

not limited to the demeanor of the witness, any interest, 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. Wherefore, the undersigned makes the following Findings of Fact, Conclusions of Law and Decision. In the absence of a transcript, the Undersigned has relied upon her notes, her memory and the documentary record herein.

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's Certification letter, mailed by Respondent The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter the "Commission") on June 12, 2012.

2. The Petitioner applied for certification as a Detention Officer with the Commission through the Wake County Sheriff's Office on or about July 29, 2009. R. Ex. 1.

3. During the processing of Petitioner's application for certification, the Commission learned that Petitioner was charged with the felony offense of distributing cocaine, a schedule II controlled substance, in Hopewell, Virginia, on August 12, 1998.

4. In furtherance of Petitioner's application for certification, the Commission's investigator, Andy Stone, interviewed Petitioner to discuss the above-referenced felony charge in Hopewell, Virginia. During that conversation, Petitioner admitted to investigator Stone that he sold two (2) crack cocaine rocks to an undercover officer on August 12, 1998. Petitioner advised investigator Stone that he had been selling crack cocaine for approximately one (1) month and that he was selling the crack cocaine in order to support himself and his brother. Petitioner admitted to investigator Stone that during that one (1) month period, Petitioner made somewhere between \$200.00 and \$300.00 selling crack cocaine when he was sixteen years old. *See also* R. Ex. 3 att. 3 & R. Ex. 7. Petitioner was not arrested immediately after the sale. Rather, Petitioner learned later that day that there was an order for his arrest and Petitioner voluntarily surrendered himself to the police. R. Ex. 7.

5. The Record of Proceedings from the District Court in Hopewell, Virginia indicates that the charges were reduced to "simple possession – 1st offender status with probation" on January 27, 1999. Petitioner remained in compliance with the Virginia Court's orders which resulted in the charge being dismissed on March 8, 2000. R. Ex. 3 att. 2.

6. Following its investigation, the Commission notified Petitioner that his eligibility for certification would be addressed by the Commission's Probable Cause Committee (hereinafter "PC Committee") on June 5, 2012. R. Ex. 2.

7. Petitioner appeared before the PC Committee and was provided the opportunity to

dispute and/or explain to the PC Committee the circumstances surrounding his felony charge. At the probable cause meeting, Petitioner repeated the information he had given to investigator Stone.

8. On or about June 12, 2012, the PC Committee found probable cause existed to believe Petitioner had committed the felony offense of distributing cocaine, a schedule II controlled substance, in Hopewell, Virginia, on August 12, 1998. Based on this finding of probable cause, the Commission notified Petitioner in writing on June 12, 2012, of the proposed denial of his certification and Petitioner was advised of his right to request an administrative hearing in order to contest the proposed denial of Petitioner's certification. R. Ex. 4, 5 & 6.

9. Petitioner timely requested an administrative hearing by letter in which he stated, in part:

I would first like to submit to the Commission that I truly value my certification and I completely understand the tremendous responsibilities that it holds. As a young teenager, I whole heartedly regret making the poor choice of getting involved with illegal drugs, and allowing myself to fall prey to the poverty stricken environment that I grew up in. I'm so thankful that I was given a second chance to do something positive with my life and my future.

I submit to the commission that I took advantage of the second chance opportunity and went to the University of North Carolina on a Football Scholarship and graduated with a 4 year degree. Also for the past three years, I have chosen to work at the Wake County Sheriff's Office Detention Center as a Detention Officer. My passion is to help make a positive influence and difference in the lives of the young men and women that enter the Detention facility know firsthand about making poor choices and the consequences that come along with them. Life experience has taught me a great lesson about having integrity, creditability, honesty, and trustworthiness. The aforementioned attributes has helped me become a better person and a positive role model on how to learn from your mistakes and make the best of a second chance opportunity.

R. Ex. 6

10. At the administrative hearing, Petitioner was honest and forthright regarding his criminal behavior as a juvenile in 1998. His testimony repeated the statements he made to investigator Stone and to the PC Committee.

11. Petitioner testified that he stopped selling drugs immediately after his arrest and the Undersigned finds Petitioner's testimony credible.

12. Testimonial evidence was received concerning the various requirements made by Petitioner's probation officer and how Petitioner accepted and complied with each and every requirement, including submitting to drug screens and transferring between high schools on at least two occasions.

13. Since 1998, Petitioner has made significant progress in his personal life and has remained trouble-free. Petitioner was able to earn a high school diploma, despite the legal issues he faced. Petitioner has been gainfully employed since college and been consistent in volunteer work and ministries where he could work with disadvantaged youth.

14. Petitioner testified that he wants to work with at risk youth and teach them not to make the mistakes he has made in life.

15. The Undersigned had the opportunity to observe Petitioner's demeanor and finds that Petitioner is remorseful for his past actions as a teenager. Petitioner's desire to use his past mistakes as a way to help others is laudable.

16. In reviewing the documentary and testimonial evidence, the Undersigned finds that on each and every occasion, the Petitioner has been forthright, honest and consistent in reporting the facts concerning the felony charge and his testimony at the administrative hearing to be credible.

17. The Undersigned finds as fact that Petitioner is committed to remaining a productive member of society, and to use the mistakes of his youth to help him be an effective law enforcement officer.

CONCLUSIONS OF LAW

1. The parties are properly before the undersigned Administrative Law Judge and jurisdiction and venue are proper.

2. Pursuant to Section 18.2-248 (1998) of the Virginia Code, it is a felony for an individual to intentionally sell or distribute a controlled substance in the State of Virginia. Section 18.2-248 (c) of the Virginia Code provides that intentionally selling a schedule II controlled substance shall result in confinement for a period not less than five (5) years, with a maximum term of confinement of 40 years. R. 8 & 10.

3. Pursuant to Section 54.1-3448 (1998) of the Virginia Code, cocaine is classified as a Schedule II controlled substance. Section 18.2-250 (1998) of the Virginia Code makes the mere possession of cocaine a class 5 felony offense in the State of Virginia. R. 9 & 10.

4. The 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.

5. 12 NCAC .0301 (a) (10) states:

Every Justice Officer employed or certified in North Carolina shall not have committed or been convicted of a crime or crimes

as specified in 12 NCAC 10B .0307.

6. 12 NCAC 10B .0307 (a) (1) states:

Every Justice Officer employed in North Carolina shall not have committed or been convicted by a local, state, federal or military court of a felony.

7. 12 NCAC 10B .0204(a)(1) states that the Commission shall deny the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer has committed a felony.

8. Pursuant to 12 NCAC 10B .0103(11), “Felony” means any offense designated a felony by the laws, statutes, or ordinances of the jurisdiction in which the offense occurred.

9. 12 NCAC 10B .0204(b)(2) states that the Commission shall deny certification of a justice officer when the Commission finds that the applicant for certification fails to meet any of the certification standards required by 12 NCAC 10B .0300.

10. The powers of Administrative Law Judge are set forth in N.C.G.S. § 150B-33 which states in pertinent part:

(b) An administrative law judge may:

...

(9) Determine that a rule as applied in a particular case is void because ... (3) is not reasonably necessary to enable the agency to fulfill a duty delegated to it by the General Assembly.

11. Based upon the facts of this particular case, the Undersigned determines that the application of the Commission’s rules would defeat the purpose of the rules, to wit, to ensure that only persons of high moral character, honesty and integrity are commissioned as law enforcement officers and, therefore, the rules as applied are void.

PROPOSAL FOR DECISION

Based upon the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, the Undersigned determines that Petitioner’s application for justice officer certification should be granted.

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 25th day of March, 2013.

Selina M. Brooks
ADMINISTRATIVE LAW JUDGE