

**IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14 DOJ 00878**

ORDER GRANTING SUMMARY JUDGMENT TO PETITIONER AND PROPOSAL FOR DECISION

APPEARANCES

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

ISSUE

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 mail the proposed Denial of Justice Officer's Certification letter, mailed by Respondent Sheriffs' Commission on December 23, 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. The proposed denial of Petitioner's application for justice officer certification is based on four (4) misdemeanor criminal convictions which appeared on Petitioner's criminal record at the time of Respondent's December 23, 2013, Notification of Probable Cause to Deny Justice Officer Certification.

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. At the time Respondent issued its December 23, 2013, written notification, Petitioner stood convicted of the following misdemeanor offenses:

- i. Class A misdemeanor - Simple Worthless Check, 2004 CR 053653;
- ii. Class B misdemeanor - Assault on a Female, 2001 CR 051218;
- iii. Class B misdemeanor - Injury to Personal Property, 2001CR 051225; and
- iv. Class A misdemeanor - Injury to Personal Property, 1996 CR 000582.

6. Petitioner filed a request for an administrative hearing on February 3, 2014. The basis of Petitioner's request for an administrative hearing was that Petitioner was in the process of having certain criminal convictions removed from his criminal record. Each party filed its Prehearing Statement pursuant to the Court's February 19, 2014, Order For Prehearing Statements.

7. On January 31, 2014, Petitioner filed a Motion in Surry County District Court seeking to set aside his Assault on a Female conviction in case number 2001 CR

051218, in addition to his Injury to Personal Property conviction in case number 2001CR 051225. (Petitioner's Exhibit 1)

8. On February 3, 2014, said Motion came to be heard in Surry County District Court. By Order of the same date, the Honorable Judge Charles M. Neaves, Jr. entered an Order setting aside Petitioner's Assault on a Female conviction in case number 2001 CR 051218, and also setting aside Petitioner's Injury to Personal Property conviction in case number 2001CR 051225. (Petitioner's Exhibit 2)

9. Thereafter, on March 11, 2014, Assistant District Attorney Tim Watson filed voluntary dismissals in both 2001 CR 051218 and 2001 CR 051225. (Petitioner's Exhibits 3 and 4)

10. At the time of the proposed denial of Petitioner's application for justice officer certification on December 23, 2013, Petitioner stood convicted of 4 misdemeanor offenses in violation of 12 NCAC 10B .0204 (d) (5), as set out above in subparagraph 5 in greater detail.

11. However, because case numbers 2001 CR 051218 and 2001 CR 051225 were recently set aside and subsequently dismissed by the Surry County District Attorney's Office, Petitioner no longer stands convicted of 4 misdemeanor offenses pursuant to 12 NCAC 10B .0204 (d)(5). Therefore, there is no genuine issue of material fact for hearing in this dispute, and Petitioner is entitled to summary judgment as a matter of law. In entering this Order Granting Summary Judgment to Petitioner, the undersigned is making no findings of fact and conclusions of law as to whether Petitioner has "committed" the offenses which were set aside in case numbers 2001 CR 051218 (Assault on a Female) and 2001 CR 051225 (Injury to Personal Property).

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 justice 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. Pursuant to 12 NCAC 10B .0205(3)(d), when the Commission denies the certification of a justice 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. At the time Respondent issued its proposed denial of Petitioner's application for justice officer certification on December 23, 2013, Petitioner stood convicted of the following four (4) misdemeanor offenses: 1) Simple Worthless Check, 2004 CR 053653; 2) Assault on a Female, 2001 CR 051218; 3) Injury to Personal Property, 2001CR 051225; and 4) Injury to Personal Property, 1996 CR 000582. Petitioner's application for certification was therefore subject to denial in December 2013 pursuant to 12 NCAC 10B .0204(d)(5).

6. On February 3, 2014, Petitioner's Assault on a Female conviction in 2001 CR 051218 and Injury to Personal Property conviction in 2001CR 051225 were set aside. Thereafter, the District Attorney's Office voluntarily dismissed 2001 CR 051218 and 2001 CR 051225.

7. Petitioner no longer stands convicted of a 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. Therefore, there is no genuine issue of material fact for hearing in this dispute, and Petitioner is entitled to summary judgment as a matter of law on the charge that Petitioner has been convicted of a combination of four or more Class A or Class B misdemeanor offenses. The undersigned is making no findings of fact or conclusions of law as to whether Petitioner committed the Assault on a Female offense in 2001 CR 051218, or the Injury to Personal Property offense in 2001CR 051225.

PROPOSAL FOR DECISION

Based upon the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, the undersigned recommends the Respondent take no action to deny Petitioner's application for certification based on the Assault on a Female conviction in 2001 CR 051218 and the Injury to Personal Property conviction in 2001CR 051225, which were set aside and dismissed after Petitioner submitted his application for certification through the Commission. This proposal shall in no way affect the Commission's ability to consider the possible commission of any of the above-referenced offenses that were set aside.

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 21st day of May, 2014

Craig Croom
ADMINISTRATIVE LAW JUDGE