

**IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12 DOJ 5140**

PROPOSAL FOR DECISION

APPEARANCES

ISSUES

- EXHIBITS ADMITTED**

STIPULATIONS

- 1

2. On or about April 4, 2012, Petitioner was notified that the Commission found probable cause exists to believe her detention officer certification should be revoked.

3. Petitioner timely requested an administrative hearing, and the Commission thereafter requested the assignment of an administrative law judge to hear the contested case.

4. The Office of Administrative Hearings has jurisdiction over the subject matter and over both parties in this case, and venue is proper.

5. During the year 2010, Petitioner committed the following misdemeanor criminal offense in Forsyth County: larceny in violation of N.C.G.S. § 14-72(a). Pursuant to the Commission's rules, this offense is classified as a Class B misdemeanor. 12 NCAC 10B .0103(10)(b)(1).

6 Accordingly, Petitioner has committed a crime or unlawful act defined as a Class B misdemeanor and which occurred after the date of appointment, subjecting her certification to revocation or suspension by the Commission. 12 NCAC 10B .0204(d)(1). Pursuant to the Commission's rules, the period of sanction is not less than five years. 12 NCAC 10B .0205(2)(a).

7. Following an administrative hearing, the Commission may reduce or suspend this five-year period of sanction, or substitute a period of probation in lieu of revocation or suspension, if extenuating circumstances brought out at the administrative hearing warrant such action. 12 NCAC 10B .0205(2).

8. At the hearing in this matter, Petitioner may present such evidence as may be admissible and relevant to prove extenuating circumstances as permitted under 12 NCAC 10B .0205(2). The Commission may challenge Petitioner's evidence and may present such rebuttal evidence as may be admissible and relevant to the Commission's determination whether extenuating circumstances, if any, warrant a reduction or suspension of the sanction set forth in 12 NCAC 10B .0205(2)(a).

9. Additionally, the parties stipulate to the following circumstances relevant to Petitioner's commission of misdemeanor larceny:

a. Petitioner began working at J.C. Penney in Winston-Salem in 1994. She left this employment when she began working for the Guilford County Sheriff's Office. In or around the year 2006 or 2007, Petitioner went back to work at J.C. Penney as a loss prevention officer.

b. On multiple occasions, and during the course of several months leading up to January 3, 2011, Petitioner took various items of merchandise from the J.C. Penney store without paying for them. These included, but were not necessarily limited to, articles of clothing, hand gloves, and a

straightening iron. The total market value of the merchandise which Petitioner took from J.C. Penney was approximately \$500. Petitioner was continuously employed by J.C. Penney as a loss prevention officer at the store during the relevant time period.

c. On January 3, 2011, Petitioner approached her store manager at J.C. Penney and admitted to taking the merchandise.

d. On January 3, 2011, Petitioner was charged with one count of misdemeanor larceny in Forsyth County. (11 CR 700221) On February 25, 2011, this charge was voluntarily dismissed by the State. On January 30, 2012, this charge was expunged by the Court by Order of Expunction.

e. Following an internal investigation by the Guilford County Sheriff's Office, Petitioner was placed on one-year probation, during which time she was not permitted to perform duties requiring contact with money or property. She remains employed with the Guilford County Sheriff's Office.

f. The Guilford County Sheriff's Office has expressed its desire for Petitioner to retain her Certification and employment with the Guilford County Sheriff's Office.

Based upon the foregoing stipulations, the admitted documentary evidence, the testimony of witnesses, including determination of witness credibility, the undersigned makes the following:

FINDINGS OF FACT

1. Petitioner was charged with larceny on January 3, 2011.
2. In 2010 and 2011, Petitioner went through some serious health issues which resulted in her taking six (6) weeks of FMLA from the Guilford County Sheriff's Office. Ms. Holly Ingram, Licensed Professional Counselor, High Point Regional Health System, made assessments as to the mental health of Petitioner and the effect Petitioner's childhood experience, including PTSD, may have had on Petitioner's criminal behavior. Ms. Ingram is not a psychologist or a psychiatrist either by educational degree or professional licensing. Ms. Ingram referred Petitioner to a psychologist for testing and diagnosis, but the psychologist's subsequent report was not in evidence.
3. Petitioner was terminated from her employment as a loss prevention officer with J.C. Penney on or about January 3, 2011 after self-reporting her shoplifting of items to her supervisor. Petitioner remains highly regarded by her former supervisor and is still permitted to shop at the store where she was formerly employed.
4. By stipulation of the parties at the hearing, Petitioner expressed a willingness to

pay restitution to J.C. Penney in the amount of \$500. Petitioner would have done so, except when the criminal charge against Petitioner was dismissed, the company was no longer able to accept payment from her.

5. Major Deborah Montgomery and Captain Eddie Maness of the Guilford County Sheriff's Office testified on Petitioner's behalf at the hearing. Petitioner continues to perform well as a detention officer with Guilford County. Petitioner's latest performance appraisal indicates that she received a final performance rating of 4.14 out of a possible 5. (Petitioner's Ex. 1).

6. Had Petitioner not voluntarily self-reported her crime to the store manager at J.C. Penney, she would likely have never been suspected of or charged with larceny.

7. Petitioner's supervisors at J.C. Penney urged the Winston-Salem Police Department not to charge Petitioner with the felony offense of larceny by employee. On January 3, 2011, Petitioner was charged with one count of misdemeanor larceny; she committed larceny on three or more occasions. On February 25, 2011, this charge was voluntarily dismissed. On January 30, 2012, this charge was expunged by the court.

8. Petitioner's larceny charge can be considered as a negative factor in future promotion consideration as a detention officer with Guilford County.

9. Petitioner was 46 years old when she committed the larceny. As a loss prevention officer for her employer, she held a position of trust to prevent theft from the store.

Based on the foregoing Stipulations and Findings of Fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case.

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 deny, revoke or suspend such certification.

3. Pursuant to 12 NCAC 10B .0204(d)(1) the 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 has committed a crime or unlawful act defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor and which occurred after the day of initial certification.

4. Pursuant to 12 NCAC 10B .0103(10)(b)(i), a Class B Misdemeanor is defined in pertinent part as:

(i) an act committed or omitted in violation of any common law, criminal statute, or criminal traffic code of this state which is classified as a Class B Misdemeanor as set forth in the "Class B Misdemeanor Manual" as published by the North Carolina Department of Justice and shall automatically include any later amendments and editions of the incorporated material as provided by G.S. 150B-21.6. . . .

5. Pursuant to N.C.G.S. § 14-72(a), 12 NCAC 10B .0103(10)(b), and the Class B Misdemeanor Manual adopted by the Respondent, the crime of misdemeanor larceny constitutes a Class B misdemeanor.

6. By stipulation, Petitioner committed the Class B misdemeanor offense of larceny in violation of N.C.G.S. § 14-72(a). Therefore, Petitioner's detention officer certification is subject to revocation or suspension on this asserted basis. However, the undersigned concludes that contained in the findings, there are extenuating circumstances that warrant a probationary suspension in lieu of revocation or active suspension.

7. The undersigned has weighed all factors in extenuation.

Based on the foregoing STIPULATIONS, FINDINGS OF FACT AND CONCLUSIONS OF LAW, the undersigned makes the following:

PROPOSAL FOR DECISION

Respondent revoke Petitioner's justice officer certification for a period of five (5) years and recommends that Respondent, in lieu of the five year revocation, suspend the period of revocation and place Petitioner on probation, with appropriate conditions, for a period of one year.

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.

This the 9th day of November, 2012.

Julian Mann, III
Chief Administrative Law Judge

A copy of the foregoing was mailed to:

William L. Hill
Attorney at Law

ATTORNEY FOR PETITIONER

William P. Hart, Jr.
Assistant Attorney General
NC Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001
ATTORNEY FOR RESPONDENT

This the ____ day of November, 2012.

N.C. Office of Administrative Hearings
6714 Mail Service Center
Raleigh, North Carolina 27699-6714
(919) 431-3000
FAX: (919) 431-3100