

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13DOJ03417

<p>ANDREW GEORGE ANDERSON, Petitioner,</p> <p>v.</p> <p>NORTH CAROLINA SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION, Respondent.</p>	<p>ORDER GRANTING SUMMARY JUDGMENT TO PETITIONER AND PROPOSAL FOR DECISION</p>
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This law enforcement certification case arises out of action by Respondent Commission whereby on November 6, 2012, Respondent issued a summary denial of Petitioner's justice officer certification application.

The Commission alleged that Petitioner was convicted of misdemeanor battery in the State of Maryland on or about February 25, 1991, Case No. 00606649Q1. The Commission alleged a violation of 12 NCAC 10B .0204, by alleging that Petitioner had been convicted of the battery offense.

On January 13, 2013, Petitioner sought relief in the District Court of Maryland by filing a petition for expungement. The Prosecutor issued a nolle prosecution decision, thereby resulting in a dismissal of the charge.

On April 25, 2013, a Judge of the Maryland District Court for Saint Mary's County issued an order of expungement.

At the time Respondent took administrative action to summarily deny Petitioner's certification on November 6, 2012, the above-referenced misdemeanor conviction appeared on Petitioner's criminal record. Because of this recent expungement action, however, there no longer remains a valid conviction. Thus, currently there is no conviction on Petitioner's record. Therefore, there is no genuine issue of material fact for trial in this dispute, and Petitioner is entitled to summary judgment as a matter of law on the charge that Petitioner had been convicted of the battery offense.

In entering this Order Granting Summary Judgment to Petitioner, the Undersigned is making no findings of fact and conclusions of law as to whether Petitioner "committed" an assault in Maryland.

Wherefore, summary judgment is granted to Petitioner.

PROPOSAL FOR DECISION


Based upon the foregoing findings of fact and conclusions of law, the Undersigned recommends Respondent take no action to deny Petitioner's certification based on a conviction that no longer exists on Petitioner's record. This proposal shall in no way affect the Commission's ability to consider the possible commission of the above-referenced battery.

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 29th day of August, 2013.



Beecher R. Gray
Administrative Law Judge