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No. 83
In the Matter of Donald Feola,
Respondent,
v.
Patrick J. Carroll, &c. et al.,
Appellants.

Vincent Toomey, for appellants.
Thomas J. Troetti, for respondent.
City of New York, amicus curiae.

PIGOTT, J.:

Petitioner Donald Feola, a police officer employed by respondent City of New Rochelle, was convicted following a jury trial of endangering the welfare of a child in violation of Penal Law § 260.10(1) for incidents that occurred outside the line of duty. Respondent Patrick J. Carroll, Police Commissioner for the

City, summarily terminated Feola upon his conviction citing Public Officers Law § 30(1)(e).

Feola then commenced this CPLR article 78 proceeding against Carroll and the City seeking reinstatement and demanding a hearing pursuant to Civil Service Law § 75. In their answer, respondents contended that Feola's conviction involved conduct in violation of his oath of office and therefore his position as a police officer automatically became vacant upon his conviction on that charge. Supreme Court, relying on our decision in Matter of Duffy v Ward (81 NY2d 127 [1993]), dismissed the petition, holding that Feola's conviction for endangering the welfare of a child constituted an oath of office violation, rendering a pre-termination hearing unnecessary.

The Appellate Division reversed, granted Feola's petition and remitted the matter to Supreme Court for a calculation of back pay and interest (25 AD3d 697, 697-698). The court concluded that Feola was entitled to a due process hearing because Penal Law § 260.10(1) could not be construed, on its face, as constituting "a crime involving 'willful deceit or calculated disregard for honest dealings' or 'an intentional dishonesty or corruption of purpose' . . . as that crime is not limited to conduct likely to be injurious to the moral welfare of a child," noting that the statute also prohibits conduct injurious to a child's physical or mental welfare (id. at 699, quoting Duffy, 81 NY2d at 135). Following entry of judgment upon

remittal, this Court granted leave and we now reverse.

Public Officers Law § 30(1)(e) is a self-executing statute which provides that an office is deemed vacant upon an officer's "conviction of . . . a crime involving a violation of his oath of office." A misdemeanor conviction for conduct outside the line of duty will be considered a crime involving a violation of one's oath of office under Public Officers Law § 30(1)(e) only if the violation is apparent from the Penal Law's definition of the crime (see Duffy, 81 NY2d at 134). In addition, that section is applicable to misdemeanors, an element of which includes "knowing or intentional conduct indicative of a lack of moral integrity" (id. at 135). Summary dismissal is therefore justified in circumstances where the misdemeanor for which the officer is convicted "demonstrat[es] a lack of moral integrity," namely, one that involves a "willful deceit or a calculated disregard for honest dealings" (id.).

Here, the jury found that petitioner "knowingly act[ed] in a manner likely to be injurious to the physical, mental or moral welfare of a child less than seventeen years old" (Penal Law § 260.10 [1]). One element of the crime of child endangerment is that defendant knew that his conduct could potentially harm a child (see People v Johnson, 95 NY2d 368, 372 [2000]).

The Appellate Division concluded that Feola was entitled to a hearing because it was unclear whether Feola's

conduct was potentially injurious to the child victim's moral, as opposed to her physical or mental, welfare (25 AD3d at 699). The proper inquiry under Duffy, however, is whether petitioner was convicted of a misdemeanor which, on its face, demonstrates a lack of moral integrity, not whether the prohibited conduct may have had a particular effect, in this case, on a particular child victim. A facial review of the elements of the crime of endangering the welfare of a child under Penal Law § 260.10(1) indicates clearly that it is a "crime involving a violation of [an officer's] oath of office."

Reviewing the elements of the offense without consideration of the underlying facts, a conviction for endangering the welfare of a child under Penal Law § 260.10(1) conclusively establishes a lack of moral integrity. A conviction requires that the defendant knowingly engage in behavior likely to be injurious to a child victim's physical, mental or moral welfare. Here, a jury found, beyond a reasonable doubt, that Feola knew that his conduct could potentially cause injury to a child and that, notwithstanding the likelihood of such injury, he opted to engage in the prohibited conduct. Because one who knowingly engages in conduct likely to be injurious to a child's welfare would be deemed wanting in moral integrity, any pre-termination hearing into the facts underlying Feola's conviction would be unnecessary (see Duffy, 81 NY2d at 135). When a public officer's interest in employment is weighed against the interest

of this State's citizens in having public officers possessed of moral integrity, "the balance must be struck in favor of the public" (Matter of Toro v Malcolm, 44 NY2d 146, 151-152 [1978], rearg denied 45 NY2d 776 [1978], cert denied 439 US 837 [1978]).

The Appellate Division misconstrued our holding in Duffy when it concluded that a due process hearing was necessary to establish whether Feola's conviction amounted to an oath of office violation. Under Duffy, there are two alternative findings that may be reached. If the officer is convicted of a misdemeanor the elements of which constitute willful deceit, calculated disregard for honest dealings, intentional dishonesty or corruption of purpose, then an oath of office violation has occurred and the position becomes vacant. If, on the other hand, the misdemeanor for which the officer has been convicted is not of such a nature, then the officer is entitled to a hearing on the issue of appropriate discipline, which may include termination. Here, Feola's conviction of endangering the welfare of a child constitutes the former, not the latter.

Accordingly, the judgment of Supreme Court and the order of the Appellate Division brought up for review should be reversed, with costs, and the petition dismissed.

Matter of Feola v Carroll

No. 83

GRAFFEO, J.(dissenting) :

Petitioner, Donald Feola, seeks to annul the determination of respondents, the City of New Rochelle and its Police Commissioner, that summarily terminated his employment as a police officer after he was convicted of endangering the welfare of a child (Penal Law § 260.10 [1]). I would affirm because I believe our precedent in Matter of Duffy v Ward (81 NY2d 127 [1993]) requires that a due process disciplinary hearing should have been conducted in this case.

In 2002, petitioner was indicted on several felony and misdemeanor counts in connection with his relationship with a 16-year-old girl. A jury eventually found petitioner not guilty of all counts, except for a misdemeanor charge alleging that petitioner "knowingly acted in a manner likely to be injurious to the physical, mental and moral welfare of a child less than seventeen years old" under Penal Law § 260.10 (1) -- the "endangering the welfare of a child" statute.

The Police Commissioner subsequently notified petitioner that his employment was terminated automatically upon his conviction in accordance with Public Officers Law § 30 (1) (e). Petitioner requests review of his dismissal in this CPLR

article 78 proceeding, claiming that he should have been afforded a disciplinary hearing under Civil Service Law § 75 since his conviction did not provide a basis for summary termination.

Public Officers Law § 30 (1) (e) provides that a public employee can be automatically terminated if the employee is convicted of a felony or "a crime involving a violation of [the] oath of office." The Legislature therefore imposed a significant limitation on a public employer's authority to summarily dismiss a civil service employee who has been convicted of a misdemeanor for conduct that occurred outside the line of duty -- the crime must relate to a violation of the oath of office.

In Duffy, we made clear that "a misdemeanor conviction for conduct outside the line of duty will be 'a crime involving a violation of the oath of office' under Public Officers Law § 30 (1) (e) only if [the] violation is apparent from the Penal Law's definition of the crime" (81 NY2d at 134). Thus, we must look at the elements of the offense -- not the facts of a particular case -- to determine whether a misdemeanor conviction warrants summary dismissal. We further held that an oath of office violation attaches where the statutory elements of the misdemeanor demonstrate "knowing or intentional conduct indicative of a lack of moral integrity" (id. at 135). Hence, under the Duffy rule, more than a general criminal intent is necessary to constitute an "oath of office" crime. To fall within the ambit of Public Officers Law § 30 (1) (e), we emphasized that the crime must

"be one demonstrating a lack of moral integrity, it must be one involving willful deceit or a calculated disregard for honest dealings. More than intent or a criminal mens rea is needed for summary dismissal; there must be an intentional dishonesty or corruption of purpose inherent in the act prohibited by the Penal Law" (id.).

The majority asserts that "one who knowingly engages in conduct likely to be injurious to a child's welfare would be deemed wanting in moral integrity" (majority op at 4) because "[o]ne element of the crime of child endangerment is that defendant knew that his conduct could potentially harm a child" (majority op at 3). But under Duffy, this intent alone is insufficient to categorize a misdemeanor as an "oath of office" crime supporting summary termination. Penal Law § 260.10 (1) "is broadly written and imposes a criminal sanction for the mere 'likelihood' of harm" to a child (People v Johnson, 95 NY2d 368, 372 [2000]). Further, the statute "does not require that the conduct be specifically directed at a child; rather, a defendant must simply be aware that the conduct may likely result in harm to a child, whether directed at the child or not" (id.; see People v Simmons, 92 NY2d 829, 830 [1998]). And critically, case law demonstrates that a conviction under Penal Law § 260.10 (1) may arise in circumstances having nothing to do with intentional dishonesty or corruption of purpose (see e.g. People v Simmons, 92 NY2d at 830 [affirming conviction for endangering the welfare of a child where day care teacher repeated "mocking and vulgar remarks" to a child]; People v Filangeri, 13 Misc 3d 142[A] [App

Term, 2d Dept, 2d & 11th Jud Dists 2006] [affirming conviction for endangering the welfare of a child when defendant, whose one-year-old daughter was sitting in the back of his car, slammed on his brakes, causing a traffic enforcement officer with whom defendant had just had a verbal altercation to rear-end defendant's car], lv denied 8 NY3d 880 [2007]; People v Afia, 17 Misc 3d 734 [Crim Ct, Kings County 2007] [school bus driver who left a sleeping child on the bus at the end of a morning trip convicted of attempted endangering the welfare of a child]).

Although a conviction under Penal Law § 260.10 (1) certainly calls into question the actor's judgment, it does not always present an issue of "moral integrity" as that term was carefully defined in Duffy. I therefore disagree with the majority that, in all instances, a conviction under Penal Law § 260.10 (1) implicates a breach of public trust. The facts underlying a conviction for endangering the welfare of a child may ultimately warrant discipline, including termination of employment -- as may be the case here -- but under Civil Service Law § 75, hearings are necessary to determine the nature of the misconduct and the discipline that should be imposed.

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Judgment appealed from and order of the Appellate Division brought up for review reversed, with costs, and petition dismissed. Opinion by Judge Pigott. Chief Judge Kaye and Judges Ciparick, Read and Smith concur. Judge Graffeo dissents and votes to affirm in an opinion in which Judge Jones concurs.

Decided June 5, 2008