

STATE OF NORTH CAROLINA
COUNTY OF MADISON

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12 DOJ 651

FRANCES GENTRY DENTON,)
Petitioner,)
v.)
N.C. SHERIFFS' EDUCATION AND)
TRAINING STANDARDS)
COMMISSION,)
Respondent.)

PROPOSAL FOR DECISION

THE ABOVE CAPTIONED CONTESTED CASE was heard before the Honorable Donald W. Overby, Judge Presiding, on July 11, 2012, at the Haywood County Justice Center upon the Petitioner's request for an administrative hearing pursuant to Chapter 150B, challenging the decision of the North Carolina Sheriffs' Education and Training Standards Commission denying her certification as a justice officer, and the undersigned, after hearing evidence and arguments of counsel, finds as follows:

APPEARANCES

Petitioner appeared represented by attorney Larry B. Leake, Leake Scott & Stokes Asheville, North Carolina.

Respondent was represented by attorney Matthew L. Boyatt, NC Department of Justice, Raleigh, North Carolina.

WITNESSES

Respondent: Frances Denton, the Petitioner.
Petitioner: Sheriff James (Buddy) Harwood, Sheriff of Madison County
Michael Garrison, Chief Deputy, Madison County

ISSUE

Whether grounds exist for Respondent to deny Petitioner's application for certification as a deputy sheriff for Madison County based on her commission or conviction of a combination of crimes as defined in 12 NCAC 10B .0103(10)(a) or .0103(10)(b); or based on her commission or conviction of a felony.

BURDEN OF PROOF

Respondent has the burden of proving that Petitioner has committed or been convicted of the criminal offenses that justify denying her certification. Petitioner may rebut Respondent's showing.

FINDINGS OF FACT

1. The Petitioner was born in Buncombe County, North Carolina, and reared in Florida and Madison County, North Carolina. She married her husband, Tim when she was sixteen years old and had not yet finished high school. She received her GED in 2006. She and Tim have now been married for twenty five years and have lived in the same home the entire time. She worked with her Husband moving mobile homes for seventeen years. She has also helped Tim hang vinyl siding.
2. The Petitioner completed basic law enforcement training in June 2010, and applied with the Madison County Sheriff's Department September 2010. She has been employed pursuant to a provisional certification as a justice officer with the Madison County Sheriffs' Department as a correctional officer and Deputy Sheriff.
3. The Petitioner, in her application to the Commission for certification as a justice officer, disclosed to the Commission what appeared to be a rather lengthy record, which included four felony charges.
4. Among the information submitted was a record for Frances G. Denton who was convicted of worthless check in 1987, but this person lived in Williamston, North Carolina. There is no evidence this Petitioner ever lived in Williamston, North Carolina, and there is no evidence to support that she committed this offense.
5. Petitioner's submission also noted two charges of driving while license revoked, no operator's license and expired tag, and there is no evidence to support that this Petitioner committed any of those offenses.
6. Petitioner admits that she had received a prayer for judgment continued on a 1998 worthless check charge and had been convicted on a 2002 misdemeanor larceny charge.
7. The Petitioner further disclosed in her application that she was charged on or about August 30, 1991, with issuing a check on a closed bank account, was charged on September 12, 1992, with issuing a worthless check, was charged on September 18, 1998, with resisting a public officer and on August 8, 1998 with 2 counts of forgery of a check and 2 counts of uttering a forged instrument.
8. The Petitioner was convicted in 2002 of misdemeanor larceny, a Class B misdemeanor. Petitioner still contends that she did not commit the offense, but she plead not guilty but was in fact found guilty.

9. The Petitioner was, in fact, given a prayer for judgment continued in 1998 as to the worthless check charge. For the purposes of this action, the prayer for judgment continued is treated the exact same as a finding of guilty.
10. The only evidence before this Court concerning the resisting a public officer was the sworn testimony of the Petitioner. She was credible in her testimony concerning a problem that she had with a police officer. The officer had come to her home looking for her husband. He grabbed her and arrested her at a time when she was pregnant and very close to her delivery date. The officer was subsequently charged with felonies and lost his law enforcement certification. The criminal charge of resisting a public officer was dismissed. There is not sufficient evidence to show that she committed this offense.
11. The only evidence before this Court concerning the communicating threats was the sworn testimony of the Petitioner. She was credible in her testimony concerning a problem that she had with her next door neighbor. The charge of communicating threats was dismissed. There is not sufficient evidence to show that she committed this offense.
12. The only evidence before this Court concerning the forging and uttering of instruments was the sworn testimony of the Petitioner. She was credible in her testimony concerning a problem that she had no involvement at all with the forging of instruments or the uttering of those forged instruments. The person who forged those instruments and uttered them was her brother, and she had no part in any of those transactions. The criminal charges of forging and uttering instruments were dismissed. There is not sufficient evidence to show that she committed these offenses.
13. Counsel for the Respondent acknowledged that the Respondent did not have sufficient evidence to establish the commission of the criminal offenses of forgery, uttering a forged instrument, communicating threats, and resisting a public officer.
14. The burden of proof as to proving the commission of any criminal offenses upon which the Petitioner has not been convicted is on the Respondent.
15. In 1991, the Petitioner had closed a bank account previously used by her. Shortly after the closing of the aforesaid account, the Petitioner mistakenly picked up the checkbook for the closed account, rather than the checkbook for her new account, and hurriedly wrote a check on the closed account, leading to the August 30, 1991, charge of knowingly issuing a check on a closed bank account. The only sworn testimony about this case is from the Petitioner who stated that she did not even realize that the check had been issued on the closed account until she was served with the summons.
16. N.C.G.S. § 14-107 requires “knowledge” on the part of a defendant who issues a check on a closed account. North Carolina case law has determined that someone

acts “knowingly” when the person is aware or conscious of he or she is doing, and that a person does not act “knowingly” if he or she merely should have known. Under N.C.G.S. 14-107(d)(4), one may be convicted if he or she simply knew that the account had been closed prior to the issuance of the check. In this instance, Petitioner lacked the requisite knowledge and the specific intent to violate the statute. The criminal case was voluntarily dismissed.

17. In 1992, the Petitioner wrote a check, not realizing that her husband had previously written a check on the joint account, leading to the issuance of the September 12, 1992, worthless check charge. From her sworn testimony, at the time she issued that check to her knowledge there was sufficient funds on deposit to cover that check. But for her husband issuing a check on that account without her knowledge, the check would have cleared.
18. N.C.G.S. § 14-107(a) likewise requires “knowledge” on the part of a defendant who issues a simple worthless check. It goes further and requires that the defendant must know at the time of writing the check that there are insufficient funds on deposit at the bank.
19. There is not sufficient evidence to show that Petitioner committed the criminal offenses of issuing a check on a closed account in 1991 or issuing a worthless check in 1992. The Respondent has failed to meet its burden of proof to the charge of willfully issuing a check on a closed account and issuing a check with insufficient funds.
20. Assuming *arguendo* that the Respondent has met its burden of proof establishing that the Petitioner had knowingly written a check on a closed account on August 30, 1991, and that the Petitioner had knowingly written an insufficient funds check on September 12, 1991, the undersigned would still be of the opinion that the Commission, in its discretion, should not deny for any period of time the Petitioner’s application, given that these offenses occurred twenty years or more and there has been no evidence of any further issuance of bad checks nor criminal activity of any kind other than those offense to which she has admitted.
21. The Sheriff of Madison County and the Chief Deputy Sheriff of Madison County have appeared and testified that the Petitioner had been serving as a correctional officer for more than 6 months, has been doing an outstanding job, and, in fact, was one of the Department’s best three employees.
22. The 1998 worthless check charge upon which the Petitioner received a prayer for judgment continued and the 2002 Class B misdemeanor larceny conviction do not constitute a sufficient basis for the Commission denying the Petitioner’s application for a justice officer certification.

CONCLUSIONS OF LAW:

1. The Petitioner committed the offense of worthless check in 1998 and for purposes herein was convicted of that offense.
2. The Petitioner committed the offense of misdemeanor larceny in 2002 and for purposes was convicted of that offense.
3. Commission and conviction of those two criminal charges alone are insufficient to deny Petitioner her certification.
4. Respondent has failed to prove Petitioner has committed or been convicted of any other criminal offenses.
5. The application of the Petitioner to the North Carolina Sheriffs' Education and Training Standards Commission for certification as a justice officer should not be denied.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the Petitioner be certified as a justice officer by the North Carolina Sheriffs' Education and Training Standards Commission.

NOTICE AND ORDER

The North Carolina Criminal Justice Education and Training Standards Commission will make the Final Decision in this case. That agency 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)

This the 30th day of August, 2012.

Donald W. Overby
Administrative Law Judge