

STATE OF NORTH CAROLINA
COUNTY OF PITT

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14 DOJ 00561

<p>DAVID NOLLIE EURE, Petitioner,</p> <p>v.</p> <p>NC CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION, Respondent.</p>	<p style="text-align: center;">ORDER AND PROPOSAL FOR DECISION</p>
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This case came on for hearing on October 24, 2014 before Administrative Law Judge Donald W. Overby in Greenville, North Carolina. This case was heard after Respondent requested, pursuant to N.C.G.S. § 150B-40(e), 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.

This matter was set for hearing before the undersigned on October 24, 2014 in Pitt County, North Carolina. Present were the Petitioner, David Nollie Eure, his attorney, Mary-Ann Leon, and counsel for Respondent, William P. Hart, Jr. Assistant Attorney General. Petitioner's name has been incorrectly designated on previous captions as "David Noelle Eure" and should be correctly designated as "David Nollie Eure."

Prior to taking testimony, Petitioner moved to have certain Requests for Admissions served by Petitioner upon Respondent deemed admitted. After hearing arguments of counsel, Petitioner's motion was allowed.

Respondent called two witnesses to testify in support of its proposed suspension of Petitioner's Correctional Officer Certification: Gates County Deputy Sheriff Bryan D. Johnson and Petitioner David Nollie Eure. Respondent moved to have Respondent's exhibits 1, 3, 4, 5, and 6 admitted into evidence and these were admitted into evidence.

At the close of Respondent's evidence, Petitioner moved for a directed verdict in his favor. Petitioner's motion is more properly styled as a motion pursuant to Rule 41(b) of the North Carolina Rules of Civil Procedure to dismiss Respondent's finding of probable cause and the Court will treat it as such.

Respondent's exhibits numbered 1, 3 – 6 were tendered and accepted into evidence. Petitioner's exhibits numbered 1 – 6 were tendered and accepted into evidence. The parties Stipulations numbered 1 – 8 were tendered to the Court and accepted prior to taking evidence.

Pursuant to Rule N.C.R.C.P. Rule 41(b) and N.C.R.C.P. 52(a)(2), the Court makes the following

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 Suspension of Correctional Officer's Certification letter, mailed by Respondent, the North Carolina Criminal Justice Education and Training Standards Commission (hereinafter "The Commission"), on December 11, 2013.
2. 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 9, to certify justice officers and to deny, revoke or suspend such certification.
3. This contested case arises out of action by Respondent Commission whereby on December 11, 2013 Respondent notified Petitioner that it had found probable cause to believe Petitioner committed the "DAC misdemeanor" offense of "Going Armed to the Terror of the People" on September 16, 2012 and that it proposed suspension of Petitioner's Correctional Officer Certification for a period of not less than three years, pursuant to 12 NCAC 09G.0505(b)(1).
4. Petitioner timely filed a Request for an Administrative Hearing to be conducted under Chapter 150B of the North Carolina General Statutes. On or about January 21, 2014, Respondent, through its counsel, requested 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.
5. Petitioner went to the area adjacent to the home of Roger Shingleton around 3:00 a.m. on September 16, 2012 after Mr. Shingleton left a voicemail for Petitioner to come to Mr. Shingleton's house. Petitioner had previously called Shingleton to inquire about whether Mr. Shingleton had sold marijuana to an individual who owed Petitioner money for the sale of scrap metal from Petitioner's property. Shingleton took offense and thus wanted to "settle" the matter.
6. Petitioner drove toward Mr. Shingleton's house from Rooks Road where Petitioner lived and upon arriving at the intersection of Rooks Road and Highway U.S. 158 turned onto a private right of way, traveled down the private right of way and stopped his vehicle at the private right of way and Mr. Shingleton's driveway.
7. There is no evidence that Petitioner had any weapon of any sort with him.

8. Petitioner announced in a loud voice to Mr. Shingleton that he [Petitioner] was there.
9. Petitioner waited several minutes and, receiving no response from anyone inside the home, Petitioner left and returned to his home.
10. Sheriff's deputies investigated a claim by Mr. Shingleton and his girlfriend Ginger Goad that Petitioner had fired shots at their home. Gates County Sheriff's deputies did not find any evidence that Petitioner had fired a gun on September 16, 2012. He had no weapon in his vehicle.
11. There was no evidence that corroborated that Petitioner was seen on Hwy US 158 on September 16, 2012, or that a gun was seen in Petitioner's possession that early morning.
12. There is no evidence that Petitioner armed himself with a gun in the early morning hours of September 16, 2012 for the purpose of terrifying others.
13. Petitioner did not engage in any acts on a public highway for the purpose of terrifying others.
14. Petitioner did not go about on a public highway in a manner to cause terror to others.
15. Mr. Shingleton and his girlfriend (now wife) Ginger Goad were both properly served with subpoenas to appear and testify in this contested case hearing. Neither appeared.
16. Petitioner was charged criminally twice for the events of September 16, 2012 involving Mr. Shingleton and the charges were dismissed both times.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case, and the parties received proper notice of the 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 Respondent, 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 9G, to certify correctional officers and to revoke, suspend, or deny such certification.
3. Pursuant to 12 NCAC 09G.0504(b)(3) the Commission may, suspend, 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 12 NCAC 09G.0102 after certification.
4. 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).

5. Respondent has the burden of proof in the case at bar. Respondent has not shown by a preponderance of the evidence that Respondent's proposed suspension of Petitioner's correctional officer certification is supported by substantial evidence.
6. The common law misdemeanor offense of "Going Armed to the Terror of the People" requires evidence that Petitioner:
 - (a) armed himself with an unusual and dangerous weapon;
 - (b) for the purpose of terrifying others; and
 - (c) goes about on public highways;
 - (d) in a manner to cause terror to others.

State v. Dawson, 272 N.C. 535, 159 S.E.2d 1 (1968).

7. Respondent has failed to present any evidence that Petitioner was armed with a weapon for the purpose of terrifying others and went about on a public highway in a manner to cause terror to others.
8. The right to a fair and impartial hearing, with the right to cross-examine witnesses for the Respondent, is afforded to Petitioners to enable them to hear and refute the evidence against them. N.C. Gen. Stat. §150B-40(a). Without the testimony of witnesses upon whom the Respondent relied in determining it had probable cause to find that Petitioner had committed the offense, Petitioner is prejudiced by the agency's reliance on conclusions contained in the investigator's report that could not be tested through cross-examination. Parties cannot control the appearance or the testimony of their witnesses; however, without the required proof that the investigator's conclusions regarding probable cause are based on credible evidence presented to the fact finder, Respondent's case must fail.
9. Given the evidence presented by the Respondent at the hearing the undersigned concludes that, as a matter of law, Respondent has presented insufficient evidence to establish probable cause that Petitioner committed the offense of "Going Armed to the Terror of the People" on September 16, 2012.

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned finds that Respondent's finding of probable cause and proposed decision to suspend Petitioner's Officer Certification is not supported by competent evidence and the undersigned hereby recommends that Respondent not suspend Petitioner's Officer Certification.

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.

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714.

IT IS SO ORDERED.

This the 7th day of November, 2014.

The Honorable Donald W. Overby
Administrative Law Judge