

STATE OF NORTH CAROLINA  
COUNTY OF CUMBERLAND

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
12DOJ10201

LEE DANIEL WILKERSON, Petitioner,  v.  NORTH CAROLINA CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION, Respondent.	<b>PROPOSAL FOR DECISION</b>
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On May 17, 2013, this matter came on for a contested case hearing before the Undersigned. This case was heard after Respondent requested, under NCGS 150B-40(e), designation of an administrative law judge to preside at the hearing of a contested case. The presiding Administrative Law Judge received this Proposal for Decision on October 2, 2013.

#### **APPEARANCES**

Petitioner: Dallas M. Pounds, Attorney, Lumberton N. C.

Respondent: Lauren Earnhardt, Assistant Attorney General, Raleigh, N. C.

#### **ISSUES**

1. Whether Petitioner committed the felony offense of Forgery of Deeds or Wills in violation of NCGS 14-122 and in violation of the Commission's administrative rules 12 NCAC 09A .0204(b)(2) and 12 NCAC 09B .0111(1)(a).
2. Whether Petitioner committed the Class B misdemeanor offense of Common Law Forgery and in violation of the Commission's administrative rules 12 NCAC 09A .0204(b)(3)(A).
3. Whether a sanction should be imposed against Petitioner under Respondent's rules.

#### **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.
2. Petitioner Lee Daniel Wilkerson holds law enforcement officer certification with Respondent North Carolina Criminal Justice Education and Training Standards Commission through Parkton Police Department. Petitioner was certified with Robeson

County Sheriffs' Office from October 17, 2006, until his separation on April 4, 2009.

3. On April 22, 2009, Petitioner was arrested by the Robeson County Sheriffs' Department and charged with two counts of Forgery of Deeds or Wills in violation of NCGS § 14- 122. Prior to his arrest and during an internal affairs investigation, he was suspended and resigned his position of Deputy Sheriff with the Robeson County Sheriffs' Department effective April 9, 2009.
4. On November 4, 2009, Petitioner entered into a plea arrangement whereby a felony charge of Forgery of Deeds or Wills was dismissed by the State and the remaining charge of Forgery of Wills or Deeds was reduced to a misdemeanor charge of Common Law Forgery. Petitioner entered into a Deferred Prosecution Agreement on the misdemeanor charge. On the Deferred Prosecution Agreement, Petitioner checked box number 5 which states "the admission of responsibility given by me and any stipulation of facts shall be used against me and admitted into evidence without objection in the State's prosecution against me for this offense should prosecution become necessary as a result of these terms and conditions of Deferred Prosecution.
5. On May 5, 2010, after successfully complying with the terms and conditions of the Deferred Prosecution Agreement, the misdemeanor charge of Common Law Forgery was dismissed by the State.
6. On March 19, 2010, Petitioner--then employed by the Parkton Police Department-- applied for recertification with the North Carolina Criminal Justice Education and Training Standards Commission.
7. On August 23, 2010 Respondent's Probable Cause Committee found probable cause to existed to suspend/revoke Petitioner's certification based upon the fact that Petitioner committed the two felonies of Forgery of Deeds or Wills in violation of NCGS 14-122 and in violation of 12 NCAC 09B .0111(1)(a) and committed the Class B misdemeanor of Common Law Forgery in violation of 12 NCAC 09 .0103(23)(b).
8. Petitioner timely requested an administrative hearing, and the Commission thereafter requested the assignment of an Administrative Law Judge to hear the contested case.
9. Petitioner is the grandson of Kernis Hammonds with whom he resided prior to his arrest. Petitioner had lived with Kernis Hammonds since his early childhood. Testimony from all witnesses at the hearing was that Petitioner was like a son to Kernis Hammonds.
10. All his life, Kernis Hammonds had told Petitioner that Petitioner would inherit all of Kernis Hammonds' land, and particularly the home, upon Kernis Hammonds' death.
11. In November 2009, Kernis Hammonds, who was suffering from cancer and dementia, was placed in Hospice Care. At one visit by Petitioner with Kernis Hammonds, Petitioner had a conversation with Kernis Hammonds regarding the home and land. Kernis Hammonds, who was lucid at the time, reconfirmed his desire to leave his property to Petitioner.

12. Petitioner then sought the advice of an attorney, who advised Petitioner to have Kernis Hammonds revoke a Power of Attorney which Kernis Hammonds previously had granted to his daughters, Debbie Chavis and Suwanna Klingenschidt, and to have Kernis sign a General Warranty Deed conveying his land and home to Petitioner.
13. Petitioner again went to visit Kernis Hammonds on November 7, 2009. At that visit, Kernis Hammonds was unconscious and non-responsive to Petitioner. However, Petitioner signed Kernis Hammonds' name to the Revocation of Power of Attorney. Petitioner left and had the Revocation of Power of Attorney notarized and recorded with the Robeson County Clerk of Court. Petitioner returned to Hospice Care where Kernis was living. At this visit, Petitioner's mother was present. Petitioner had with him a General Warranty Deed transferring the home and land from Kernis Hammonds to Petitioner. Petitioner's mother placed a pen in Kernis Hammonds' hand and moved his hand in a manner to create Kernis Hammonds' signature on the Deed. Petitioner left and had the Deed notarized and recorded with the Robeson County Register of Deeds.
14. Testimony from all witnesses at the hearing was that Kernis Hammonds, prior to his death, often had voiced his desire that Petitioner inherit all his land and home.
15. Shortly after November 7, 2009, Kernis Hammonds succumbed to his illness and died intestate, having no will naming his heirs.
16. Because Petitioner allegedly committed the felony offense of Forgery of Wills or Deeds, his certification is subject to revocation or permanent denial under 12 NCAC 09A.0205(a)(1).
17. Because Petitioner allegedly committed the misdemeanor offense of Common Law Forgery, his certification is subject to revocation or suspension for a period of no less than five years under 12 NCAC 10B .0204(d)(1). And 12 NCAC 10B .0205(2)(a). This sanction may be reduced by the Commission upon a showing of extenuating circumstance, under 12 NCAC 10B .0205(2).

### **CONCLUSIONS OF LAW**

1. Both parties properly are before the Office of Administrative Hearings, and jurisdiction and venue are proper.
2. Respondent has authority, granted under Chapter 17C of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 9, to certify law enforcement officers and to revoke, suspend, or deny such certification.
3. Under 12 NCAC 10B .0204(d)(1) the Commission may revoke, deny, or suspend the certification of a law enforcement officer when the Commission finds that the applicant for certification or the certified officer has committed a felony offense or committed a Class B misdemeanor.

4. The Undersigned finds that an essential element of Forgery of Deeds or Wills, as contained in NCGS 14-122, requires that the forgery be committed with the intent to defraud. The undersigned finds that Petitioner did not possess the requisite felonious intent to defraud when he signed Kernis Hammonds' name to the Revocation of Power of Attorney or when he assisted his mother with signing Kernis Hammonds' name to the General Warranty Deed.
5. The Undersigned finds that, although Petitioner may have committed the offense of Common Law Forgery, extenuating circumstance warrant the imposition of a lesser sanction against Petitioner's law enforcement officer certification.
6. Respondent has not met the burden of proof of proving that Petitioner committed the two felony offenses of Forgery of Wills or Deeds.
7. Respondent has met the burden of proof of proving that Petitioner did commit the offense of Common Law Forgery, a Class B misdemeanor, while holding certification as a law enforcement officer. The findings of the Probable Cause Committee as to the Common Law Forgery are supported by substantial evidence and are not arbitrary and capricious.
8. The Commission may revoke Petitioner's law enforcement officer certification for a period of not less than five years. Based on the extenuating circumstances presented, the Commission may reduce or waive this period of sanction or instead impose a period of probation.

### **PROPOSAL FOR DECISION**

Based on the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, the Undersigned recommends that the Commission revoke Petitioner's law enforcement certification for a period of not less than five years, but that the Commission suspend this sanction on the condition that Petitioner successfully complete a two-year period of probation.

### **NOTICE AND ORDER**

The North Carolina Criminal Justice Education Training and 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 10th day of October, 2013.

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Beecher R. Gray  
Administrative Law Judge