

**IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14 DOJ 00529**

PROPOSAL FOR DECISION

APPEARANCES

Respondent: Matthew L. Boyatt
Assistant Attorney General
Attorney for Respondent
Department of Justice
Law Enforcement Liaison Section
Post Office Box 629
Raleigh, North Carolina 27602-0629

Is Respondent's proposed suspension of Petitioner's correctional officer certification, based upon Petitioner having been convicted of misdemeanor cruelty to animals, supported by a preponderance of the evidence?

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 Chief Administrative Law Judge makes the following FINDINGS OF FACT.

In making these FINDINGS OF FACT, the undersigned 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. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, both parties received Notice of Hearing, and Petitioner received the written notification of the proposed suspension of his correctional officer certification through a letter mailed by Respondent on December 11, 2013. (Respondent's Exhibit 2)

2. Petitioner requested an administrative hearing after receiving the above-referenced Proposed Suspension of Correctional Officer Certification letter dated December 11, 2013.

3. The North Carolina Criminal Justice Education and Training Standards Commission (hereinafter the "Commission") has the authority granted under Chapter 17C of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 09G, to certify corrections officers and to revoke, suspend, or deny such certification.

4. 12 NCAC 09G.0504(b)(3) provides that the Commission may suspend or revoke the certification of a corrections officer when the Commission finds that the certified officer has committed or been convicted of a misdemeanor as defined in 12 NCAC 09G.0102, after the initial date of certification.

5. According to the classifications found in 12 NCAC 09G.0102(9)(ddd), cruelty to animals, in violation of North Carolina General Statute § 14-360, constitutes a misdemeanor pursuant to the Commission's Rules.

6. 12 NCAC 09G.0505(b) provides that when the Commission suspends or denies the certification of a corrections officer pursuant to 12NCAC09G.0504, the period of sanction shall be not less than three (3) years; however, the Commission may either reduce or suspend the period of sanction under this Rule or substitute a period of probation in lieu of suspension of certification following an administrative hearing, where the cause of sanction is commission or conviction of a misdemeanor as defined in 12 NCAC 09G.0102 .

7. Petitioner was awarded his General Certification from the Commission on or about April 26, 2011. (Respondent's Exhibit 1)

8. Petitioner worked as a correctional officer at Hyde Correctional Institution for approximately four (4) years. Petitioner's duties included supervising and transferring inmates, in addition to supervising the mess hall and other common areas of Hyde Correctional Institution.

9. On October 1, 2012, a Chowan County Grand Jury returned a True Bill of Indictment, charging Petitioner with felony cruelty to animals for the felonious killing of a lab mix belonging to Tiffany Bell. On August 27, 2013, Petitioner appeared in Criminal Superior Court in Chowan County before the Honorable Jerry R. Tillett. At that time, Petitioner entered an Alford plea to the reduced charge of misdemeanor cruelty to animals in violation of North Carolina General Statute § 14-360(a), in case number 12CRS000289. (Respondent's Exhibit 6, Attachment A)

10. Petitioner does not deny that he stands convicted of misdemeanor cruelty to animals in violation of North Carolina General Statute § 14-360, as set out in the Judgment introduced into the record at the hearing of this matter. *See* 12CRS000289. (Respondent's Exhibit 7)

11. On or about April 30, 2012, Petitioner was at his girlfriend's house in Chowan County. Petitioner was working outside and his son was also outside playing. Petitioner's pit bull was chained to a tree. Petitioner testified that a lab mix entered onto the property and began to attack his pit bull. According to Petitioner, the lab mix began to "whip up" on Petitioner's pit bull. Petitioner attempted to run the lab mix off, but the dog would not leave the property.

12. Petitioner also testified that the lab mix then began to approach his son in an aggressive manner. Petitioner was able to get his son onto the front porch of his girlfriend's house and away from harm. At that time, Petitioner decided to retrieve his rifle from within his girlfriend's home. Petitioner entered the home and retrieved his Remington 30-06 rifle from the bedroom. Petitioner then returned outside and approached the lab. Petitioner was close enough to the lab that he did not have to use the scope on the 30-06. Petitioner shot and killed the lab.

13. Petitioner made no attempt to call the police or animal control prior to shooting the lab. Petitioner could have called for assistance since he and his son were safely on the front porch of the house. Petitioner testified that he killed the dog as he believed the lab was a threat to his son.

14. Petitioner's employer initiated an investigation into potential misconduct by Petitioner for the killing of the lab. Petitioner was required to provide his employer with a written statement regarding the events of April 30, 2012. In that written statement, Petitioner makes no mention of the lab attacking his pit bull. Furthermore, Petitioner fails to mention that this dog approached his son in an aggressive manner. (Respondent's Exhibit 4)

15. Petitioner was terminated from Hyde County Correctional Institution for conduct

unbecoming of a sworn corrections officer. The basis of this finding by his employer was Petitioner's conduct on April 30, 2012, wherein Petitioner shot and killed the lab that entered onto the property of his girlfriend.

16. Petitioner exhibited poor judgment and conduct unbecoming of a sworn corrections officer when he killed Ms. Bell's lab mix.

17. Several months after Petitioner killed the lab, he was charged in an unrelated matter with the crime of communicating threats. Petitioner admitted that the warrant alleged that Petitioner threatened to shoot and kill the complainant's dog. Petitioner denies making this threat. Petitioner and his girlfriend were walking by a neighbor's house when a woman began to yell profanities towards them. Petitioner continued to walk, but his girlfriend lagged behind and continued to have words with the woman. This resulted in cross warrants being issued, wherein Petitioner was accused of threatening to kill the woman's dog.

18. Although the communicating threats charge against Petitioner was ultimately dismissed, Petitioner was charged with an offense wherein the alleged threat involved the killing of another dog.

19. Petitioner has been convicted of the misdemeanor offense of cruelty to animals in violation of N.C.G.S. § 14-360(a), and that this conviction occurred after Petitioner received certification from Respondent. Respondent's proposed suspension of Petitioner's correctional officer's certification is supported by a preponderance of the evidence presented at the administrative hearing.

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 hearing in this 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. The North Carolina Criminal Justice Education and Training Standards Commission has the authority granted under Chapter 17C of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 09G, to certify corrections officers and to revoke, suspend, or deny such certification.

3. 12 NCAC 09G.0504 provides that:

b) The Commission maysuspend, revoke or deny the certification of a corrections officer when the Commission finds that the applicant for certification or the certified officer:

(3) has committed or been convicted of a misdemeanor as defined in 12NCAC09G.0102 after certification[.]

4. Pursuant to 12 NCAC 09G.0102 (2)(c), convicted or conviction includes “a plea of no contest, nolo contendere, or the equivalent.”

5. Misdemeanor cruelty to animals in violation of N.C.G.S. § 14-360(a) constitutes a misdemeanor under the Commission’s Rules pursuant to 12 NCAC 09G .0102(9) (ddd).

6. 12 NCAC 09G .0505(b)(1) provides that when the Commission suspends or denies the certification of a corrections officer pursuant to 12NCAC09G.0504, the period of sanction shall be not less than three (3) years; however, the Commission may either reduce or suspend the period of sanction.... or substitute a period of probation in lieu of suspension of certification following an administrating hearing, where the cause of sanction is: (1) the commission or conviction of a misdemeanor as defined in 12NCAC09G.0102.

7. The party with the burden of proof in a contested case must establish the facts required by N.C.G.S. § 150B-23(a) by a preponderance of the evidence. N.C. Gen. Stat. § 150B-29(a). The administrative law judge shall decide the case based upon the preponderance of the evidence. N.C. Gen. Stat. § 150B-34(a). Respondent has the burden of proof.

8. Respondent has met its burden of proof in the case at bar. The evidence presented at the administrative hearing establishes that Petitioner was convicted of the misdemeanor offense of cruelty to animals in violation of N.C.G.S. § 14-360(a) on August 27, 2013. Pursuant to 12 NCAC 09G.0102(2)(c) and 12NCAC09G.0102(9)(ddd) of the Commission’s Rules, Petitioner’s Alford plea and subsequent adjudication of guilt constitutes a misdemeanor conviction. This criminal conviction occurred after Petitioner’s certification through the Commission on April 26, 2011. Respondent’s proposed suspension of Petitioner’s certification is therefore supported by a preponderance of the evidence presented at the administrative hearing.

9. In mitigation of Petitioner’s conduct is his belief that his child was threatened by a stray and trespassing lab-mix dog. The lab-mix attacked Petitioner’s dog. Petitioner’s dog was not free to retreat. Although the Petitioner removed his son from immediate danger, a future encounter between this dog and/or his son was foreseeable. In aggravation of Petitioner’s conduct was the continuation of this conflict with an adjoining neighbor arising out of the same or similar incident. This second incident resulted in additional criminal charges. This second incident demonstrates poor judgment on the part of Petitioner.

PROPOSAL FOR DECISION

NOW, THEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law, the Undersigned recommends Respondent suspend Petitioner’s correctional officer certification for a period of three (3) years based upon Petitioner’s misdemeanor cruelty to animals conviction, which occurred after Petitioner received certification through the Commission. The Commission has the authority to issue a lesser sanction, in its discretion. However, Petitioner’s unbecoming conduct, as set out in greater detail above, warrant some period of active suspension. The undersigned proposes that taken into account the totality of the circumstance, that Petitioner’s certification be suspended for a period of three years but that all

but 30 days of said suspension be stayed, and that Petitioner's certification be restored after a period of 30 days following the entry of Respondent's final decision as a lesser sanction to be imposed against Petitioner.

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 Criminal Justice Education and Training Standards Commission.

This the 8th day of October, 2014.

Julian Mann III
Chief Administrative Law Judge