

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
11 DOJ 10315

DILLAN NATHANUEL HYMES)

Petitioner,)

v.)

NORTH CAROLINA CRIMINAL
JUSTICE EDUCATION AND TRAINING
STANDARDS COMMISSION,)

Respondent.)

PROPOSAL FOR DECISION

On June 14, 2012, Administrative Law Judge Donald W. Overby, heard this case in Raleigh, 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: Dillan Nathaniel Hymes, Pro Se
1516 Quiet Oaks Road
Knightdale, North Carolina 27545

Respondent: Lauren D. Tally, Assistant Attorney General
N.C. Department of Justice
9001 Mail Service Center
Raleigh, North Carolina 27699-9001

ISSUE

Does substantial evidence exist to revoke Petitioner's correctional officer certification?

RULES AT ISSUE

12 NCAC 09G.0504(a)
12 NCAC 09G.0505(a)(1)

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 factors 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 Revocation of Correction Officer's Certification letter, mailed by Respondent, the North Carolina Criminal Justice Education and Training Standards Commission, on May 25, 2011.

2. The Respondent, North Carolina Criminal Justice Education and Training Standards Commission has the authority granted under Chapter 17C of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 9G, to certify correctional officers and to revoke, suspend, or deny such certification.

3. 12 NCAC 09G.0504 (a) provides that the North Carolina Criminal Justice Education and Training Standards Commission shall revoke the certification of a correctional officer . . . when the Commission finds that the officer has committed or been convicted of a felony offense.

4. 12 NCAC 09G.0505(a)(1) provides that when the North Carolina Criminal Justice Education and Training Standards Commission revokes or denies the certification of a correction officer pursuant to 12 NCAC 09G.0504 of this Section, the period of sanction shall be 10 years where the cause of sanction is: (1) the commission or conviction of a felony offense.

5. Petitioner was awarded probationary correctional officer certification by the North Carolina Criminal Justice Education and Training Standards Commission on September 7, 2007, and received general correctional officer certification on September 7, 2008. (Respondent's Exhibit 1)

6. The Criminal Justice Standards Division, on behalf of the Respondent, received notification from the North Carolina Department of Corrections in a letter dated March 22, 2010, that the Petitioner had been charged with the felony offense of obtaining property by false pretense. Edward Zapolsky (hereinafter "Zapolsky"), an investigator with the Criminal Justice Standards Division, then obtained certified copies of the court paperwork related to the Petitioner's criminal charges from the Clerk of Superior Court in Wake County file number 10 CR 202604. (Respondent's Exhibit 1)

7. On February 2, 2010, in Wake County, Petitioner was served with a warrant for his arrest for the felony charge of Obtaining Property by False Pretense in violation of North Carolina General Statute §14-100. This incident involved Petitioner attempting to falsely obtain monies from Jose Mauricio Morataya and North State Acceptance following the transfer of ownership of a motor vehicle. Petitioner demonstrated false pretense by presenting to Morataya

a North Carolina title free and clear of a lien when in fact the Petitioner knew that a lien was in effect with the lienor, North State Acceptance. (Exhibit 1 p. 4)

8. Ed Bayne, currently employed by the secondary finance company North State Acceptance, testified at the hearing. Mr. Bayne has worked for North State Acceptance for over five years and serves primarily as a sub-prime auto loan specialist. Bayne works in conjunction with North State Acceptance's car dealership Central Carolina Pre-Owned.

9. Bayne testified that he first became acquainted with Petitioner on November 4, 2009, when Petitioner purchased a 2006 Scion Xb from Central Carolina Pre-Owned. Petitioner financed this vehicle through Bayne's office at North State Acceptance. Bayne testified that the financing agreement between North State Acceptance and Petitioner required Petitioner to place a one thousand dollar down payment on the vehicle. Pursuant to the contract, North State Acceptance retained a lien on the vehicle and Petitioner accrued monthly payments of \$310.17. Bayne testified that the financed value of the vehicle at the time of purchase was \$10,195.56. On December 10, 2009, Petitioner made his first payment on the vehicle by certified check for \$310.17. After this initial payment, however, Bayne testified that Petitioner stopped making payments altogether. (Respondent's Exhibit 2)

10. Bayne testified that North State Acceptance customarily receives title documentation for mortgaged vehicles within twenty days of sale. When North State Acceptance did not receive title to Petitioner's mortgaged vehicle within twenty days, Bayne accessed North Carolina Department of Motor Vehicle records to complete a missing title report. During this inquiry, Bayne noticed that the title for the Scion Xb was listed neither in Petitioner's name nor the previous owner's name. Instead, the title was listed in the name of Jose Mauricio Morataya. Bayne testified that he "knew something was wrong" when he saw Morataya's name on a clean title that did not include North State Acceptance's lien. Bayne testified that he then contacted a sales agent at Central Carolina Pre-Owned who informed him that the paperwork for the vehicle, including North State Acceptance's lien, had been properly submitted to NCDMV weeks prior.

11. Bayne contacted NCDMV to inquire about the status of the title. Shortly thereafter, NCDMV Inspector Cathy Callahan discovered that North State Acceptance's lien on the vehicle had been left off of the title by clerical error. Rather than issuing the title to the mortgage holder North State Acceptance, NCDMV had erroneously issued the title to Petitioner. Further review of the vehicle's records indicated that after receiving a clean title, Petitioner sold the vehicle to Jose Morataya who then assumed title without North State Acceptance's lien.

12. Bayne testified that he called Petitioner in mid-December to inquire about the sale of the vehicle. Despite the sale being confirmed by NCDMV records, Petitioner denied having sold the vehicle. North State Acceptance tracked the vehicle to Burlington and re-possessed it on December 18, 2009.

13. Jose Morataya, to whom the vehicle was sold, testified at the hearing. Morataya recalled that he was first made aware of the vehicle and Petitioner by an ad on Craigslist in December of 2009. Morataya testified that he contacted Petitioner on December 15, 2009 because he was interested in seeing and potentially purchasing the vehicle. The two arranged to

meet later that evening at a McDonald's on Miami Boulevard in Durham, North Carolina. Upon meeting, Morataya recalled that Petitioner appeared as though he wanted to complete the deal quickly. Morataya cited the fact that Petitioner came to the meeting with a title that had already been notarized and wanted cash only. Petitioner represented that he owned the vehicle outright, that the title was clean, and that he wanted \$10,000 for the car. After test driving the vehicle and comparing the title document to Petitioner's license, Morataya negotiated with Petitioner regarding the price. Morataya ultimately paid Petitioner approximately \$7,000 in cash and took possession of both the vehicle and the title documentation.

14. Morataya testified that a week later, on December 18, 2009, he left work and found his vehicle missing. Believing the vehicle to have been stolen, Morataya contacted the police who initiated an investigation. North State Acceptance later contacted Morataya and informed him that they had repossessed the vehicle because Petitioner had falsely sold it when he still owed money.

15. Based on NCDMV Inspector Callahan's inquiry, she served as the complainant and secured a warrant for Petitioner's arrest for the felony charge of obtaining property by false pretense. Petitioner was served on February 2, 2010. (Respondent's Exhibit 1)

16. There is no question that NCDMV erroneously issued the title to Petitioner without having properly recorded the lien.

17. The case was referred to Wake County District Court, but dismissed on January 18, 2011 for lack of jurisdiction. The case was transferred to Durham County, but the county did not pursue prosecution. (Respondent's Exhibit 1)

18. Zapolsky presented Petitioner's case to the Probable Cause Committee of the North Carolina Criminal Justice Education and Training Standards Commission on May 19, 2011. Petitioner did not attend. The Probable Cause Committee found probable cause to believe that the Petitioner had committed the felony offense of obtaining property by false pretense in violation of N.C. GEN. STAT. 14-100. The Petitioner was notified of the findings of the Probable Cause Committee via a certified letter sent to him on May 25, 2011.

19. Petitioner testified at the hearing stating that shortly after purchasing the vehicle from Central Carolina Pre-Owned in November of 2009 he became dissatisfied with its quality. Petitioner claims that he returned to Central Carolina Pre-Owned in order to return the vehicle, but was informed that the deal was complete. Petitioner claimed that an agent from Central Carolina Pre-Owned informed him he could terminate his ownership responsibilities by transferring the monthly payments to someone else or selling the car and reimbursing North State Acceptance the balance owed.

20. Petitioner testified that he advertised the vehicle on Craigslist and met with Morataya on December 15, 2009 in Durham, North Carolina. Petitioner testified that he informed Morataya that North State Acceptance was owed a balance of roughly \$10,000 on the vehicle and that the monthly payments were approximately \$300. Petitioner claimed that he took only \$1,000 from Morataya so that he could recoup his down payment on the vehicle. Petitioner denied receiving \$7,000 from Morataya. Petitioner testified that he "didn't know exactly what

he was doing” regarding the transfer of the vehicle to Morataya, and that any mistakes should be attributed to the fact that he is not “in auto-financing.”

21. Petitioner’s version of the facts is implausible when he claims he allowed Morataya to leave with a \$10,000 vehicle while Morataya only paid Petitioner \$1,000. He presents no evidence that he and Morataya made an agreement that Morataya would continue the payments on the vehicle. Petitioner lacks credibility and his account is not believable. Petitioner took advantage of erroneously receiving a clean titled to the vehicle from NCDMV, knowing there was a lien on the vehicle, by quickly selling it to Morataya under the false pretense that he owned it outright.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. The parties received proper notice of the hearing in the matter. To the extent that the Findings of Fact 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 Respondent, the North Carolina Criminal Justice Education and Training Standards Commission, has the authority granted under Chapter 17C of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 9G, to certify correctional officers and to revoke, suspend, or deny such certification.

3. Pursuant to 12 NCAC 09G .0504(a), the Commission shall revoke the certification of a correctional officer when the Commission finds that the officer has committed or been convicted of a felony offense.

4. Pursuant to 12 NCAC 09G.0505(a)(1), when the Commission revokes the certification of a corrections officer pursuant to 12 NCAC 09G .0504, the period of the sanction shall be 10 years where the cause of sanction is... commission or conviction of a felony offense.

5. The party with the burden of proof in a contested case must establish the facts required by N.C. GEN. STAT. § 150B-23(a) by a preponderance of the evidence. N.C. Gen. Stat. § 150B-29(a). The administrative law judge shall decide the case based upon the preponderance of the evidence. N.C. Gen. Stat. § 150B-34(a).

6. Respondent has the burden of proof in the case at bar. Respondent has shown by a preponderance of the evidence that Respondent’s proposed suspension of Petitioner’s correctional officer certification is supported by substantial evidence.

7. Respondent may properly suspend the Petitioner’s certification pursuant to 12 NCAC 09G .0504(a) for the commission of a felony offense which occurs after certification.

8. ”Obtaining Property by False Pretense”, in violation of N.C.Gen. Stat. § 14-100 is a Class H felony. A person is guilty of “Obtaining Property by False Pretense” if that person:

- (1) obtains or attempts to obtain
- (2) anything of value
- (3) from another person
- (4) with the intent to cheat or defraud that person of the value of the item in question

9. A preponderance of the evidence shows that Petitioner committed the felony criminal offense of obtaining property by false pretense when he falsely represented to Jose Morataya that he owned a vehicle with a clean title for the purpose of profiting from the sale of the mortgaged vehicle. Petitioner's claims that he was given permission to sell the car by Central Carolina Pre-Owned, that he informed Morataya of the payment schedule, and that he only received \$1,000 to recoup his down payment lack credibility when weighed against the record of investigation presented by Zapolsky, the testimony sworn by Bayne and Morataya, and the documentation presented by DMV Inspector Callahan. Petitioner's statements are not believable. All substantive evidence in this case suggests that Petitioner knowingly misrepresented the state of his ownership of the vehicle and the title documentation in order to profit from the sale.

10. The findings of the Probable Cause Committee of the Respondent are supported by substantial evidence and are not arbitrary and capricious.

PROPOSAL FOR DECISION

NOW, THEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law, the Undersigned recommends Respondent suspend the Petitioner's correctional officer certification for a period of not less than ten (10) years based upon Petitioner's commission of a felony offense, after certification to wit; obtaining property by false pretenses in violation of N.C. Gen. Stat. § 14-100.

NOTICE

The Agency making the Final Decision in this contested case is required to give each party an opportunity to file Exceptions to the Proposal for Decision, to submit Proposed Findings of Fact and to present oral and written arguments to the Agency. N.C. Gen. Stat. §150B-40(e).

The Agency that will make the Final Decision in this contested case is the North Carolina Criminal Justice Education and Training Standards Commission.

This the 23rd day of July, 2012.

Donald W. Overby
Administrative Law Judge