

DATED: September 1, 2016.

Signed

Bride Seifert

Administrative Law Judge

²⁰ *Platt*, at 599; *see also* Alaska Court Website, Suspended Imposition of Sentence, Frequently Asked Questions, available at: <http://courtrecords.alaska.gov/webdocs/media/docs/bp-sis-faq.pdf>. Although *Platt* was a nurse licensing case, the court did not rely on license type when determining that an SIS is a conviction.

²¹ “‘Felony’ means a crime classified as a felony in Alaska at the time the crime was committed...; a completed suspended imposition of sentence, expungement of record, or a pardon does not remove a felony conviction from a person’s record.”

²² *Jerrel v. State, Department of Natural Resources*, 999 P.2d 138 (Alaska 2000); *Kenai Penin. Fisherman’s Co-op Ass’n v. State*, 628 P.2d 897 (Alaska 1981).

²³ *See In re F Q.*, OAH No. 13-0337-CMB, at p.5 (OAH 2013); *See also In re K D*, OAH No. 14-2301-MDX, at p. 6 (Comm’r of Health and Social Services 2014).

²⁴ Lamont testimony.

²⁵ Mr. Lamont may apply for certification after the 10 year exclusion period has run.

Adoption

The undersigned adopts this Decision under the authority of AS 44.64.060(e)(1), as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 14 day of December, 2016.

By: Signed _____
Bryce Johnson
Chair, Alaska Police Standards Council

[This document has been modified to conform to the technical standards for publication.]
