

STATE OF NORTH CAROLINA
COUNTY OF DARE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13DOJ11188

<p>Steven Wesley Jones, 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 August 22, 2013, Administrative Law Judge Beecher R. Gray heard this case in Greenville, 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

ISSUE

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 under the Commission's Rules, such that Petitioner's application for certification is subject to denial?

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 Petitioner received by mail the proposed Denial of Justice Officer's Certification letter, mailed by Respondent Sheriffs' Commission on March 20, 2013.
2. The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter referred to as the "Commission" or "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 Dare 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. Petitioner was appointed as a detention officer through the Dare County Sheriff's Office on September 5, 2012.
6. Petitioner testified at the administrative hearing and does not dispute that he has been convicted of three (3) misdemeanor offenses, as set out in greater detail below.
7. On August 12, 1997, Petitioner was convicted of misdemeanor Assault on a Female in violation of N.C.G.S. § 14-33 (c)(2) in Franklin County, North Carolina; Case No. 1997 CR 004189. (R. Ex. 4)
8. On January 19, 1993, Petitioner was convicted of misdemeanor larceny in violation of N.C.G.S. § 14-72 (a) in Dare County, North Carolina; Case No. 1992 CR 006420. (R. Ex. 6)
9. On October 2, 1991, Petitioner was convicted of misdemeanor Underage Possession of Beer/Wine in violation of N.C.G.S. § 18B-302 in Dare County, North Carolina; Case No. 1991 CR 012251. (R. Ex. 7)
10. Under the Commission's Rules, 12 NCAC 10B .0103 (10) (b), and the Class B Misdemeanor Manual adopted by Respondent, Petitioner's misdemeanor Assault on a Female conviction and misdemeanor Larceny conviction each constitute separate Class B misdemeanor convictions.
11. Under the Commission's Rules, 12 NCAC 10B .0103 (10) (a), and the Class B Misdemeanor Manual adopted by Respondent, Petitioner's misdemeanor Underage Possession of Beer/Wine conviction constitutes a Class A misdemeanor conviction.

Harassing Phone Calls

12. In connection with Petitioner's 1997 Assault on a Female charge and subsequent conviction, Petitioner was also charged with Harassing Phone calls in violation of N.C.G.S. § 14-196 (a) (3).

13. Petitioner testified regarding the above-referenced harassing phone calls and does not dispute that his actions on July 7, 1997, rose to the level of committing this offense. Petitioner testified that in July of 1997, he and his now ex-wife, Ms. Tammy Jones, were separated, and Petitioner was living separate and apart from Ms. Jones. Petitioner knew that Ms. Jones was going on a date the evening of July 7, 1997. Petitioner called Ms. Jones at approximately 11:00 p.m., and learned that her date was still at the residence. Petitioner stated that he became upset about this and began to argue with his ex-wife. Ms. Jones hung up on Petitioner, at which time Petitioner got in his automobile and began the hour long drive to Ms. Jones' residence. During this drive, Petitioner stated he called his ex-wife repeatedly and was increasingly upset. At one point, Ms. Jones picked up the telephone, and Petitioner stated something to the effect that he would do what he had to do. Petitioner's testimony was honest and forthright regarding his past actions. Petitioner stated that his numerous calls to his ex-wife on July 7, 1997 were an annoyance to Ms. Jones and were also harassing in nature. Petitioner regrets his actions on the evening of July 7, 1997. When Petitioner arrived at his ex-wife's residence, the police were called, and Petitioner was ultimately charged with Harassing Phone Calls, Communicating Threats, and Assault on a Female. Petitioner was convicted of the Assault on a Female charge, as set out above in paragraph 7.
14. After considering the evidence presented and the testimony of the witnesses, the Undersigned finds that Petitioner did commit the offense of Harassing Phone Calls in violation of N.C.G.S. § 14-196 on or about July 7, 1997. At that time, Petitioner telephoned Ms. Jones repeatedly for the purpose of annoying and harassing her at a time when she was entertaining a house guest. However, there is no evidence that Petitioner communicated a threat towards Ms. Jones or her guest on the evening of July 7, 1997. Therefore, the Undersigned further finds that Petitioner did not commit the offense of Communicating Threats on the evening in question.
15. The above-referenced three (3) misdemeanor convictions and commission of the offense of Harassing Phone Calls occurred over 16 years ago. Petitioner admits that he stands convicted of these offenses and that he telephonically harassed Ms. Jones on July 7, 1997. Petitioner has not attempted to make excuses for his prior conduct. In the past 16 years, Petitioner has matured, has remained a law-abiding citizen, and has worked as a sworn detention officer in the State of Virginia. Petitioner is regarded highly by his previous employer, the Western Tidewater Regional Jail, in Suffolk, Virginia. Further, Petitioner's current employer, the Dare County Sheriff's Office, holds Petitioner in high regard and values Petitioner's service to the community and commitment to law enforcement.
16. Petitioner has been employed by the Dare County Sheriff's Office for approximately one (1) year. At the administrative hearing, Captain Kathryn Bryan with the Dare County Detention Center testified on behalf of Petitioner. Based on Captain Bryan's observations, Petitioner is a hard worker and is an asset to the Dare County Sheriff's Office. In addition, Captain Bryan is of the opinion that Petitioner is honest and is well suited for work in law enforcement. Captain Bryan testified that Petitioner is aware of

the seriousness of his prior criminal activity and that Petitioner has never made excuses for his past conduct.

17. 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 two (2) Class B misdemeanor offenses (Assault on a Female and Larceny), and one (1) Class A misdemeanor offense (Underage Possess of Beer/Wine). This Court further finds that Petitioner committed the Class B misdemeanor offense of Harassing Phone Calls on July 7, 1997.

CONCLUSIONS OF LAW

1. The parties are properly before the undersigned Administrative Law Judge, and jurisdiction and venue are proper.
2. Under 12 NCAC 10B .0204(d)(5), the Commission may revoke, suspend, or deny the certification of a detention 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.
3. 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.
4. Under 12 NCAC 10B .0205(3)(d), when the Commission denies the certification of a detention 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).
5. Assault on a Female in violation of N.C.G.S. § 14-33 (c)(2) , Larceny in violation of N.C.G.S. § 14-72 (a), and Harassing Phone Calls in violation of N.C.G.S. § 14-196, are each classified as Class B misdemeanors under 12 NCAC 10B .0103 (10)(b) and the Class B Misdemeanor Manual adopted by Respondent. Petitioner has been convicted of two (2) separate Class B misdemeanors (Assault on a Female and Larceny) and has also committed the Class B misdemeanor offense of Harassing Phone Calls. Petitioner does not dispute this record.

6. The offense of Underage Possession of Beer/Wine under N.C.G.S. § 18B-302 is classified as a Class A misdemeanor pursuant to 12 NCAC 10B .0103 (10)(a) and the Class B Misdemeanor Manual adopted by Respondent. The record in this case establishes that Petitioner has been convicted of this Class A misdemeanor offense.
7. Petitioner has committed or been convicted of a combination of four (4) or more crimes or unlawful acts defined as either Class A or Class B misdemeanors under the Commission's Rules, as set out in greater detail above. Petitioner's application for certification is therefore subject to denial pursuant to 12 NCAC 10B .0204(d)(5).
8. Under 12 NCAC 10B .0205, 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 and place Petitioner on a 12-month probationary period, during which time Petitioner shall not violate the Commission's rules. Petitioner's misdemeanor offenses occurred over 16 years ago and Petitioner has accepted responsibility for his prior actions. In addition, in the past 16 years, Petitioner has matured, has been a law-abiding citizen, and has successfully worked as a detention officer in the State of Virginia. Such a record warrants a lesser sanction than the outright denial of Petitioner's application for 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, in accordance with N.C. Gen. Stat. § 150B-36(b).

This the 22nd day of October, 2013.

Beecher R. Gray
Administrative Law Judge