

STATE OF NORTH CAROLINA
COUNTY OF CLEVELAND

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12 DOJ 00650

MARSHALL TODD MARTIN,)
Petitioner,)
)
v.)
)
N.C. SHERIFFS' EDUCATION)
AND TRAINING STANDARDS)
COMMISSION,)
Respondent.)
_____)

DECISION

On June 7, 2012, Administrative Law Judge Selina M. Brooks heard this case in Morganton, North Carolina. The case was heard after respondent requested, pursuant to N.C.G.S. § 150B-40(e), the designation of an administrative law judge to preside at the hearing of this contested case under Article 3A, Chapter 150B of the North Carolina General Statutes.

APPEARANCES

Petitioner: Daniel R. Talbert, Esq.
Respondent: Matthew L. Boyatt, Assistant Attorney General

ISSUE

Did Petitioner fail to make proper notice of criminal charges to the Respondent?

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 of justice officer certification letter, mailed by Respondent The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter referred to as "the Sheriffs' Commission") on December 20, 2011.

2. The Sheriffs' 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 deny, revoke, or suspend such certification.

3. 12 N.C.A.C. 10B .0204(b)(2) provides that the Sheriffs' Commission may revoke,

deny, or suspend the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer fails to meet or maintain any of the employment or certification standards required by 12 N.C.A.C. 10B .0300.

4. 12 N.C.A.C. 10B .0301(a)(7) requires that every justice officer employed or certified in North Carolina shall within five (5) working days notify the Sheriffs' Standards Division and the appointing department head in writing of all criminal offenses with which the officer is charged and shall also give notification, in writing, to the Sheriffs' Standards Division and the appointing department head following the adjudication of these criminal charges.

5. The Petitioner was initially appointed as a Detention Officer through the Cleveland County Sheriff's Office on or about August 25, 1998.

6. In order to obtain certification through the Sheriffs' Commission, the Petitioner attended the Detention Officer Certification Course (hereinafter the "Certification Course") at Gaston Community College. The Petitioner was required to attend the Orientation block of the Certification Course, which provided Petitioner with instruction on the rules and regulations governing the Sheriffs' Commission and Petitioner's certification through this Commission.

7. As part of the Orientation block of training, Petitioner was instructed on the requirements of 12 NCAC 10B .0301, which provides:

(a) Every Justice Officer certified as a Deputy Sheriff or Detention officer in North Carolina shall:

(7) Within five working days notify the Standards Division and the appointing department head in writing of all criminal offenses with which the officer is charged; and shall also give notification, in writing, to the Standards Division and the appointing department head following the adjudication of these criminal charges.

8. The Petitioner successfully completed the Certification Course on February 28, 2000. The Petitioner's Student Course Completion Record indicates the Petitioner received a perfect score of 100 on the Orientation block of training.

9. On January 7, 2000, the Petitioner signed an Acknowledgment of Orientation, wherein the Petitioner acknowledged that he received the certification requirements for a Detention Officer, and that he was instructed in the certification and training requirements set out in the Orientation block of instruction.

10. The Petitioner received his general certification from the Sheriffs' Commission on April 10, 2000.

11. On May 12, 2000, the Petitioner was served with a criminal summons for one (1) misdemeanor worthless check charge: 00 CR 051714. At the time the Petitioner received the criminal summons, Petitioner was employed by the Cleveland County Sheriff's Office and held certification through the Sheriffs' Commission. The Petitioner was served with the above-referenced criminal summons within three (3) months of successfully completing the Orientation block of training that was a part of Petitioner's Certification Course.

12. Despite being instructed to report all criminal charges within five (5) days of being served with a criminal summons, the Petitioner failed to advise the Sheriffs' Commission of Petitioner's 00 CR 051714 worthless check charge.

13. On June 30, 2000, the Petitioner separated from the Cleveland County Sheriff's Office. Despite this separation, the Petitioner remained certified through the Sheriffs' Commission for one (1) year following Petitioner's date of separation.

14. On September 19, 2000, the Petitioner was served with a second criminal summons for a misdemeanor worthless check charge: 00 CR 054403. The Petitioner was served with this second worthless check criminal summons within seven (7) months of successfully completing the Orientation block of training that was part of Petitioner's Certification Course.

15. Despite being instructed to report all criminal charges within five (5) days of being served with a criminal summons, the Petitioner failed to advise the Sheriffs' Commission of Petitioner's second worthless check charge, 00 CR 054403.

16. The Petitioner voluntarily paid off each worthless check and both misdemeanor worthless check charges were voluntarily dismissed by the Cleveland County District Attorney's Office.

17. On or about December 6, 2010, the Petitioner reapplied for certification through the Sheriffs' Commission. It was at this time that the Sheriffs' Commission discovered that Petitioner received two (2) criminal summonses for worthless check charges and that Petitioner failed to disclose, either verbally or in writing, these charges to the Sheriffs' Commission pursuant to its rules.

18. Based on Petitioner's failure to disclose criminal charges within five (5) days of being served, the Petitioner was provided with written notification that the Respondent intended to submit Petitioner's case to its Probable Cause Committee for a determination as to whether probable cause existed to believe Petitioner failed to disclose criminal charges as required by the Commission's Rules. The Petitioner was provided notice of the Respondent's December 6, 2011 Probable Cause Committee meeting. Following the December 2011 probable cause meeting, Respondent's Probable Cause Committee determined that probable cause did exist to believe Petitioner violated the Commission's Rules due to Petitioner's failure to make timely notice of criminal charges. Thereafter, the Petitioner received the Respondent's Notification of Probable Cause to Deny Justice Officer Certification dated December 20, 2011. Petitioner timely requested an administrative hearing within 30 days.

19. The Petitioner testified that in 2000 he was unaware of the requirement to report all criminal charges to the Sheriffs' Commission within five (5) days of receiving a criminal summons. However, this is implausible in light of the fact that the Petitioner admitted to taking and successfully completing the Orientation block of training in the Certification Course. The Petitioner received a perfect score of 100 on this portion of training. Further, the Petitioner admitted to recognizing the Orientation block training materials that were provided to Petitioner during the Certification Course. Finally, the Petitioner received his first worthless check charge within three (3) months of completing the Orientation block of training.

20. Notwithstanding the foregoing, the Petitioner served as a law enforcement officer through the Kingstown Police Department from January 21, 2006 through July 24, 2008. Further, the Petitioner served with the Grover Police Department for approximately three (3) years and was the Grover Chief of Police for two (2) of the three (3) years. Petitioner has been a good law enforcement officer and has been an asset to the communities in which Petitioner served. Petitioner has no criminal record except for the aforementioned misdemeanor worthless check charges, which were voluntarily dismissed upon payment of restitution. Finally, Petitioner testified to extenuating circumstances during the general period in which Petitioner failed to notify the Sheriffs' Commission, including but not limited to financial hardship Petitioner was experiencing, in addition to the death of Petitioner's wife.

CONCLUSIONS OF LAW

1. The parties are properly before the undersigned administrative law judge, and jurisdiction and venue are proper.

2. The Petitioner failed to make timely notification of his two (2) worthless check charges in violation of 12 N.C.A.C. 10B .0204(b)(2) and 12 N.C.A.C. 10B .0301(a)(7).

3. The Respondent's proposed denial of Petitioner's justice officer certification is supported by substantial evidence. However, pursuant to 12 N.C.A.C. 10B .0205 (2), the Sheriffs' Commission has the discretion to impose a lesser sanction, to include the imposition of a probationary period in lieu of suspension or revocation.

DECISION

NOW, THEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned recommends the Respondent certify the Petitioner based on the totality of the evidence presented at the administrative hearing. Following the certification of Petitioner, it is further recommended that Petitioner be placed on a 12 month probationary period, during which time the Petitioner shall not violate any of the laws of this State or of the Respondent's rules.

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.

IT IS SO ORDERED this the 13th day of July, 2012.

Selina M. Brooks
Administrative Law Judge