

STATE OF NORTH CAROLINA
COUNTY OF HAYWOOD

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
22 DOJ 03415

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| Robert Shawn Gaddis Petitioner, v. North Carolina Sheriffs Education and Training Standards Commission Respondent. | PROPOSAL FOR DECISION |
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This case came on for hearing on December 8, 2022, before the undersigned Administrative Law Judge David Sutton in Waynesville, North Carolina. This case was heard after Respondent requested, pursuant to N.C. Gen. Stat. § 150B-40(e), designation of an Administrative Law Judge to preside at the hearing of a contested case under Article 3A, Chapter 150B of the North Carolina General Statutes.

APPEARANCES

Petitioner: Bill J. Jones
89 Walnut Street
Waynesville, North Carolina 28786

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

ISSUE

Whether Petitioner's justice officer certification should be revoked based upon the allegation that Petitioner knowingly made a material misrepresentation in violation of Commission rules when he failed to disclose a 1989 "Rioting-Inciting" charge on his 1993 Personal History Statement.

RULES AT ISSUE

12 NCAC 10B .0204(c)(1) and (c)(2)

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned Administrative Law Judge makes the following FINDINGS OF FACT.

In making the FINDINGS OF FACT, the undersigned Administrative Law Judge has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate facts for judging credibility, including, but not limited to, the demeanor of the witness, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences, about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case.

FINDINGS OF FACT

1. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, both parties received notice of hearing, and that the Petitioner received by certified mail, the proposed denial letter, mailed by Respondent, the North Carolina Sheriffs' Education and Training Standards Commission (hereinafter "The Commission"), on July 28, 2022. (R. Ex. 2)

2. The Commission has the authority granted under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B, to certify deputy sheriffs and to revoke, suspend, or deny such certification under appropriate circumstances with valid proof of a rule violation.

3. In 1989, Petitioner was charged with the misdemeanor offense of "Rioting – Inciting" in violation of N.C. Gen. Stat. § 14-288.2. (R. Ex. 4)

4. Petitioner was first awarded justice officer certification by Respondent on July 13, 1993, through the Haywood County Sheriff's Office. (R. Ex. 3) Petitioner did not disclose the rioting charge at that time.

5. In 2022, while applying for a position with the Asheville-Buncombe Tech Campus Police, Petitioner discovered that he had been charged with a "Rioting-Inciting" in 1989. Prior to 2022, Petitioner was not aware of the charge. Upon discovering the charge, Petitioner self-reported to Respondent promptly.

6. Petitioner credibly testified that the incident arose from a fight in a parking lot he was watching while in high school with a large group of friends. He did not remember being arrested or charged. Petitioner re-called being told by a group of friends that everybody who was present at the fight needed to go to Court on a certain day. It appears from his testimony that he thought he was to attend Court as a witness or spectator. When Petitioner and his friends arrived at Court, they were told that they were free to leave.

7. The very limited information in the AOC printout of the charge, which is the only extant court record, supports and is consistent with Petitioner's version of events. (R. Ex. 4)

8. Petitioner omitted the "Rioting – Inciting" charge from his 1993 application because he was unaware of it at the time.

9. Petitioner has served in law enforcement since 1993, including as Chief of Police for the Town of Canton, NC for some time. Petitioner credibly testified that he has not engaged in misconduct or faced disciplinary action during this time.

CONCLUSIONS OF LAW

1. The parties are properly before this Administrative Law Judge. Jurisdiction and venue are properly before this Administrative Law Judge. To the extent that the Findings of Facts contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels.

2. The North Carolina Sheriffs' Education and Training Standards Commission has certain authority under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B to certify justice officers and to suspend, revoke, or deny certification under appropriate proof of a rule violation.

3. The Commission's Notification of Probable Cause states that probable cause exists to revoke Petitioner's justice officer certification because Petitioner knowingly failed to report the 1989 "Rioting – Inciting" charge on his 1993 application in violation of 12 NCAC 10B .0204(c)(1) and (c)(2).

4. N.C. Gen. Stat. §150B-40(e) provides that "[w]hen a majority of an agency is unable or elects not to hear a contested case," the agency is to apply to the Office of Administrative Hearings ("OAH") for a designation of an Administrative Law Judge ("ALJ"). In such case, "[t]he provisions of [Article 3A], rather than the provisions of Article 3, shall govern a contested case..." N.C. Gen. Stat. §150B-40(e).

5. In Article 3A cases, OAH, through an ALJ, presides over the hearing in place of the agency, and makes a "proposal for decision" back to the agency. N.C. Gen. Stat. §150B-40.

6. In *Peace v. Employment Sec. Comm'n of N. Carolina*, 349 N.C. 315, 328, 507 S.E.2d 272, 281 (1998), the North Carolina State Supreme Court addressed the burden of proof. Although Peace is an Article 3 case, the discussion of burden of proof is instructive in this instant case. Peace states:

In the absence of state constitutional or statutory direction, the appropriate burden of proof must be "judicially allocated on considerations of policy, fairness and common sense." 1 Kenneth S. Broun, Brandis & Broun on North Carolina Evidence §37 (4th. Ed. 1993). Two general rules guide the allocation of the burden of proof outside the criminal contest: (1) the burden rests on the party who asserts the affirmative, in substance rather than form; and (2) the burden rests on the party with peculiar knowledge of the facts and circumstances.

Id.

7. Neither the North Carolina Constitution nor the General Assembly has addressed the burden of proof in Article 3A cases. Applying the statutory law along with "considerations

of policy, fairness and common sense,” the Undersigned determines that Respondent should bear the burden of proof in an action where Respondent proposes to take some action against a justice officer based upon its investigation into that individual.

8. The burden of proof is the preponderance of the evidence standard. See N.C. Gen. Stat. §§ 150B-23(a); 29(a); and 34(a). Accordingly, the Commission must prove that it is more likely than not that Petitioner knowingly failed to report the 1989 “Rioting – Inciting” charge on his 1993 application for justice officer certification.

9. The preponderance of the evidence is that, while Petitioner failed to disclose the “Rioting-Inciting” charge on his 1993 application for justice officer certification, Petitioner did not do so knowingly as he was not aware of the charge at the time, and as such, probable cause therefore does not exist to find he made a material misrepresentation in violation of 12 NCAC 10B .0204(c)(1) and (c)(2).

10. The actions of the Commission were not arbitrary and capricious.

PROPOSAL FOR DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby proposed that Petitioner’s justice officer certification **NOT BE SUSPENDED OR REVOKED**.

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. N.C.G.S. § 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. N.C.G.S. § 150B-42(a).

IT IS SO ORDERED.

This the 23rd day of January, 2023.



David F Sutton
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:

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This the 23rd day of January, 2023.



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