

**BOARD OF TRUSTEES OF THE
CITY OF JACKSONVILLE POLICE AND FIRE PENSION FUND**

In Re:

**FORFEITURE OF RETIREMENT
BENEFITS OF DANNY RAY HAMLIN**

FINAL ADMINISTRATIVE ORDER
FORFEITING RETIREMENT BENEFITS

This matter came before the Board of Trustees as a result of Danny Ray Hamlin's no contest plea to one (1) count of Grand Theft for violation of Section 812.014, Florida Statutes and four (4) counts of Official Misconduct for violation of Section 838.022(1), Florida Statutes. Hamlin pled no contest to these offenses. Adjudication of guilt was withheld.

For the reasons which follow, the Board of Trustees finds, as a matter of law, that Hamlin was convicted of a specified felony under both Florida Statutes §112.3173(2)(e)(2) and §112.3173(2)(e)(4).

DUE PROCESS ISSUES

On or about July 1, 2014, Hamlin was served with a written Notice of Proposed Agency Action via certified mail, and was offered a full and complete opportunity to request a hearing challenging the proposed action. The Notice of Proposed Agency Action notified Hamlin that, if he wished to request a hearing to contest the proposed agency action, he must file a Petition with the Board by July 11, 2014. Hamlin failed to respond to the Notice of Proposed Agency Action. The Board of Trustees hereby finds that Hamlin was provided with adequate notice of the proposed action and the opportunity to contest the action if he so desired. Accordingly, the Board of Trustees finds that Hamlin has been afforded due process.

FINDINGS OF FACT

Hamlin pled no contest to one (1) count of Grand Theft for violation of Section 812.014, Florida Statutes and four (4) counts of Official Misconduct for violation of Section 838.022(1), Florida Statutes. Hamlin's no contest plea relates to crimes committed while on duty as a City of Jacksonville police officer. Hamlin's crimes involved submitting official records for overtime in closed criminal cases, and receiving payment for the same.

The Amended Information contains two paragraphs entitled count IV, despite referring to two separate incidents and separately listing 5 charges. The Counts follow the outline from the information:

- Count I: On or about January 13, 2013 Danny Ray Hamlin knowingly obtained, used or attempted to obtain or use U.S. Currency belonging to the Jacksonville Sheriffs Office in an amount of \$300.00 or more but less than \$20,000.00 with the intent to deprive any other person of the benefit of the property contrary to Florida Statutes, Sections 812.014(2)(c) and 812.014(1).
- Count II: On or about March 22, 2103, Danny Ray Hamlin, while a public servant, knowingly falsified an official record or official document with corrupt intent to benefit himself or another, by submitting an overtime submission for a court appearance on March 22, 2103 in a case closed since January 29, 2013, contrary to Florida Statutes, Section 838.022(1).
- Count III: On or about May 15, 2013, Danny Ray Hamlin, while a public servant, knowingly falsified an official record or official document with corrupt intent to benefit himself or another, by submitting an overtime submission for a court appearance

on May 15, 2103 in a case closed since July 31, 2012, contrary to Florida Statutes, Section 838.022(1).

Count IV:
On or about February 22, 2103, Danny Ray Hamlin, while a public servant, knowingly falsified an official record or official document with corrupt intent to benefit himself or another, by submitting an overtime submission for a court appearance on February 22, 2103 in a case closed since November 21, 2012, contrary to Florida Statutes, Section 838.022(1).

Count IV¹:
On or about April 23, 2103, Danny Ray Hamlin, while a public servant, knowingly falsified an official record or official document with corrupt intent to benefit himself or another, by submitting an overtime submission for a court appearance on April 23, 2103 in a case closed since March 6, 2012 contrary to Florida Statutes, Section 838.022(1).

LEGAL BASIS FOR THE DECISION

Article II, Section 8(d) of the Florida Constitution provides that a public officer or employee convicted of a felony involving a breach of public trust is subject to forfeiture of retirement benefits as provided by law. Following a finding by the Florida Supreme Court in *Williams v. Smith*, 360 So. 2d 417 (Fla. 1978), that these provisions in the Constitution are not self-implementing, the Legislature passed Section 112.3173, Florida Statutes, which defines the scope of the constitutional provision.

¹ The Amended Information contains two separate events marked as Count IV but lists 5 offenses each if which constitutes a felony.

Section 112.3173 provides that a public officer or employee convicted of a “specified offense” forfeits all retirement benefits except the employee’s own contributions. The terms “conviction” and “conviction” are defined in Section 112.3173(2)(a) as “an adjudication of guilt by a court of competent jurisdiction; a **plea of guilty or nolo contendere**; a jury verdict of guilt when adjudication is withheld and the accused is placed on probation; or a conviction by the Senate of an impeachable offense.” In this instance, Hamlin’s plea of no contest constitutes a conviction under the forfeiture laws of the State of Florida.

The term “specified offense” includes the committing, aiding, or abetting of any theft by a public officer or employee from his or her employer. Hamlin pled no contest to theft, and the theft was from the Jacksonville Sheriff’s Office, his employer. “Specified offense” also includes any felony specified in chapter 838, Florida Statutes, except sections 838.16 and 838.16. Hamlin pled no contest to four counts of official misconduct, by falsifying overtime records. The Board finds that Hamlin committed specified offenses as those offenses are laid out in 112.3173(2)(e)(2) and 112.3173(2)(e)(4).

Florida’s Constitution requires that any person convicted of a breach of public trust is liable to the State for any illegal profits obtained. *St. John Medical Plans, Inc. v. Gutman*, 721 So. 2d 717 (Fla. 1998). In criminal cases involving police officers, courts have been willing to depart from sentencing guidelines where police officers misuse their positions for personal gain. *Spain v. State*, 475 So. 2d 944 (Fla. 4th DCA 1985); *Cason v. State*, 508 So. 2d 448 (Fla. 3d DCA 1987).

Hamlin’s plea of no contest, notwithstanding that adjudication of guilt was withheld, constitutes a conviction under Section 112.3173(2)(a). Having been convicted of specified offenses within the meaning of Sections 112.3173(2)(e)(2) and (6), Florida Statutes, Hamlin’s rights, privileges and benefits under the Fund are subject to forfeiture pursuant to Sections 112.3173(3)

and the Board of Trustees forfeits the retirement benefits of Hamlin.

FINAL ORDER

WHEREFORE, based on the foregoing findings of fact and conclusions of law, the Board of Trustees of the City of Jacksonville Police and Fire Pension Fund finds that Danny Ray Hamlin has been convicted of a specified offense as provided in Section 112.3173, Florida Statutes, and all right, title and interest in his account with the City of Jacksonville Police and Fire Pension Fund is hereby forfeited.

DONE AND ORDERED at Duval County, Florida, this 25th day of July, 2014.


CHAIRPERSON

Filed with the Administrator/Clerk of the Board this 25th day of July, 2014.


ADMINISTRATOR/CLERK OF THE BOARD



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished this 25th day of July, 2014, to the below-named addressee, via U.S. Certified Mail, Return Receipt Requested and regular mail:

Danny Ray Hamlin
1106 Seattle Slew Lane
Jacksonville, Florida 32218-1953


ADMINISTRATOR/CLERK OF THE BOARD



NOTICE OF APPEAL RIGHTS

This Order becomes final as of the date it is filed with the Administrator/Clerk of the Board. This Order may be appealed within thirty (30) days of the date the Order is filed with the Administrator/Clerk of the Board. Failure to file an appeal within the time noted is a waiver of any appeal rights. The original Notice of Appeal should be filed with the Administrator/Clerk of the Board and a copy of the Notice of Appeal, together with the filing fee prescribed by law shall be filed with the Clerk of the First District Court of Appeal.

cc: Robert D. Klausner, Esquire