

STATE OF NORTH CAROLINA
COUNTY OF YADKIN

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
22 DOJ 02316

George Keith Sizemore Petitioner, v. North Carolina Sheriffs Education and Training Standards Commission Respondent.	PROPOSAL FOR DECISION
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THIS MATTER presented for hearing on the merits 24 October 2022 before Jonathan S. Dills, Administrative Law Judge (“ALJ”), in High Point, North Carolina. Per GS § 150B-40(e), Respondent requested that the Office of Administrative Hearings (“OAH”) handle this contested case pursuant to GS §§ 17E and 150B (the “APA”).

APPEARANCES

Petitioner: George Keith Sizemore, *pro se*
1048 Faith Lane
Yadkinville, NC 27055

Respondent: Robert J. Pickett
Attorney for Respondent
Department of Justice
Law Enforcement Liaison Section
9001 Mail Service Center
Raleigh, NC 27699-9001

ISSUES

- 1) Should Petitioner’s application for justice officer certification be denied for likely committing a Class B misdemeanor of Injury to Personal Property?
Answer: No.
- 2) Should Petitioner’s application for justice officer certification be denied for failing to report criminal charges to Respondent within five days?
Answer: No.
- 3) Should Petitioner’s certification be issued on a probationary basis?
Answer: Yes, for two years.

BASED UPON careful consideration of the entire record; having weighed all the evidence and assessing the credibility of each witness by considering appropriate factors for judging credibility including, demeanor, interests, biases, and prejudices; the opportunity to see, hear, know, and remember; reasonableness; and consistency with all other believable evidence; the undersigned makes the following:

FINDINGS

1. Both parties are properly before this Tribunal; Petitioner received notice of agency action and timely appealed; the parties received appropriate notice of hearing; and no party has otherwise objected.
2. Respondent Commission has the authority granted under GS § 17E and 12 NCAC 10B to grant, revoke, suspend, or deny sheriff certification under appropriate circumstance.
3. Petitioner is an applicant for certification with the Yadkin County Sheriff's Office. He was appointed as a detention officer 19 April 2021 and deputy 29 May 2021. He is currently working in a probationary capacity under 12 NCAC 10B .0402 and .0403. He previously held probationary criminal justice officer certification through Appalachian State University Police Department beginning 29 May 2021 but left prior to general certification.
4. On or about 29-30 May 2021, Petitioner argued with his then girlfriend, Allison Stoetzel. Petitioner admits he damaged the rearview mirror and parking brake button in Stoetzel's car. On or about 01 June 2021, Stoetzel took out a warrant against Petitioner for Communicating Threats and Injury to Personal Property. Petitioner agreed to pay damages. Charges were thereafter dismissed.
5. Petitioner did not report the criminal charges to Respondent until 29 June 2021. There was some evidence of prior attempts to report, but Petitioner admits such was still outside of the five-day reporting window of 12 NCAC 10B .0301(a)(7).
6. Petitioner was cooperative with investigators and admits to causing the subject damages.
7. Respondent failed to find probable cause re Communicating Threats.

CONCLUSIONS

1. The Tribunal need only find facts material to resolution. *Flanders v. Gabriel*, 110 N.C. App. 438, 440, 429 S.E.2d 611, 612, aff'd, 335 N.C. 234, 436 S.E.2d 588 (1993).
2. To the extent that the Findings contain Conclusions, or Conclusions are Findings, they should be so considered regardless of labeling. *Charlotte v. Heath*, 226 N.C. 750, 755, 440 S.E.2d 600, 604 (1946).

3. The OAH has jurisdiction over the parties and subject matter per the state constitution, GS § 7A-750 *et seq.*, and the APA. Venue is proper. Parties are herein properly designated. There is no question as to joinder. Parties received lawful notice of hearing.
4. Here, Respondent has the burden of proof. *See*, full analysis, incorporated herein by reference: *Graves v N.C. Criminal Justice Educ. & Training Standards Comm'n*, 2022 WL 16709937 (*Dills*, NCOAH).
5. Petitioner likely committed a Class B misdemeanor of Injury to Personal Property. He failed to timely notify Respondent of attenuate charges.
6. The following mitigating circumstances exist to support reduced sanction:
 - a. Petitioner's delay in reporting was unmotivated by any intent to conceal or deceive and did not affect Respondent's investigation.
 - b. Petitioner cooperated with the investigation and immediately admitted wrongdoing.
 - c. Petitioner has maintained his current employment with the Yadkin County Sheriffs' Office without additional violations.
 - d. Petitioner made restitution.
 - e. Charges were dismissed.
 - f. Petitioner was credible, forthright, and appropriately remorseful with the Tribunal.
7. This ruling is based upon a preponderance of credible evidence after full hearing. There is substantial evidence justifying adoption of the Tribunal's proposal. GS § 150B-42.

WHEREFORE, the Tribunal makes the following:

PROPOSAL FOR DECISION

BASED ON the foregoing Findings and Conclusions, it is proposed that Petitioner's certification **NOT BE DENIED** and instead it be placed in a probationary status for two years on condition that he not violate Commission Rules or commit criminal offense.

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this Proposal for Decision, to submit proposed Findings of Fact, and to present oral and written arguments to the agency. GS § 150B-40(e).

The agency that will make the final decision in this contested case is the North Carolina Sheriffs' Education and Training Standards Commission.

A copy of the final agency decision or order shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency and a copy shall be furnished to any attorney of record. GS § 150B-42(a).

SO ORDERED.

This the 13th day of December, 2022.

A handwritten signature in blue ink, appearing to read "Jonathan S. Dills", is positioned above a solid blue horizontal line.

The Honorable Jonathan S. Dills
Administrative Law Judge

CERTIFICATE OF SERVICE

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service:

George Keith Sizemore
1048 Faith Lane
Yadkinville NC 27055
Petitioner

Robert J Pickett
NC Department of Justice
rpickett@ncdoj.gov
Attorney for Respondent

This the 13th day of December, 2022.



Betty Owens
Paralegal
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