

STATE OF NORTH CAROLINA  
COUNTY OF JOHNSTON

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IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
13 DOJ 19149

WILLIAM RICHARD HERRING, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 N.C. SHERIFFS' EDUCATION )  
 AND TRAINING STANDARDS )  
 COMMISSION, )  
 )  
 Respondent. )

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**PROPOSAL FOR DECISION**

**THE ABOVE-ENTITLED MATTER** was heard before the undersigned Augustus B. Elkins II, Administrative Law Judge, in Fayetteville, North Carolina. This case was heard pursuant to N.C.G.S. § 150B-40, 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. The record was left open for the parties' submission of further materials, including but not limited to supporting briefs, memorandums of law and proposals.

The Respondent submitted proposals and argument to the Clerk's Office of the Office of Administrative Hearings on June 25, 2014 which was received by the Undersigned on June 30, 2014. The Undersigned's Paralegal contacted counsel for the Petitioner on July 10, 2014 requesting the time when Petitioner would be submitting proposals. The Undersigned held the record awaiting materials from the Petitioner. Petitioner's counsel was again contacted on or about August 15, 2014 and notified the Undersigned's Paralegal that he would inform her by August 25, 2014 if he would be submitting proposals. Hearing nothing further from Petitioner, the record was closed on August 26, 2014.

**APPEARANCES**

Petitioner: James D. Johnson, Jr., Esq.  
212 East Main Street  
Benson, North Carolina 27504

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

## **ISSUE**

Did Petitioner knowingly make a material misrepresentation of any information required for certification as a justice officer?

## **EXHIBITS**

Petitioner's Exhibits 1-3 were introduced and admitted.

Respondent's Exhibits 1-7 were introduced and admitted.

**BASED UPON** careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned Administrative Law Judge makes the following FINDINGS OF FACT. In making the FINDINGS OF FACT, the undersigned Administrative Law Judge has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including, but not limited to, the demeanor of the witness, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case.

## **FINDINGS OF FACT**

1. The Petitioner received by certified mail, the proposed Denial of Justice Officer's Certification letter mailed by Respondent Sheriffs' Commission on September 25, 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 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.

4. Petitioner was previously certified through the North Carolina Criminal Justice Education and Training Standards Commission (hereinafter the "CJ Commission") and was employed as a certified correctional officer at Polk Youth Center. Petitioner worked at Polk for approximately thirteen months. Petitioner resigned from Polk Youth Center in 1986 in lieu of disciplinary action. (Respondent's Exhibit 7)

5. Petitioner did not work in law enforcement again until he reapplied for certification through the CJ Commission in 2001. In furtherance of his application for certification through the CJ Commission, Petitioner completed a Report of Appointment and Application for Certification (hereinafter the "Application") on June 5, 2001. (Respondent's Exhibit 3) Question 3 of the Application asked if the applicant had ever used any illegal drugs. On this Application, Petitioner disclosed that he used marijuana in high school and attached a handwritten statement, wherein he wrote: "Experimented with marijuana in high school." (Respondent's Exhibit 3)

6. At the time Petitioner completed the above-referenced Application for certification through the CJ Commission, Petitioner had already received training to become a certified justice officer in 1985 and Petitioner had worked in a sworn capacity at Polk Youth Center from May 6, 1985 through June 16, 1986.

7. At the time Petitioner completed the above-referenced 2001 Application, Petitioner knew the importance of honesty and integrity in the field of law enforcement. Petitioner knew that they are core values that are expected of a sworn justice officer in this State. Petitioner signed the 2001 Application before a notary public, affirming that each and every statement on the Application was true and complete. Petitioner was cautioned that "any omission, falsification, or misrepresentation of any factor or portion of such information can be the sole basis for . . . denial, suspension or revocation of my certification." (Respondent's Exhibit 3)

8. The Petitioner applied for certification through the Respondent Sheriffs' Commission on or about July 19, 2012. At that time, Petitioner completed a Personal History Statement (Form F-3) as part of his original employment application with the Harnett County Sheriff's Office, and in order to obtain certification as a justice officer from the Sheriffs' Commission.

9. Question No. 39 of the Sheriffs' Commission Form F-3 asked the applicant to disclose whether or not he had ever used illegal drugs, and if so, to describe the circumstances. When the Petitioner completed Question No. 39, he answered "Yes," indicating that he had used marijuana in high school. However, Petitioner also disclosed on the Sheriffs' Commission Form F-3 that he used cocaine during the 1990's, and that he "stopped using it in the late 90's." (Respondent's Exhibit 2)

10. Petitioner admitted under oath that he had been using cocaine during the 1990s while he was a traveling salesman. Petitioner estimated that he used cocaine approximately five or six times when it was provided by another salesman. Petitioner stated he never purchased or supplied the cocaine. Petitioner testified that he quit using cocaine in 1998 or 1999. By Petitioner's own admission, he had used cocaine three (3) years prior to completing the CJ Commission Application on June 1, 2001.

11. Petitioner failed to disclose his cocaine use on the 2001 CJ Commission Application. Petitioner admitted under oath that at the time he completed this Application, he was aware that repeated drug use could be a bar to Petitioner's certification and to obtaining employment in the field of law enforcement. Petitioner maintains that he did not disclose the cocaine use on the 2001 Application because of "maybe the rush of completing the application, and not reviewing it." (Respondent's Exhibit 4) This is at odds with Petitioner's testimony at trial. Petitioner stated the training coordinator gave the application to him and he took it with him to Virginia Beach. Petitioner admitted that he completed the CJ Commission Application while a passenger in a car trip lasting a couple of hours. Petitioner did not remember filling it out and testified he did not know why the cocaine use was not on the Application. At the time Petitioner completed the Application; Petitioner was 39 years old and had worked previously in law enforcement as a detention officer.

12. Petitioner provided a handwritten statement and attached that statement to the CJ Commission Application. He took the time to describe his past marijuana use in high school during the 1980's. (Respondent's Exhibit 3) An examination of the Application and written statement establishes that Petitioner did not sign the Application before a notary public until four (4) days after Petitioner completed the handwritten statement. Petitioner had the opportunity to disclose his past cocaine use when he disclosed his marijuana use; however, Petitioner did not disclose his illicit cocaine use during the 1990's.

13. Petitioner was investigated in 2005 while working at Johnston Correctional Institution for viewing pornographic material on a work computer. During the internal affairs investigation, Petitioner was found to have provided his supervisors false and misleading information. (Respondent's Exhibit 6)

14. At the hearing of this matter, Petitioner maintained that he did not lie to his supervisors. Petitioner claims that he failed to provide his supervisors with the "entire truth." The Petitioner agrees that honesty and integrity are essential attributes to being a law enforcement officer.

15. Petitioner submitted an exhibit documenting his involvement with correctional officers at Johnston Correctional Institution donating teddy bears to the Highway Patrol in December 2010. (Petitioner's Exhibit 1) Petitioner also submitted a December 2013 letter from Dwight L. Braswell who wrote "as a testimony to the integrity and character" of Petitioner. (Petitioner's Exhibit 2) Petitioner also submitted an October 2013 letter from Johnston County Sheriff Steve Bizzell where Sheriff Bizzell wrote that he had known Petitioner for over 10 years and found him to be "a man of integrity and a friend and neighbor to those in his community near Benson, NC." (Petitioner's Exhibit 3)

**BASED UPON** the foregoing FINDINGS OF FACT and upon the preponderance or greater weight of the evidence in the whole record, the Undersigned makes the following Conclusions of Law.

### **CONCLUSIONS OF LAW**

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. The parties received proper notice of the hearing in the matter. To the extent that the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are findings of fact, they should be so considered without regard to the given labels.

2. 12 NCAC 10B.0204(c)(1) 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[.]

3. A preponderance of the evidence exists to support the conclusion that Petitioner knowingly made a material misrepresentation of information required for certification by failing to disclose his prior cocaine use on the June 5, 2001 Report of Appointment and Application for Certification submitted to the CJ Commission. Petitioner completed this Application just 3 years following his last cocaine use. Petitioner did disclose marijuana use dating back to the 1980's. Moreover, at the time Petitioner completed this CJ Commission form, Petitioner had already been certified through the CJ Commission and had worked in a sworn capacity at Polk Youth Center for over a year. A preponderance of the evidence exists to support the conclusion that Petitioner's failure to disclose his cocaine use did not rise out of mistake.

4. The Petitioner's knowing material misrepresentation of information required for certification through the CJ Commission and the Sheriffs' Commission constitutes a violation of 12 NCAC 10B .0204(c)(1).

5. Petitioner has the burden of proof in the case at bar. The party with the burden of proof in a contested case must establish the facts required by G.S. § 150B-23(a) by a preponderance of the evidence. Under the controlling North Carolina statutes and rules, and the current case law, Petitioner failed in his burden of proof regarding Respondent's proposed denial of Petitioner's justice officer certification.

**BASED UPON** the foregoing Findings of Fact and Conclusions of Law the Undersigned makes the following Proposal for Decision.

### **PROPOSAL FOR DECISION**

The Undersigned finds and holds that there is sufficient evidence in the record to properly and lawfully support the Conclusions of Law cited above.

Based on those conclusions and the facts in this case, the Undersigned holds that the Petitioner has failed to carry his burden of proof by a greater weight of the evidence that Respondent exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by law or rule. The finder of fact cannot properly act upon the weight of evidence, in favor of the one having the *onus*, unless it overbear, in some degree, the weight upon the other side. The weight of Petitioner's evidence does not overbear in that degree required by law the weight of evidence of Respondent and as such the findings and actions of the Commission must be and are hereby affirmed.

### **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.

A copy of the final agency decision or order shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency and a copy shall be furnished to his attorney of record. N.C.G.S. § 150B-42(a). It is requested that the agency furnish a copy to the Office of Administrative Hearings.

**IT IS SO ORDERED.**

This is the 17th day of September, 2014.

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Augustus B. Elkins II  
Administrative Law Judge