

STATE OF NORTH CAROLINA
COUNTY OF NORTHAMPTON

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
11 DOJ 13151

Shatel Nate Coates)
Petitioner)
)
vs.)
)
NC Sheriffs' Education and Training)
Standards)
Commission)
Respondent)

PROPOSAL FOR DECISION

On November 3, 2011, pursuant to N.C. Gen. Stat. § 150B-40(e), Respondent requested designation of an administrative law judge to preside at a contested case hearing under Article 3A, Chapter 150B of North Carolina General Statutes. On April 27, 2012, Administrative Law Judge, Melissa Owens Lassiter heard this contested case in Raleigh, North Carolina. On May 29, 2012, the undersigned issued an Order ruling there was sufficient evidence presented at the contested case hearing to support Respondent's decision to deny Petitioner's justice officer certification application. On June 11, 2012, pursuant to the undersigned's Order, Respondent filed a proposed Decision in this case with the Office of Administrative Hearings.

APPEARANCES

For Petitioner: Michael C. Byrne
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For Respondent: John J. Aldridge, III,
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NC Department of Justice
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ISSUE

Is Respondent's proposed denial of Petitioner's justice officer certification supported by substantial evidence?

EXHIBITS ADMITTED INTO EVIDENCE

For Petitioner: 6, 7, 8, 9, 10, 12

For Respondent: 1 - 12

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 the Petitioner received the Notification of Probable Cause to Deny Justice Officer Certification letter mailed by the Respondent on 3 October 2011, and as corrected on January 24, 2012.

2. The North Carolina Sheriffs' Education and Training Standards 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 justice officers and to revoke, suspend, or deny such certification.

3. Pursuant to 12 NCAC 10B .0204(d)(2), the Commission may revoke, suspend, or deny the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer has committed or been convicted of:

(2) a crime or unlawful act defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor within the five year period prior to the date of appointment.

4. Pursuant to 12 NCAC 10B.0103(2), "convicted" or "conviction" means and includes, for purposes of this chapter, the entry of (A) a plea of guilty; (B) a verdict or finding of guilt by a jury, judge, magistrate, or other duly constituted, established, and recognized adjudicating body, tribunal, or officials, either civilian or military; or (C) a plea of no contest, nolo contendere, or the equivalent.

5. Pursuant to 12 NCAC 10B .0103(10)(b)(iii), a Class B misdemeanor is defined as any act committed in violation of a criminal statute of any jurisdiction other than North Carolina for which the maximum punishment in the jurisdiction where the act occurred includes imprisonment for a term more than six months, but not more than two years.

6. Pursuant to Virginia Code § 18.2-96, any person who commits simple larceny not from the person of another of goods and chattels of the value of less than \$200.00, except as provided in subdivision (iii) of Section 18.2-95, shall be deemed guilty of petit larceny which shall be punishable as a Class 1 misdemeanor.

7. Pursuant to Virginia Code § 18.2-11, the authorized punishment for a conviction of a Class 1 misdemeanor is confinement in jail for not more than twelve months and a fine of not more than \$2,500.00, either or both.

8. Pursuant to 12 NCAC 10B.0103(10)(b)(iii) of the Commission's rules, in addition to Virginia Code §§ 18.2-96 and 18.2-11, a conviction of a Class 1 misdemeanor of petit larceny in the State of Virginia constitutes a Class B misdemeanor for purposes of the Respondent's rules.

9. On or about February 4, 2010, Petitioner completed a Personal History Statement (Form F-3) as part of her employment application with the Northampton County Sheriff's Office, and in order to obtain certification as a justice officer from the Sheriffs' Commission.

10. On February 5, 2010, Petitioner completed a Report of Appointment Form for the North Carolina Sheriffs' Education and Training Standards Commission to be certified as a deputy sheriff with the Northampton County Sheriff's Office. On February 5, 2010, Petitioner was sworn as a deputy sheriff through the Northampton County Sheriff's Office.

11. Question No. 42 of the Sheriffs' Commission Form F-3 asked the applicant if she had ever been arrested by a law enforcement officer or otherwise charged with a criminal offense. Petitioner responded that she had been charged with grand larceny by the Franklin Virginia Police Department on July 10, 2008. She further indicated that the charge was reduced to a misdemeanor. In response to Question No. 45 of the Form F-3, the Petitioner further elaborated that she had been charged with a felony because, "a friend did not ring up all of my items at the register. After leaving out the store and was apprehended the items were over \$200.00 which made it a felony in Virginia."

12. Along with her application for certification as a deputy sheriff, Petitioner also submitted a typed statement to Respondent, summarizing what transpired on July 10, 2008 to cause Petitioner to be charged with felonious larceny. (See Respondent's Exhibit 3)

- a. In this statement, Petitioner explained how she and a friend went to Wal-Mart on July 10, 2008 in Franklin, Virginia. Petitioner "picked up clothes for her hair accessories and clothes for her little sisters, a birthday gift for her stepfather (cologne), a couple of movies and some personal hygiene products." Since Petitioner worked at the photo section of this Wal-Mart, she went there to check out. One of her friends was working at the register. Petitioner complained to her friend that the store had cut her hours, and that she didn't make enough money in her paycheck. "It was a mutual agreement" for her friend not to scan all of the items that Petitioner had picked up. After paying for the items that her friend did scan, Petitioner placed the bags in her shopping cart, and left the store.

- b. Once outside, the store manager approached Petitioner, and asked her to return to the store with him. When the store manager asked Petitioner if she had paid for all of the items that she had left the store with, Petitioner replied, "Yes." The store manager compared the receipts and items in the bags to see if Petitioner had paid for all the items.
- c. In her statement, Petitioner indicated there were \$291.00 worth of non-paid merchandise in the bags. Petitioner explained that she decided to go along with not paying for all of the items, because the store had started cutting back on her hours. She complained that she did not have enough money to get the necessities she needed such as personal hygiene products.
- d. The Franklin Virginia police arrested Petitioner at the store. Her bail was set at \$2,500.00. Petitioner's stepfather posted bond for her. Since the stolen items were valued at over \$200.00, Petitioner's charge was a felony in Virginia. At trial, Petitioner pled guilty to the misdemeanor charge of larceny in return for the felony charge being dismissed. Petitioner paid \$191.00 in court costs according to her statement and was sentenced to seven days in jail.

13. Based on the Petitioner's responses to the various questions on the Personal History Statement and her written statement, staff for the Respondent began requesting any available records from Franklin, Virginia regarding Petitioner's charge and its disposition.

14. Certified court records from Franklin, Virginia indicate that Petitioner was charged on July 10, 2008 with felonious larceny in violation of Virginia Criminal Code § 18.2-95 and accused of stealing various items valued at \$200.00 or more and belonging to Franklin Wal-Mart. These records further reflect that on September 8, 2008, the Petitioner pled guilty to misdemeanor larceny pursuant to Virginia Criminal Code § 18.2-96 and the felony charge was reduced accordingly. Petitioner was sentenced to seven days in jail, and assessed fees in the amount of \$191.00 (Respondent's Exhibit 6)

15. Respondent assigned eastern field representative Ted Sauls to further investigate Petitioner's commission of the felony larceny charge stemming from Petitioner's July 10, 2008 arrest. In furtherance of that request, Mr. Sauls interviewed the Wal-Mart employees in Virginia involved with this incident, and those individuals also charged criminally as a result of this incident.

16. On June 1, 2001, Sauls interviewed Petitioner by telephone. Petitioner told Sauls that she was nineteen years old at the time of the incident, and that she was working part-time at the Wal-Mart in Franklin, Virginia. She advised that her working hours had been cut from 30 hours per week to under 24 hours per week.

- a. Petitioner went to the Wal-Mart with her mother on July 10, 2008. Each

shopped separately, but placed their respective items in the same cart. Petitioner remembers complaining to her co-worker (Shanta DeLoatch) about her hours and pay being cut. Shanta told Petitioner not to worry about it and that she (Shanta) would take care of her. Petitioner understood that Shanta intended to not charge her for all of the items in the cart. Petitioner remembers purchasing clothes for her little sisters, personal hygiene products, and cologne for her stepfather. While Petitioner could not remember all of the items in her shopping cart, she knew she had a shopping cart full.

- b. She told Sauls that she remembered paying Shanta \$35.00 to \$50.00 for the items, but cannot remember the exact amount of money she gave her. She further stated that there was approximately \$291.00 in merchandise that she did not pay for. Petitioner told Sauls that she and her mother were stopped exiting the store by the manager, Kevin Huggins. Petitioner stated that after she was stopped by Huggins that she texted Shanta and told her "They got me."
- c. Petitioner, Shanta, and Petitioner's mother were arrested and charged with larceny. Petitioner said that her mother had no idea what was going on, and was not involved in the theft.
- d. Petitioner told Sauls that she regretted the incident. Petitioner told Sauls that after the incident, she was initially accepted into the United States Marine Corps but was dismissed a week later on a medical discharge. Petitioner elaborated that when she was seven or eight years old she had lense implants in her eyes.

(Petitioner's Exhibit 6, Respondent's Exhibit 4)

17. On June 1, 2011, Sauls interviewed Shanta DeLoatch by telephone. Ms. DeLoach advised Sauls that July 10, 2008 was her last day of employment with Wal-Mart as she was scheduled to leave for the military thereafter. She was trying to help Petitioner by "sliding" items passed the scanner, and not ringing them up. She had known Petitioner for approximately six months. Shanta told Sauls that Petitioner's mother, while shopping with Petitioner, did not know that she and Petitioner were taking the items without paying for them. Shanta was charged with the felony offense of embezzlement, pled guilty to that offense, but received no jail time. She felt Petitioner deserved a second chance, and that she was a good person. (Petitioner's Exhibit 6, Respondent's Exhibit 4)

18. On Saturday, July 2, 2011, Sauls interviewed Officer A. W. Herdeg of the Franklin Virginia Police Department by telephone. Herdeg told Sauls that he recalls arresting Petitioner, Petitioner's mother, and DeLoatch for larceny from the Wal-Mart in Franklin, Virginia. Herdeg told Sauls that his notes reflect that Petitioner did not want to make a statement, and that Petitioner's mother denied knowing anything about the theft.

19. On July 12, 2011, Sauls also telephonically interviewed Kevin Huggins, the former manager of the Franklin, Virginia Wal-Mart store. Huggins advised that he caught Petitioner leaving the store with items she had not paid for. He told Sauls that he believed Petitioner "was young, and did something stupid, and that she has probably learned a valuable lesson and would never do it again." (Respondent's Exhibit 4)

20. On July 13, 2011, Sauls interviewed Petitioner's mother, Gena Jackson by telephone.

- a. Ms. Jackson went with her daughter to Wal-Mart on July 10, 2008. Jackson drove because Petitioner's car was being serviced. Petitioner told Jackson that she would pay for all of the items picked up by the two, and that they would settle up later. When she and Petitioner got outside of the store, they were approached by a store employee, and escorted back into the building. After the employee accused them of stealing, Jackson was dumbfounded, and did not know what he was talking about. Jackson was arrested and charged with larceny, but this charge was later dismissed by the district attorney.
- b. Jackson got very mad at Petitioner for stealing, and "fussed" her out several times. The day of the incident, Petitioner cried all the way home. She raised Petitioner better than that, and has always told her it was wrong to steal. Jackson and her husband let Petitioner go through the court system, so that Petitioner would realize how serious the matter was. She let Petitioner "pull her days in jail and did not try to hire an attorney to interfere."
- c. After Petitioner finished with her legal problems, Petitioner signed up for the Marine Corps. Petitioner was not accepted by the Marine Corps because she did not divulge that she had lense implants in her eyes.
- d. Jackson told Sauls that Petitioner was upset and disappointed, because the Marine Corps thought that she had intentionally not divulged her medical history on her eyes. Jackson told Sauls that she believed that Petitioner had just forgotten to make the Marine Corps aware of her eye surgery. She believed Petitioner would make a great law enforcement officer.

21. Certified true copies of the Franklin Virginia Police Department crime reports on the Petitioner's offense were accepted into evidence as Respondent's Exhibits 7 and 8. The Franklin Police Department crime report reflects that a total of \$422.13 worth of items passed through the cashier, and Petitioner paid \$29.73. In her statement to the Franklin Police Officers, Petitioner stated that she did it because she needed the money. Petitioner stated that her hours had been cut to about 20 hours a week, and that she was having difficulty paying a lot of her bills such as car insurance,

cell phone bill and credit card bills. She further stated that her car was breaking down, and that she was spending a lot of money to fix it. She stated that she and her mother were going shopping that day, and she told her mother to get what she wanted because she (Petitioner) was going to pay. Petitioner explained that her mother did not know what was going on, and what was going to happen. (Respondent's Exhibit 7)

22. The Franklin Police Department follow-up report (Respondent's Exhibit 8) contains receipts from the Wal-Mart store in Franklin, Virginia dated July 10, 2008. These receipts are represented to be the receipts from the Petitioner's transaction. The receipt marked as items "not paid for" reflect a total value of the items not paid for as being \$412.02. The items on this list range from bubble bath, ribbon, clothing, flowers, and birthday cards. At the administrative hearing, Petitioner denied remembering if the items listed on the receipts found at Respondent's Exhibit 8 contained the items that she stole.

23. At the administrative hearing, Gena Jackson testified, and stated substantially the same information as conveyed to Mr. Sauls.

24. In her testimony at the administrative hearing, Petitioner explained that \$291.00 worth of merchandise was not paid for on July 10, 2008, and that she got this figure from her attorney in the criminal matter. Petitioner acknowledged that a number of the items stolen were not necessities, such as ribbons, eyelash kit, etc. Petitioner did not recall how much money she had paid to the cashier on July 8, 2008. However, Petitioner did tell Mr. Sauls that she had paid between \$35.00 and \$50.00. Neither could Petitioner recall how she paid for the items on that date, whether by cash, check, credit card, etc.

25. During cross-examination, Petitioner stated that she joined the United States Marine Corps after her legal problem for larceny. She stated that she was subsequently discharged, however because of her previous eye surgery. Petitioner denied that she was discharged from the Marine Corps for intentionally not disclosing her prior surgery on her enlistment documents. A copy of the Petitioner's release from active duty orders (DD Form 214) reflects the reason for the Petitioner's separation from the United States Marine Corps as "fraudulent enlistment." No other evidence was available to further elaborate on the basis for this determination by the Marine Corps.

26. Respondent did not state or use any information regarding Petitioner's admission or discharge to the Marine Corps as a reason for denying her certification application.

26. Petitioner currently works as a court security officer for the Northampton County Sheriff's Office. She has completed basic law enforcement training, and desires to continue with the sheriff's office. Petitioner agrees that honesty and integrity are essential attributes to be a law enforcement officer in North Carolina.

27. Petitioner is embarrassed by her actions from the July 10, 2008 incident,

and is embarrassed for her Mom. She was raised better than that, and has learned her lesson. She did not intentionally omit that she had cataracts on her Marine application and did not try to fraud anyone on her Marine application. She deals with people her age in court, and tries to educate them by telling them about her mistake from July 10, 2008. She has not stolen anything since July 10, 2008.

28. In a letter dated April 26, 2012, Sheriff Wardie P. Vincent, Sr. of Northampton County stated that Petitioner had been employed with his office for two years, and worked as a courthouse security officer. He stated that Petitioner had worked with other officers, and had learned the operations of the sheriff's office. He stated that Ms. Coates has the ability to be an outstanding officer if given a chance.

CONCLUSIONS OF LAW

1. Both parties are properly before this Administrative Law Judge and jurisdiction and venue are proper.

2. The North Carolina Sheriffs' Education and Training Standards Commission has the authority granted Chapter 17E of the general statutes, Title 12 of the North Carolina Administrative Code, Chapter 10B, to certify justice officers and to deny, revoke or suspend such certification.

3. Pursuant to 12 NCAC 10B .0204(d)(2), the Commission may revoke, suspend, or deny the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer has committed or been convicted of a crime or unlawful act defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor within the five year period prior to the date of appointment.

4. Pursuant to Virginia Code §§ 18.2-11 and 18.2-96, and 12 NCAC 10B .0103(10)(b) the crime of petit larceny in Virginia constitutes a Class B misdemeanor.

5. Petitioner's conviction for the Class B misdemeanor offense of Petite Larceny from Virginia in 2008 constitutes a violation of 12 NCAC 10B .0204(d)(2).

6. Pursuant to 12 NCAC 10B .0205(3)(d), when the Commission revokes, suspends, or denies the certification of a justice officer, the period of sanction shall be for an indefinite period, but continuing so long as the stated deficiency, infraction, or impairment continues to exist, where the cause of sanction is commission or conviction of offenses as specified in 12 NCAC 10B .0204(d)(2). (Emphasis added.)

7. Respondent's proposed denial of the Petitioner's certification is supported by substantial evidence.

8. 12 NCAC 10B .0205(3) also provides that:

The Commission may either reduce or suspend the periods of sanction where revocation, denial or suspension of certification is based upon Subparagraphs .0204(d)(3), (d)(4), and (d)(5) or substitute a period of probation in lieu of revocation, suspension or denial following an administrative hearing. This authority to reduce or suspend the period of sanction may be utilized by the Commission when extenuating circumstances brought out at the administrative hearing warrant such a reduction or suspension.

9. There was some circumstantial evidence presented at hearing warranting Respondent's imposition of a lesser sanction in this case, such as placing Petitioner on a probationary certification for a specified time period, in lieu of denial of certification.

PROPOSAL FOR DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned recommends Respondent deny Petitioner's justice officer's certification based upon the Petitioner's conviction for the Virginia crime of petit larceny.

NOTICE

The North Carolina Sheriffs' Education and Training Standards Commission will make the Final Decision in this contested case. That agency 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. Gen. Stat. § 150B-40(e).

This the 5th day of July, 2012.

Melissa Owens Lassiter
Administrative Law Judge