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Opinion No. 13-78

State Retirement Benefits—Effect of "Conviction" Under Tenn. Code Ann. § 8-35-124

QUESTION

When should the retirement benefits of a State employee or official who has been "convicted" of "a felony arising out of the employee's or official's employment or official capacity, constituting malfeasance in office" be terminated under Tenn. Code Ann. § 8-35-124?

OPINION

Under Tenn. Code Ann. § 8-35-124, the benefits that an employee or official of the State is entitled to receive from the Tennessee Consolidated Retirement System must be terminated upon a verdict of guilty by a jury, a finding of guilt by a judge in a bench trial, or the entry of a plea of guilty or nolo contendere of "a felony arising out of the employee's or official's employment or official capacity, constituting malfeasance in office."

ANALYSIS

The termination of retirement benefits of a Tennessee employee or official after a felony conviction is governed by Tenn. Code Ann. § 8-35-124(a)(1), which provides:

> No employee or elected or appointed official of the state or any political subdivision thereof shall be entitled to receive retirement benefits from the Tennessee consolidated retirement system, any superseded retirement system or any other public pension system, if such employee or official is convicted in any court of this state of a felony arising out of the employee's or official's employment or official capacity, constituting malfeasance in office.

The same prohibition applies in the case of any such conviction "in any state or federal court" "[n]otwithstanding any other law to the contrary." Tenn. Code Ann. § 8-35-124(a)(2). The manner in which these prohibitions are to be enforced is defined by Tenn. Code Ann. § 8-35-124(b), which states:

> (b) Upon initial conviction, or upon a plea of guilty or nolo contendere, any person subject to the provisions of this section shall:
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> (1) Have the employee's or official's benefit stopped immediately, if the employee or official is receiving a benefit.

The Tennessee Court of Criminal Appeals has noted that two distinct meanings of the term "conviction" exist under Tennessee law, explaining as follows:

> In a general sense, a "conviction" has been defined as "the result of a criminal trial which ends in a judgment or sentence that the accused is guilty as charged." *Black's Law Dictionary* 333 (6th ed. 1990). In one sense, it is viewed as necessarily including the judgment on the finding of guilt or verdict. In *McClain v. State*, 186 Tenn. 401, 210 S.W.2d 680, 681 (1948), the Court stated that absent "a minute entry showing that the Trial Judge approved the verdict . . . and sentenced the Defendant, the conviction of guilt is incomplete." *Accord Ray v. State*, 576 S.W.2d 598, 602 (Tenn. Crim. App. 1978); *Spencer v. State*, 125 Tenn. 64, 69-70, 140 S.W. 597, 598-599 (1911) (technically, "a conviction involves, not only a verdict, but also a sentence passed by the court"). In fact, this has been called the "technical" meaning of "conviction." *Vasquez v. Courtney*, 272 Or. 477, 537 P.2d 536, 537 (1975).
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> Actually, the technical meaning is used in terms of requiring a "judgment of conviction." *See* Tenn. R. Crim. P. 32(e) ("judgment of conviction shall set forth the plea, the verdict or findings, and the adjudication and sentence"). In this sense, the judgment provides the legal authority for the executive branch of government to incarcerate a person who is sentenced to confinement. *See* T.C.A. §§ 40-20-101, 40-23-101. Also, the technical meaning is normally used, *absent statutory definition to the contrary*, when referring to the indirect or subsequent consequences which might result, such as, future civil disabilities. *See Vasquez v. Courtney*, 537 P.2d at 537–538 and cases cited therein.

State v. Vasser, 870 S.W.2d 543, 545-46 (Tenn. Crim. App. 1993) (emphasis added). In *Vasquez v. Courtney*, cited by the Tennessee Court of Criminal Appeals, the Supreme Court of Oregon observed that "[c]ivil disabilities are considered penal in nature and are strictly construed" and concluded that "[w]here civil penalties and disabilities are involved . . . , a large majority of jurisdictions accept the technical meaning of 'conviction' and hold that conviction takes place only after a determination of guilt *and* a pronouncement of the judgment of the court." *Vasquez v. Courtney*, 537 P.2d 536, 537 (Or. 1975) (emphasis added). The Oregon Supreme Court based this conclusion on a survey of state decisions summarized in an issue of the Vanderbilt Law Review addressing the consequences of criminal convictions. *Id.* at 538 n.2 (citing Special Project, *The Collateral Consequences of a Criminal Conviction*, 23 Vand. L. Rev. 929, 953-54 (1970)).

The denial of benefits from the Tennessee Consolidated Retirement System is a civil disability. A "civil disability" is defined as "[t]he condition of a person who has had a legal right or privilege revoked as a result of a criminal conviction." *In re S.J.K.*, 867 N.E.2d 408, 412 (Ohio 2007) (citing *Black's Law Dictionary* 494 (8th ed. 2004)). Under the principle stated in *Vasquez* and discussed in *Vasser*, therefore, if the term "convicted" in Tenn. Code Ann. § 8-35-124(a) were used without further qualification, it would be construed as referring to the "technical meaning" of "convicted."

As stated in *Vasser*, however, the technical meaning is used only "absent statutory definition to the contrary." *State v. Vasser*, 870 S.W.2d at 546. A definition to the contrary is found in Tenn. Code Ann. § 8-35-124(b), which requires that benefits be stopped "[u]pon initial conviction, or upon a plea of guilty or nolo contendere." The juxtaposition of "initial conviction" and "a plea of guilty or nolo contendere" establishes that in enacting Tenn. Code Ann. § 8-35-124(b) the General Assembly did not intend "initial conviction" to have the full "technical sense" discussed in *Vasser* and *Vasquez*. Such a reading would create inconsistent standards for triggering the statute's application, since a sentence would be required in the case of a "conviction" but not in the case of a plea of guilty or nolo contendere. Under the plain language of Tenn. Code Ann. § 8-35-124(b), therefore, "initial conviction" must be defined in the "general sense," and retirement benefits must be stopped upon a verdict of guilty by a jury, a finding of guilt by a judge in a bench trial, or the entry of a plea of guilty or nolo contendere, subject to any further qualifications set forth in Tenn. Code Ann. § 8-35-124. *See e.g., In re Estate of Davis*, 308 S.W.3d 832, 839 (Tenn. 2010) (recognizing that "statutory language cannot be considered in a vacuum, but 'should be construed, if practicable, so that its component parts are consistent and reasonable'") (quoting *Marsh v. Henderson*, 221 Tenn. 42, 424 S.W.2d 193, 196 (1968)).

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