

STATE OF NORTH CAROLINA
COUNTY OF HERTFORD

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13DOJ09570

TRUDY LANE HARRIS, Petitioner, v. NORTH CAROLINA SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION, Respondent.	PROPOSAL FOR DECISION
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On August 21, 2013, Administrative Law Judge Beecher R. Gray heard this case in Winton, North Carolina. This case was heard after Respondent requested, under 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

ISSUES

Has Petitioner committed or been convicted of any combination of four (4) or more crimes or unlawful acts defined as either Class A or Class B misdemeanors pursuant to the Commissions' Rules, such that Petitioner's application for certification is subject to denial?

Did Petitioner knowingly make a material misrepresentation of any information required for certification as a justice officer to the North Carolina Sheriffs' Education and Training Standards Commission?

FINDINGS OF FACT

1. Both parties received notice of hearing by certified mail more than 15 days prior to the hearing, and each party stipulated on the record that notice was proper. Petitioner received by U.S. Postal Service Mail the proposed Denial of Justice Officer's Certification letter, mailed by Respondent Sheriffs' Commission on January 2, 2013.

2. The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter referred to as the "Commission" or "Sheriffs' Commission") has 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 Bertie County Sheriff's Office.
4. 12 NCAC 10B.0204(d)(5) states 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. Further, 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 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
 - (2) knowingly and designedly by any means of false pretense, deception, defraud, 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.

Worthless Check Convictions

6. Petitioner was appointed as a telecommunication officer through the Bertie County Sheriff's Office on January 3, 2012.
7. Petitioner testified at the administrative hearing and does not dispute that she has been convicted of eight (8) misdemeanor worthless check offenses, as set out in greater detail below.
8. On February 19, 1990, Petitioner was convicted of misdemeanor worthless check in violation of North Carolina General Statute § 14-107 in Hertford County, North Carolina; Case No. 1990 CR 000603. (R. Ex. 2)

9. On October 2, 1997, Petitioner was convicted of misdemeanor worthless check in violation of North Carolina General Statute § 14-107 (d)(1) in Bertie County, North Carolina; Case No. 1997 CR 002672. (R. Ex. 2)
10. On August 13, 2001, Petitioner was convicted of misdemeanor worthless check in violation of North Carolina General Statute § 14-107 (d)(1) in Hertford County, North Carolina; Case No. 2001 CR 002452. (R. Ex. 2)
11. On March 12, 2001, Petitioner was convicted of misdemeanor worthless check in violation of North Carolina General Statute § 14-107 (d)(1) in Gates County, North Carolina; Case No. 2000 CR 50233. (R. Ex. 2)
12. On February 12, 2001, Petitioner was convicted of misdemeanor worthless check in violation of North Carolina General Statute § 14-107 (d)(1) in Hertford County, North Carolina; Case No. 2001 CR 050025. (R. Ex. 2)
13. On May 22, 2006, Petitioner was convicted of misdemeanor worthless check in violation of North Carolina General Statute § 14-107 (d)(1) in Hertford County, North Carolina; Case No. 2006 CR 050213. (R. Ex. 2)
14. On September 5, 2007, Petitioner was convicted of misdemeanor worthless check in violation of North Carolina General Statute § 14-107 (d)(1) in Nash County, North Carolina; Case No. 2007 CR 051498. (R. Ex. 2)
15. On January 20, 2010, Petitioner was convicted of misdemeanor worthless check in violation of North Carolina General Statute § 14-107 (d)(1) in Bertie County, North Carolina; Case No. 2009 CR 51333. (R. Ex. 2)
16. Under 12 NCAC 10B .0103 (10)(a), Petitioner's first three (3) worthless check convictions constitute Class A misdemeanor convictions under the Commission's Rules. However, under North Carolina General Statute § 14-104 (d)(1), and more specifically 12 NCAC 10B .0103 (10)(b), a fourth (4th) and all subsequent convictions for misdemeanor worthless check under N.C.G.S. § 14-107 constitute Class B misdemeanors as set forth in the Class B Misdemeanor Manual adopted by the Commission.
17. Therefore, Petitioner's remaining five (5) worthless check convictions constitute five (5) separate Class B misdemeanor convictions under the Commission's Rules.
18. Based on the evidence presented at the administrative hearing, including Petitioner's sworn testimony and the exhibits introduced into the record, the Undersigned finds that Petitioner has been convicted of the following three (3) Class A misdemeanors: 1) misdemeanor worthless check, Case No. 1990 CR 000603; 2) misdemeanor worthless check, Case No. 1997 CR 002672; and 3) misdemeanor worthless check, Case No. 2001 CR 050025.

The Undersigned further finds that Petitioner has been convicted of the following five (5) Class B misdemeanors: 1) misdemeanor worthless check, Case No. 2000 CR 50233; 2) misdemeanor worthless check, Case No. 2001 CR 002452; 3) misdemeanor worthless check, Case No. 2006 CR 050213; 4) misdemeanor worthless check, Case No. 2007 CR 051498; and 5) misdemeanor worthless check, Case No. 2009 CR 51333.

19. Petitioner testified at the administrative hearing regarding her worthless check offenses. Petitioner does not dispute the above-referenced convictions appearing on her criminal record. Many of the above-referenced worthless check convictions occurred while Petitioner was raising her six (6) children. At that time, Petitioner was getting little to no support from her ex-husband and therefore was struggling financially. Petitioner's children are now grown and Petitioner is not subject to the same financial stress that she was when raising her children. Further, Petitioner no longer maintains a checkbook in order to avoid the possibility of writing a check without the necessary funds. Petitioner instead uses a debit card.

Material Misrepresentation

20. Petitioner completed a Personal History Statement (Form F-3), on or about July 9, 2010, as part of her original employment application with the Bertie County Sheriff's Office, and in order to obtain certification as a justice officer through the Sheriffs' Commission. *See R. Ex. 3.*
21. Question No. 39 of the Sheriffs' Commission Form F-3 asked the applicant to disclose whether or not she had ever used illegal drugs, to include marijuana, and if so, to describe the circumstances. The instructions for this question advised Petitioner that "use" included "one time use and experimentation." When Petitioner completed Question No. 39, she answered "No," indicating that she had never used marijuana or any other illegal drugs.
22. Petitioner subsequently completed another Personal History Statement (Form F-3) on or about November 21, 2011, as part of her re-employment application with the Bertie County Sheriff's Office, and in order to obtain certification as a justice officer through the Sheriffs' Commission. *See R. Ex. 4.*
23. Question No. 39 of the second F-3 form Petitioner completed asked Petitioner to disclose whether or not she had ever used illegal drugs, to include marijuana, and if so, to describe the circumstances. The instructions for this question advised Petitioner that "use" included "one time use and experimentation." When Petitioner completed Question No. 39 for the second time, Petitioner answered "Yes," indicating that she had used marijuana. Petitioner explained on the F-3 Form that she "experimented" with marijuana in high school.
24. Petitioner testified at the administrative hearing regarding the discrepancy in her two (2) F-3 Personal History Statements. Petitioner stated that while she was in high school, she attended a party where she was given some brownies laced with marijuana. The brownies

were given to Petitioner and others at the party as a joke. At the time Petitioner ate the brownies, she was unaware they contained marijuana. After feeling the effects of the brownies, Petitioner later came to learn that people who attended the party were given marijuana brownies.

25. Petitioner does not believe that she experimented with marijuana because she was an unknowing participant and did not intend to consume any illegal substances while at the above-referenced party. Petitioner disclosed the marijuana in her second F-3 Personal History Statement out of an abundance of caution. Petitioner realizes now that she should have listed her exposure to marijuana in her first F-3 Personal History Statement. In addition, Petitioner understands that she should have been more descriptive in the F-3 Form in terms of explaining all of the circumstances surrounding her exposure to marijuana. However, Petitioner's omission was not intentional and was not made in order to deceive the Commission or her employer, the Bertie County Sheriff's Office.

CONCLUSIONS OF LAW

1. The parties properly are before the undersigned Administrative Law Judge and jurisdiction and venue are proper.
2. 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 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
 - (2) knowingly and designedly by any means of false pretense, deception, defraud, 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.
3. For the reasons set out above, Petitioner did not make a knowing misrepresentation of information required for certification by omitting her exposure to marijuana in her 2010 F-3 Personal History Statement. In addition, Petitioner has not attempted to obtain certification from the Commission through any means of false pretense or cheating. Petitioner's failure to disclose her exposure to marijuana in her 2010 Personal History Statement was an oversight by Petitioner.
4. Under 12 NCAC 10B .0204(d)(5), the Commission may revoke, suspend, or deny the certification of a justice officer when the Commission finds that the applicant for certification or certified officer 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. Under 12 NCAC 10B .0103(2), “convicted” or “conviction” means and includes, for purposes of that Chapter, the entry of (a) a plea of guilty; (b) a verdict or finding of guilt by a jury, judge, magistrate, or other duly constituted, established, and recognized adjudicating body, tribunal, or official, either civilian or military; or (c) a plea of no contest, nolo contendere, or the equivalent.
 6. Under 12 NCAC 10B .0205(3)(d), when the Commission denies the certification of a justice officer, the period of sanction shall be for an indefinite period, but continuing so long as the stated deficiency, infraction, or impairment continues to exist, where the cause of sanction is commission or conviction of offenses as specified in 12 NCAC 10B .0204(d)(5).
 7. 12 NCAC 10B .0103 (10)(a), provides that Petitioner’s first three (3) worthless check convictions constitute Class A misdemeanor convictions pursuant to the Commission’s Rules.
 8. North Carolina General Statute § 14-104 (d)(1), and more specifically 12 NCAC 10B .0103 (10)(b), provides that a fourth (4th) and all subsequent convictions for misdemeanor worthless check under N.C.G.S. § 14-107 constitute Class B misdemeanor convictions as set forth in the Class B Misdemeanor Manual adopted by the Commission. Therefore, Petitioner’s remaining five (5) worthless check convictions constitute five (5) separate Class B misdemeanor convictions.
 9. Petitioner has been convicted of a combination of 4 or more offenses classified as either Class A or Class B misdemeanors. In total, Petitioner has eight (8) misdemeanor convictions on her record: three (3) class A misdemeanor convictions and five (5) class B misdemeanor convictions. All of these convictions were worthless check offenses in violation of N.C.G.S. 14-107 (d)(1). Petitioner’s application for certification is therefore subject to denial pursuant to 12 NCAC 10B .0204(d)(5).
 10. Under 12 NCAC 10B .0205, the Respondent may, in its discretion, reduce or suspend the period of sanction imposed for Petitioner’s record of a combination of four or more Class A or Class B misdemeanor convictions when extenuating circumstances brought out at the administrative hearing warrant such a reduction or suspension.

PROPOSAL FOR DECISION

Based upon the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, the undersigned recommends that Respondent issue Petitioner’s justice officer certification notwithstanding Petitioner’s three (3) Class A and five (5) Class B misdemeanor worthless check convictions. The majority of these convictions occurred while Petitioner was a single parent

struggling to support her six (6) children. Petitioner has since taken steps to ensure that she will not issue additional worthless checks. The undersigned therefore recommends that the Commission issue Petitioner's justice officer certification.

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 1st day of October, 2013.

Beecher R. Gray
Administrative Law Judge