

STATE OF NORTH CAROLINA
COUNTY OF SCOTLAND

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12DOJ08026

<p>SHERONICA HALL SMITH, Petitioner,</p> <p>v.</p> <p>NORTH CAROLINA SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION, Respondent.</p>	<p>PROPOSAL FOR DECISION</p>
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On April 29, 2013, Administrative Law Judge Beecher R. Gray heard this case in Fayetteville, North Carolina. This case was heard after Respondent requested the designation of an Administrative Law Judge to preside at the hearing of a contested case under Article 3A, Chapter 150B of the North Carolina General Statutes. After serving a copy of its draft proposal for decision upon Counsel for Petitioner in May 2013, Respondent filed that Draft Proposal for Decision in the Office of Administrative Hearings on August 19, 2013. Petitioner did not file any documents or argument in response to Respondent's Draft Proposal for Decision.

APPEARANCES

Petitioner: Timothy R. Snead, Esq.
Respondent: Matthew L. Boyatt, Assistant Attorney General

ISSUES

1. Whether Petitioner knowingly made a material misrepresentation to the North Carolina Sheriffs' Education and Training Standards Commission of any information required for certification as a justice officer.
2. Whether Petitioner committed the felony offense of Influencing a Witness in Dooly County, Georgia on or about July 18, 1994.

FINDINGS OF FACT

1. The parties received notice of hearing by certified mail more than 15 days prior to the hearing, and each stipulated on the record that notice was proper. Petitioner received by

certified mail the proposed Denial of Justice Officer's Certification letter, mailed by Respondent Sheriffs' Commission on June 12, 2012.

2. The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter referred to as 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 NCAC 10B.0204(c)(1) and (2) states that the Sheriffs' Commission may deny the certification of a justice officer when the Commission finds that the applicant for certification has:
 - (1) knowingly made a material misrepresentation of any information required for certification or accreditation from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission; or has
 - (2) knowingly and designedly by any means of false pretense, deception, fraud, misrepresentation, or cheating whatsoever, obtained or attempted to obtain credit, training or certification from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission.
4. Further, 12 NCAC 10B.0204(a)(1) states that the Sheriffs' Commission shall deny the certification of a justice officer when the Commission finds that the applicant for certification has committed or been convicted of a felony.
5. Petitioner is an applicant for deputy certification through the Scotland County Sheriff's Office. Petitioner previously has not held certification through the Sheriffs' Commission and previously has not held certification through the North Carolina Criminal Justice Education and Training Standards Commission.
6. On September 22, 1994, Petitioner was arrested in Dooly County, Georgia and was charged with two (2) separate felony offenses of Influencing a Witness. (R. Ex. 4) Petitioner was handcuffed during her arrest and was fingerprinted and photographed as part of the criminal processing.
7. On January 30, 1995, Petitioner appeared in court in Dooly County, Georgia and formally waived counsel and entered a plea of not guilty to the felony offenses of Influencing a Witness.
8. On May 1, 1995, the Dooly County District Attorney filed a Motion to *Nolle Prosequi* the above-referenced felony offenses, which Motion was granted by the presiding superior court judge.

9. Petitioner completed a Personal History Statement (Form F-3), on or about February 18, 2011, as part of her employment application with the Scotland County Sheriff's Office and in order to obtain certification as a justice officer from the Sheriffs' Commission. Petitioner testified that she was provided ample time to complete and review the F-3 Personal History Statement prior to submitting the same. Further, Petitioner signed the completed Personal History Statement before a Notary Public and certified that each statement on the form was "true and complete." (R. Ex. 9)
10. Question No. 42 of the Sheriffs' Commission Form F-3 asked the applicant to disclose the following:

"Have you ever been arrested by a law enforcement officer or otherwise charged with a criminal offense?"
11. The instructions for Question No. 42 advised Petitioner of the following:

"If any doubt exists in your mind as to whether or not you were arrested or charged with a criminal offense at some point in your life . . . you should answer yes."
12. When Petitioner completed Question No. 42, she answered "No," indicating that she had never been arrested by a law enforcement officer or otherwise charged with a criminal offense.
13. At the time Petitioner completed the F-3 form in furtherance of her Scotland County Sheriff's Office application, Petitioner had earned a high school diploma from Dooly County High School and also had attended classes at Richmond Community College and Robeson Community College in furtherance of obtaining an advanced degree in Criminal Justice.
14. Petitioner maintains that she did not intentionally omit information on her February 18, 2011, Personal History Statement (Form F-3). Rather, Petitioner maintains that at the time she completed the F-3 Form, she had forgotten about being charged with two (2) separate felony offenses in Dooly County, Georgia.
15. Based on the evidence presented at the administrative hearing, the Undersigned finds that Petitioner did make a material misrepresentation of information required by the Sheriffs' Commission on the February 18, 2011, F-3 Form Petitioner completed in furtherance of her application for certification through the Scotland County Sheriff's Office. As such, Petitioner's application for certification through the Commission is subject to denial.
16. Although Petitioner may have been confused about what type of criminal charges she received in 1994, Petitioner was aware at the time she completed the 2011 F-3 Form that she had been arrested, handcuffed, and fingerprinted.
17. The Undersigned finds that the language in Question No. 42 was not confusing to Petitioner. This question states:

“Have you ever been arrested by a law enforcement officer or otherwise charged with a criminal offense?”

The instructions for this question further provide:

“If any doubt exists in your mind as to whether or not you were arrested or charged with a criminal offense at some point in your life you should answer yes.”

18. By omitting Petitioner’s felony arrest for Influencing a Witness, Petitioner did make a material misrepresentation of information required by the Sheriffs’ Commission.
19. Respondent did not offer evidence regarding the commission of the two (2) felony offenses of Influencing a Witness in Dooly County, Georgia on or about July 18, 1994, other than to introduce court documents and the police arrest records regarding the same. Petitioner denies that she committed these felony offenses. Respondent has failed to prove by a preponderance of the evidence that Petitioner committed the above-referenced felony offenses.
20. Despite Petitioner’s grave error in judgment when completing the February 2011 Personal History Statement, there was substantial mitigating evidence and extenuating circumstances presented at the administrative hearing which warrants a lesser sanction than the denial of Petitioner’s certification.

CONCLUSIONS OF LAW

1. The parties properly are before the undersigned Administrative Law Judge and jurisdiction and venue are proper.
2. The Undersigned finds, based upon the evidence presented, that Petitioner did not commit two (2) separate felony offenses of Influencing a Witness in Dooly County, Georgia on or about July 18, 1994.
3. The Undersigned further finds that Petitioner did not knowingly and designedly by any means of false pretense, deception, fraud, misrepresentation, or cheating, obtain or attempt to obtain certification through the North Carolina Sheriffs’ Education and Training Standards Commission.
4. With respect to Petitioner’s submission of the February 18, 2011, F-3 Form, however, the Undersigned finds that Petitioner did in fact knowingly make a material misrepresentation of information required for certification by failing to disclose on her F-3 Personal History Statement that Petitioner had been arrested and charged with two (2) separate felony offenses in Dooly County, Georgia on or about September 22, 1994.

5. Petitioner's knowing material misrepresentation of information required for certification through the Sheriffs' Commission constitutes a violation of 12 NCAC 10B .0204(c)(1). Respondent's proposed denial of Petitioner's certification is therefore supported by substantial evidence. Under 12 NCAC 10B .0205 (2), however, the Commission may either reduce or suspend the periods of sanction or substitute a period of probation in lieu of revocation, suspension, or denial when extenuating circumstances brought out at the administrative hearing warrant such a reduction.

PROPOSAL FOR DECISION

Based upon the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, the Undersigned recommends that Petitioner's certification be denied for a period of 12 months and that this denial be stayed and Petitioner be issued certification and placed on an active period of probation for 24 months, during which time Petitioner shall not violate any rules or regulations of the Sheriffs' Commission.

NOTICE AND ORDER

The North Carolina Sheriffs' Education and Training Standards Commission is the agency that will make the Final Decision in this contested case. As the final decision-maker, 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 pursuant to N.C. Gen. Stat. § 150B-40(e).

It hereby is ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714.

This the 11th day of September, 2013.

Beecher R. Gray
Administrative Law Judge