

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12 DOJ 10188

MARILYN CASH SMALLS,

Petitioner,

v.

N.C. SHERIFFS' EDUCATION
AND TRAINING STANDARDS
COMMISSION,

Respondent.

PROPOSAL FOR DECISION

On March 25, 2013, Senior Administrative Law Judge Fred G. Morrison Jr. heard this case in Raleigh, North Carolina. This 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 a contested case under Article 3A, Chapter 150B of the North Carolina General Statutes.

APPEARANCES

Petitioner: Pro Se

Respondent: Matthew L. Boyatt, Assistant Attorney General

ISSUE

Has the Petitioner committed or been convicted of any combination of four or more crimes or unlawful acts defined as either Class A or Class B misdemeanors pursuant to the Commission's rules, such that Petitioner's application for certification should be denied?

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 Sheriffs' Commission on September 27, 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. Petitioner is an applicant for justice officer certification through the Wake County,

North Carolina, Sheriff's Office.

4. 12 NCAC 10B.0204(d)(5) states that The Sheriffs' Commission may deny the certification of a justice officer when the Commission finds that the applicant has committed or been convicted of:

(5) any combination of four or more crimes or unlawful acts defined in 12 NCAC 10B .0103 (10) (a) as a Class A misdemeanor or defined in 12 NCAC 10B .0103 (10) (b) as a Class B Misdemeanor regardless of the date of commission or conviction.

5. The Petitioner was appointed as a telecommunications officer through the Wake County Sheriff's Office on October 1, 2010.

6. The Petitioner testified at the administrative hearing and does not dispute that she has been convicted of three (3) misdemeanor offenses, as set out in greater detail below.

7. On April 10, 1990, Petitioner was convicted of Injury to Personal Property in violation of N.C. Gen. Stat. §14-160. Petitioner was ordered to pay restitution to William Coleman in the amount of \$334.00 and was further ordered to keep the peace towards the prosecuting witness.

8. On May 26, 1992, Petitioner was convicted of Simple Worthless Check in violation of N.C. Gen. Stat. §14-107 (d) (1). Petitioner was ordered to pay restitution to Wal-Mart #1288 in the amount of \$11.21.

9. On June 10, 1993, Petitioner was convicted of Simple Worthless Check in violation of N.C. Gen. Stat. §14-107 (d) (1). Petitioner was ordered to pay restitution to Curtis Creed at Business Equipment in the amount of \$55.85.

10. The above-referenced misdemeanor convictions occurred almost 20 years ago.

11. On February 23, 1999, a criminal warrant was issued against Petitioner by Stephanie Wright; 99 CR 1139, Person County. Stephanie Wright claimed that on or about February 23, 1999, Petitioner communicated a threat towards her by stating "Don't make me come to your house bitch, I'm going to whip your ass."

12. On March 16, 1999, Petitioner pled not guilty to the above-referenced communicating threats charge and was found not guilty by the presiding district court judge.

13. At the administrative hearing, Stephanie Wright did not appear and testify regarding the events of 23 February 1999. According to Petitioner's testimony, Petitioner was friends with Ms. Wright's then husband, Alfred Wright. Petitioner had known Alfred Wright since she was a child. The two grew up together. In February of 1999, Stephanie Wright had

Alfred Wright arrested on domestic violence charges and Petitioner bailed him out of jail. As a result of this assistance, Stephanie Wright came to Petitioner's home in order to confront her. The Petitioner does admit that she argued with Stephanie Wright and that she ultimately slammed the door in Stephanie Wright's face. However, Petitioner did not threaten Ms. Wright during the argument and did not state that she would "whip your ass."

14. Based on the evidence presented at the administrative hearing, including Petitioner's sworn testimony, Petitioner did not commit the criminal offense of communicating threats on or about February 23, 1999.

15. Petitioner's three (3) misdemeanor convictions occurred approximately 20 years ago and are not a bar to Petitioner's certification. The Petitioner has not committed or been convicted of any combination of four or more crimes or unlawful acts defined as either Class A or Class B misdemeanors pursuant to the Commission's rules, such that Petitioner's application for certification should be denied.

CONCLUSIONS OF LAW

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

2. The criminal offense of simple worthless check in violation of N.C. Gen. Stat. §14-107 (d) (1) is classified as a Class A misdemeanor pursuant to the Commission's rules. Petitioner admits that she has been convicted twice of this misdemeanor offense.

3. The criminal offense of willful and wanton injury to personal property valued at over \$200.00 under N.C.G.S. §14-160 is classified as a Class B misdemeanor pursuant to the Commission's rules. Petitioner admits that on April 10, 1990, she was convicted of this misdemeanor offense.

4. The criminal offense of communicating threats under N.C.G.S. §14-277.1 is a class B misdemeanor offense pursuant to the Commission's rules. There is insufficient evidence to support a finding that Petitioner committed the class B misdemeanor offense of communicating threats on February 23, 1999. Although Petitioner argued with the complainant, the Petitioner did not threaten this individual.

5. Although Petitioner has three (3) misdemeanor convictions that occurred approximately 20 years ago, the Petitioner has not committed or been convicted of any combination of four or more crimes or unlawful acts defined as either Class A or Class B misdemeanors pursuant to the Commission's rules. As such, there is no current impediment to the approval of Petitioner's application for certification.

PROPOSAL FOR DECISION

Based upon the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, the undersigned proposes that Respondent issue Petitioner's justice officer certification.

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 29th day of April, 2013.

Fred G. Morrison Jr.
Senior Administrative Law Judge

