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**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-2848-21**

JOSEPH VAS,

Petitioner-Appellant,

v.

BOARD OF TRUSTEES,  
PUBLIC EMPLOYEES'  
RETIREMENT SYSTEM  
OF NEW JERSEY,

Respondent-Respondent.

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Submitted June 7, 2023 – Decided June 26, 2023

Before Judges Currier and Mayer.

On appeal from the Board of Trustees of the Public Employees' Retirement System, Department of the Treasury, PERS No. xx9316.

Fruhschein & Steward, LLC, attorneys for appellant (Carleen M. Steward, of counsel and on the brief).

Matthew J. Platkin, Attorney General, attorney for respondent (Donna Arons, Assistant Attorney General, of counsel; Porter R. Strickler, Deputy Attorney General, on the brief).

## PER CURIAM

Petitioner Joseph Vas appeals from an April 21, 2022 decision of the Board of Trustees (Board), Public Employees' Retirement System (PERS). The Board upheld a determination by the Division of Pensions and Benefits (Division) deeming Vas forfeited his pension benefits under N.J.S.A. 43:1-3.1 after pleading guilty to criminal charges related to his service as the Mayor of the City of Perth Amboy. We affirm.

In July 1990, Vas began serving as Mayor of the City of Perth Amboy. On March 11, 2009, a grand jury indicted Vas on eleven counts of acts of official misconduct in his capacity as the Mayor. On May 21, 2009, a separate grand jury indicted Vas on an additional nineteen counts of acts of official misconduct, money laundering, and theft in his capacity as the Mayor.

On November 18, 2010, resolving both indictments, Vas pleaded guilty to a pattern of official misconduct, N.J.S.A. 2C:30-7, for acts committed between June 17, 2003, and September 27, 2007, and between May 1, 2002, and June 30, 2008. Additionally, he pleaded guilty to theft by unlawful taking, N.J.S.A. 2C:20-3, for acts occurring between April 12, 2004, through September 27, 2007, and money laundering, N.J.S.A. 2C:21-25, for acts occurring between April 12, 2004, through September 27, 2007.

Judgments of conviction against Vas for a pattern of official misconduct, theft by unlawful taking, and money laundering were entered on May 19, 2011. Several of the offenses to which Vas pleaded guilty occurred after the effective date of N.J.S.A. 43:1-3.1,<sup>1</sup> the statute governing forfeiture of pension benefits for offenses touching upon a public office.

On November 29, 2017, Vas filed an application for deferred retirement benefits. On August 21, 2019, the Board conducted an honorable service review under N.J.S.A. 43:1-3 to determine whether Vas forfeited his pension service credits. Based on Vas's convictions for crimes enumerated under N.J.S.A. 43:1-3.1, including a pattern of official misconduct and money laundering, the Board found Vas forfeited all pension benefits as a matter of law.

Vas appealed the Board's decision, and the matter was transmitted to the Office of Administrative Law as a contested case to be scheduled for a hearing before an administrative law judge (ALJ).

After Vas filed his appeal from the Board's decision, the New Jersey Supreme Court decided State v. Anderson, 248 N.J. 53 (2021). In Anderson, the Court reviewed the validity of N.J.S.A. 43:1-3.1. That statute provides:

A person who holds or has held any public office, position, or employment, elective or appointive, under

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<sup>1</sup> As amended, N.J.S.A. 43:1-3.1 became effective on April 14, 2007.

the government of this State or any agency or political subdivision thereof, who is convicted of any crime set forth in subsection b. of this section . . . shall forfeit all of the pension and retirement benefit earned as a member of any State or locally-administered pension fund or retirement system in which he participated at the time of the commission of the offense, and which covered the office, position or employment involved in the offense. As used in this section, a crime or offense that "involves or touches such office, position or employment" means that the crime or offense was related directly to the person's performance in, or circumstances flowing from, the specific public office or employment held by the person.

[N.J.S.A. 43:1-3.1(a).]

Subsection b. of the statute identifies the crimes warranting forfeiture of retirement and pension benefits. Among the enumerated crimes mandating a member's pension forfeiture upon conviction are a pattern of official misconduct, N.J.S.A. 43:1-3.1(b)(19), and money laundering, N.J.S.A. 43:1-3.1(b)(6).

In Anderson, the Court held a pension forfeiture was not an excessive fine. 248 N.J. at 60. Additionally, the Court found public pension benefits were quasi-contractual statutory rights rather than property rights. Id. at 75. The Court concluded a conviction for any of the offenses enumerated under N.J.S.A. 43:1-3.1 mandated forfeiture of all retirement and pension benefits. Id. at 73-74.

On January 10, 2022, the Board filed a motion for summary decision declaring Vas forfeited his pension benefits under N.J.S.A. 43:1-3.1. On March 17, 2022, the ALJ issued an initial decision granting the Board's motion. Relying on Anderson, the ALJ found that because Vas was convicted of a pattern of official misconduct for crimes occurring after enactment of N.J.S.A. 43:1-3.1, the forfeiture of his pension benefits was mandated.

On April 21, 2022, the Board adopted the ALJ's initial decision and upheld the forfeiture of Vas's pension benefits.

On appeal, Vas raises arguments not presented to the ALJ or the Board.<sup>2</sup> First, Vas argues his request for pension benefits should be reviewed under the law prior to the Legislature's amendment of N.J.S.A. 43:1-3.1 because some of the acts constituting a pattern of official misconduct took place prior to the effective date of the amended statute. Additionally, Vas contends he should have been advised of the possible forfeiture of his pension benefits during his

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<sup>2</sup> We could decline to consider Vas's newly asserted arguments because the arguments were not presented to the ALJ or the Board. "It is a well-settled principle that our appellate courts will decline to consider questions or issues not properly presented to the trial court when an opportunity for such a presentation is available unless the questions . . . go to the jurisdiction of the trial court or concern matters of great public interest." See State v. Robinson, 200 N.J. 1, 20 (2009) (quoting Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973)). For the sake of completeness, we address Vas's newly raised arguments.

plea hearing. He also claims N.J.S.A. 43:1-3.1 should not be applied retroactively to bar his pension benefits. We disagree.

Our review of an agency decision is limited. In re Herrmann, 192 N.J. 19, 27 (2007). An administrative agency's final quasi-judicial decision "will be sustained unless there is a clear showing that it is arbitrary, capricious, or unreasonable, or that it lacks fair support in the record." Saccone v. Bd. of Trs., Police & Firemen's Ret. Sys., 219 N.J. 369, 380 (2014) (quoting Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011)).

When reviewing whether an agency decision is arbitrary, capricious, or unreasonable, we consider: (1) whether the agency action violated "express or implied legislative policies"; (2) whether there was substantial evidence in the record to support the agency's decision; and (3) whether in applying the law to the facts, the agency reached a conclusion "that could not reasonably have been made on a showing of the relevant factors." Allstars Auto Grp., Inc. v. N.J. Motor Vehicle Comm'n, 234 N.J. 150, 157 (2018) (quoting In re Stallworth, 208 N.J. 182, 194 (2011)).

However, we are not bound by an agency's interpretation of a statute. Saccone, 219 N.J. at 380. When interpreting a statute, we exercise de novo review. Meehan v. Antonellis, 226 N.J. 216, 230 (2016). To interpret a statute,

we must determine the legislature's intent by giving the words in the statute "their ordinary meaning and significance." Bozzi v. Borough of Roselle Park, 462 N.J. Super. 415, 425 (App. Div. 2020) (quoting DiProspero v. Penn, 183 N.J. 477, 492 (2005)). "If the statutory language is clear, our inquiry ends." S.L.W. v. N.J. Div. of Pensions & Benefits, 238 N.J. 385, 394-95 (2019) (citing Richardson v. Bd. of Trs., Police & Firemen's Ret. Sys., 192 N.J. 189, 195 (2007)).

Pension statutes "should be liberally construed and administered in favor of the persons intended to be benefitted thereby." Geller v. Dep't of Treasury, 53 N.J. 591, 597-98 (1969). "However, '[i]n spite of liberal construction, an employee has only such rights and benefits as are based upon and within the scope of the statute.'" Francois v. Bd. of Trs., Pub. Emps.' Ret. Sys., 415 N.J. Super. 335, 349 (App. Div. 2010) (quoting Casale v. Pension Comm'n of Emps.' Ret. Sys. of Newark, 78 N.J. Super. 38, 40 (Law Div. 1963)).

We first consider Vas's argument that some of his acts constituting a pattern of official misconduct occurred before N.J.S.A. 43:1-3.1 was amended and, therefore, mandatory forfeiture of his pension was improper.

"All public pension statutes in this State carry an implicit condition precedent of honorable service to an award of pension benefits, and forfeitures

can be ordered for failure of that condition." Corvelli v. Bd. of Trs., Police & Firemen's Ret. Sys., 130 N.J. 539, 550 (1992) (citing Uricoli v. Bd. of Trs., Police & Firemen's Ret. Sys., 91 N.J. 62, 66 (1982)); see also N.J.S.A. 43:1-3.1(a). Forfeiture may be directed "for misconduct occurring during the member's public service which renders the member's service or part thereof dishonorable." N.J.S.A. 43:1-3(b). When it amended N.J.S.A. 43:1-3.1 in April 2007, the Legislature "expresse[d] an unambiguous legislative intent to make the commission of certain offenses the basis for mandatory and absolute pension forfeiture." Caucino v. Bd. of Trs., Teachers' Pension and Annuity Fund, \_\_ N.J. Super. \_\_, \_\_ (App. Div. 2023) (slip op. at 13) (citing Anderson, 248 N.J. at 73). "Section 3.1 [of the statute] requires the forfeiture of all pension or retirement benefits if the person was convicted of certain crimes involving or touching upon their public employment, and the crime was committed during their membership in the pension plan." Ibid. (citing State v. Steele, 420 N.J. Super. 129, 134-35 (App. Div. 2011)).

Here, Vas pleaded guilty to a pattern of official misconduct for acts committed while he was serving as Mayor. While some of the acts constituting a pattern of official misconduct occurred before the effective date of the amended statute, other acts of misconduct occurred after April 14, 2007.



Specifically, the judgments of conviction noted the dates for acts committed by Vas constituted a pattern of official misconduct occurring after the effective date of N.J.S.A. 43:1-3.1.

We rejected a similar argument raised by the defendant in Steele. In that case, the defendant claimed a guilty plea which included crimes committed both before and after the effective date of N.J.S.A. 43:1-3.1 did not warrant total forfeiture of pension benefits. 420 N.J. Super. at 131-32. Regardless of the fact that some criminal acts occurred prior to the effective date of the pension forfeiture statute, we held that mandatory and total forfeiture of pension benefits was compelled under N.J.S.A. 43:1-3.1. Id. at 134-35. Thus, we are satisfied the Board properly applied N.J.S.A. 43:1-3.1 in determining total forfeiture of Vas's pension benefits was mandated.

We also reject Vas's argument that the Court's decision in Anderson should not be applied retroactively. Because Anderson did not announce a new rule of law, Vas's retroactivity argument is misplaced. The decision in Anderson simply sustained the validity of N.J.S.A. 43:1-3.1. As the Court held, "[the] case turn[ed] on the legislative decision in 2007 to take discretion away from courts and administrative agencies when public employees commit any of the identified offenses." 248 N.J. at 75. Because N.J.S.A. 43:1-3.1 broke no new

ground, nor imposed any new obligation, a retroactivity analysis is not required. See State v. Cummings, 184 N.J. 84, 97-98 (2005).

We also reject Vas's argument that he should have been warned of the consequences of his guilty plea as it related to his receipt of pension benefits. Vas's arguments are more appropriately asserted through a petition for post-conviction relief (PCR). However, in rejecting this argument, we do not imply that a PCR application would be considered timely filed.

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.



CLERK OF THE APPELLATE DIVISION