

STATE OF NORTH CAROLINA  
COUNTY OF DUPLIN

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
13 DOJ 16255

VINCENT DALE DONALDSON, )  
Petitioner, )  
)  
v. )  
)  
N.C. SHERIFFS' EDUCATION )  
AND TRAINING STANDARDS )  
COMMISSION, )  
Respondent. )  
\_\_\_\_\_ )

**PROPOSAL FOR DECISION**

On November 12, 2013, Administrative Law Judge Eugene J. Cella heard this case in Wilmington, 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: Vincent Dale Donaldson, *Pro Se*  
203 Clinic Circle Drive  
Rose Hill, North Carolina 28458

Respondent: Matthew L. Boyatt, Assistant Attorney General  
Attorney for Respondent  
North Carolina Department of Justice  
9001 Mail Service Center  
Raleigh, North Carolina 27699-9001

**ISSUES**

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?

Did Petitioner commit the misdemeanor offenses of cruelty to animals and denying animals adequate food and medical attention?

Has the 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?

Does the Petitioner possess the good moral character that is required of a sworn justice officer?

### **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 June 19, 2013.

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. 12 NCAC 10B.0204(c)(1) and (2) states the Sheriffs' Commission may deny the certification of a justice officer when the Commission finds that the applicant for certification 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 has

(2) knowingly and designedly by any means of false pretense, deception, fraud, 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.

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. The Petitioner is an applicant for certification through the Duplin County Sheriff's Office. Petitioner has not previously held certification through the Sheriffs'

Commission. Petitioner currently holds certification through the North Carolina Criminal Justice Education and Training Standards Commission.

### **Material Misrepresentation**

6. On May 19, 2005, Petitioner completed a Form F-5A Application for Certification through the North Carolina Criminal Justice Education and Training Standards Commission. Question number 3 of this application states:

3. Have you ever used any illegal drugs? (If yes, please explain on a separate sheet).

7. Petitioner answered “No” to question number 3, indicating that he had never used any illegal drugs. Petitioner signed the May 19, 2005 Form F-5A before a Notary, certifying that his answers to each and every statement were true and complete. At the time Petitioner completed this form he was 42 years old, had earned his high school diploma, and had served in the United States Marine Corps from August 1980 until his honorable discharge in 2003.

8. On April 11, 2012, Petitioner completed a Form F-3 Personal History Statement in furtherance of his application for certification through the Sheriffs’ Commission. Question number 39 of the Sheriffs’ Commission Form F-3 asked Petitioner the following:

39. Have you ever used any illegal drugs including but not limited to marijuana, steroids, opiates, pills, heroin, cocaine, crack, LSD, etc., to include even one time use or experimentation?

9. Petitioner responded to question number 39, stating he had used marijuana last on October 31, 1980. This response was inconsistent with Petitioner’s response to the 2005 Criminal Justice application, wherein Petitioner stated he had never used any illegal drugs.

10. The Petitioner indicates he failed to disclose the drug use on his 2005 Form F-5A because he was not a frequent drug user and the usage occurred 25 years prior to Petitioner completing the 2005 Form F-5A. Petitioner indicates he only used marijuana on one occasion in 1980, and he therefore believed this single usage did not need to be reported.

11. This Court finds that at the time Petitioner completed the 2005 Form F-5A, Petitioner knew the plain meaning of question 3, which requires the disclosure of the use of “any illegal drugs.” Petitioner’s failure to disclose his past marijuana use on the 2005 Form F-5A constitutes a material misrepresentation of information required for certification or accreditation from the Sheriffs’ Commission or the North Carolina Criminal Justice Education and Training Standards Commission. Petitioner’s application is therefore subject to denial or a lesser sanction pursuant to 12 NCAC 10B.0204(c)(1) and 12 NCAC 10B .0205 (2).

12. Although Petitioner made a material misrepresentation within the meaning of 12 NCAC 10B.0204(c)(1), this court finds that Petitioner did not violate 12 NCAC 10B.0204(c)(2),

in that there is no evidence that Petitioner designedly attempted to obtain certification through false pretense, cheating, or fraud.

13. Petitioner's failure to disclose a civil judgment levied against him was an unintentional error and was not a material misrepresentation. A civil judgment was levied against Petitioner on June 7, 2000 in Onslow County, North Carolina. The judgment was in favor of McFadyen Music, Inc. At that time, Petitioner was deployed with the United States Marines and Petitioner's wife was handling the family finances. The debt was for a clarinet that was used by Petitioner's daughter. At the time Petitioner completed his 2012 F-3 Personal History Statement, Petitioner had no recollection of this past judgment.

### **Cruelty to Animals**

14. Petitioner was charged with cruelty to animals and failing to provide adequate food and medical attention for the alleged neglect of certain dogs on or about September 16, 2005. The alleged abuse took place at the property owned by Petitioner located at 222 Regalwood Drive, Jacksonville, North Carolina. At the time of the alleged neglect, Petitioner was not residing at the Regalwood Drive residence. Petitioner had accepted a job through the North Carolina Department of Corrections and had moved with his wife to Raleigh, North Carolina in order to serve as a detention officer. Petitioner's son and daughter, who are both adults, were living at the Regalwood Drive residence in the fall of 2005 when the alleged neglect took place.

15. Petitioner was not aware that animals were being kept at his property in Jacksonville and was unaware of the alleged abuse of animals at his property. Petitioner was not advised of this until he was contacted by animal control. At that time, Petitioner was residing in Raleigh, North Carolina. The criminal charges issued against Petitioner were dismissed by the Onslow County District Attorney's Office upon verification that Petitioner was not living at the Regalwood Drive residence and upon verification that Petitioner had no knowledge that animals were being neglected.

16. This Court finds that Petitioner did not commit the class B misdemeanor offense of cruelty to animals in 2005 and further finds that Petitioner did not intentionally deprive animals of necessary food and medical treatment in 2005.

### **Commission and/or Conviction of 4 or more crimes or unlawful acts**

17. The Petitioner was convicted of Driving While Impaired, Level 5, on August 29, 2000, in violation of North Carolina General Statute § 20-138.1 (case No. 2000 CR 055811). Petitioner does not dispute this conviction. Pursuant to 12 NCAC 10B .0103 (10) (a), and the Class B Misdemeanor Manual adopted by the Respondent, a Level 5 Driving While Impaired conviction constitutes a Class A misdemeanor conviction.

18. The Petitioner was convicted of misdemeanor worthless check on a closed account on March 18, 1994, in violation of North Carolina General Statute § 14-107 (d) (4) (case

number 1994 CR 003737). Petitioner does not dispute this conviction. Pursuant to 12 NCAC 10B .0103 (10) (a), and the Class B Misdemeanor Manual adopted by the Respondent, a worthless check conviction constitutes a Class A misdemeanor conviction.

19. Petitioner has been convicted of two (2) Class A misdemeanor offenses. However, as set out above, this Court finds that Petitioner did not commit the offenses of cruelty to animals and depriving animals of food and medical attention. Therefore, Petitioner has not 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. Given the undisputed record in this case and the evidence presented, Petitioner has not violated 12 NCAC 10B .0204 (d) (5).

### **Good Moral Character**

20. Petitioner is married and has raised and supported six (6) children. Petitioner became a United States Marine in 1980 and served with the Marines until his retirement in 2003. Petitioner served 21 years and 10 months and was honorably discharged. Petitioner then obtained his probationary certification from the North Carolina Criminal Justice Education and Training Standards Commission in 2005 and his general Criminal Justice certification in 2006.

21. Petitioner has the support of the Duplin County Sheriff's Office. Lieutenant Mitchell with the Duplin County Sheriff's Office testified at the administrative hearing. The evidence presented indicates Petitioner has a reputation of being honest and hard working and that Petitioner would make an exceptional detention officer. This Court finds this testimony to be credible.

22. The Court finds that Petitioner is of good moral character within the meaning of 12 NCAC 10B .0301 (a) (8).

23. Further, despite Petitioner's serious error in judgment when completing the May 19, 2005, Form F-5A Application for Certification, there was substantial mitigating evidence and extenuating circumstances presented at the administrative hearing which warrants a lesser sanction than the denial of Petitioner's certification.

### **CONCLUSIONS OF LAW**

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

2. Pursuant to 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. Pursuant to 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. Petitioner has been convicted of two (2) class A misdemeanors pursuant to the Commission’s Rules. Petitioner’s Driving While Impaired conviction and Worthless Check conviction each constitute separate class A misdemeanor convictions.

5. The record in this case establishes that Petitioner did not commit the misdemeanor offenses of cruelty to animals and denying animals adequate food and medical attention. Therefore, Petitioner has not committed or been convicted of 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. Petitioner’s certification is not subject to denial pursuant to 12 NCAC 10B .0204 (d) (5).

6. Pursuant to 12 NCAC 10B.0204(c)(1) and (2), the Sheriffs’ Commission may deny the certification of a justice officer when the Commission finds that the applicant for certification 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 has

(2) knowingly and designedly by any means of false pretense, deception, fraud, 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.

7. The period of denial for a material misrepresentation is 5 years pursuant to 12 NCAC 10B .0205 (2). However, the Commission may issue a lesser sanction when extenuating circumstances brought out at the administrative hearing warrant such a reduction.

8. The Petitioner knowingly made a material misrepresentation of information required for certification through the North Carolina Criminal Justice Education and Training Standards Commission by failing to disclose on his 2005 Form F-5A Application for Certification that Petitioner had previously used marijuana, an illegal drug. At the time Petitioner made this material misrepresentation, Petitioner was approximately 42 years old, had

graduated from high school, and had served as a United States Marine for 21 years and 10 months. Petitioner knew the plain meaning of question 3 on the F-5A Form and chose not to disclose this information. Petitioner's application for certification is subject to denial pursuant to 12 NCAC 10B .0204 (c)(1) based on Petitioner's material misrepresentation.

9. This Court further finds that Petitioner did NOT knowingly and designedly by any means of false pretense, deception, fraud, misrepresentation or cheating, obtain or attempt to obtain certification through the North Carolina Sheriffs' Education and Training Standards Commission.

10. Petitioner is of good moral character within the meaning of 12 NCAC 10B .0301 (a) (8).

11. The Petitioner's knowing material misrepresentation of information required for certification through the Sheriffs' Commission constitutes a violation of 12 NCAC 10B .0204(c)(1). The Respondent's proposed denial of Petitioner's certification is therefore supported by substantial evidence. However, pursuant to 12 NCAC 10B .0205 (2), the Commission may either reduce or suspend the periods of sanction or substitute a period of probation in lieu of revocation, suspension, or denial when extenuating circumstances brought out at the administrative hearing warrant such a reduction.

### **PROPOSAL FOR DECISION**

Based upon the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, the undersigned recommends that Petitioner's certification be issued and that Petitioner be given a verbal and/or written warning for making a material misrepresentation on the May 19, 2005 Form F-5A. Such a reduced sanction is warranted due to the extenuating circumstances brought out at the administrative hearing. Petitioner is of good moral character and has served honorably in the United States Marine Corps for over 20 years. Petitioner would like to obtain certification in order to give back to the community and to continue to support his family financially. Petitioner has the support of the Duplin County Sheriff's Office and is considered to be a hard worker and suited for employment in law enforcement. Petitioner's lapse in good judgment is isolated to the misrepresentation related to prior drug use on his 2005 Form F-5A. Given Petitioner's reputation, substantial achievements, and service, a lesser sanction than the denial of his certification is appropriate.

### **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 11<sup>th</sup> day of April, 2014.

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Eugene J. Cella  
Administrative Law Judge