

STATE OF NORTH CAROLINA
COUNTY OF LENIOR

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14 DOJ 02723

ARELEOUS CARLOS TILGHMAN,)
)
 Petitioner,)
)
 v.)
)
 N.C. CRIMINAL JUSTICE)
 EDUCATION AND TRAINING)
 STANDARDS COMMISSION,)
)
 Respondent.)

PROPOSAL FOR DECISION

THE ABOVE-ENTITLED MATTER was heard before the undersigned Augustus B. Elkins II, Administrative Law Judge, in New Bern, 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 September 19, 2014 which was received by the Undersigned on September 23, 2014. The Undersigned held the record open for seven additional business days for submissions from the Petitioner. Hearing nothing further from Petitioner, the record was closed on October 2, 2014.

APPEARANCES

For Petitioner:

Areleous Carlos Tilghman
1719 Institute Road
Kinston, North Carolina 28504-7939

For Respondent:

Lauren Tally Earnhardt
Attorney for Respondent
Department of Justice
Law Enforcement Liaison Section
9001 Mail Service Center
Raleigh, North Carolina 27699-9001

ISSUE

1. Did Petitioner commit the Class B Misdemeanor offense of Resisting a Public Officer?
2. Did Petitioner fail to notify Respondent of the Class B Misdemeanor charge of Resisting a Public Officer?
3. Did Petitioner fail to meet or maintain one or more of the minimum employment standards that every criminal justice officer shall demonstrate good moral character?

RULES AT ISSUE

(including but not limited to the following)

12 NCAC 09A.0103
12 NCAC 09A.0103(23)(b)
12 NCAC 09A.0204(b)(2)
12 NCAC 09A.0204(b)(3)(A)
12 NCAC 09A.0204(b)(9)
12 NCAC 09A.0205(b)(6)
12 NCAC 09A.0205(b)(1)
12 NCAC 09B.0101(3)
12 NCAC 09B.0101(8)

EXHIBITS

Respondent's Exhibits 1 (with 27 page attachment) and 2 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. 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 Revocation of Juvenile Justice Officer's Certification

letter, mailed by Respondent, the North Carolina Criminal Justice Education and Training Standards Commission, on March 13, 2014.

2. Respondent, 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 9A, to certify juvenile justice officers and to revoke, suspend, or deny such certification.

3. Petitioner was awarded probationary juvenile justice officer certification by the Respondent on June 1, 2009 and received general juvenile justice officer certification on February 19, 2013.

4. Kevin Wallace, an investigator with Respondent since January 2013, testified at the hearing. When Mr. Wallace became an investigator with Respondent, there was an open investigation into potential rule violations committed by Petitioner. On January 24, 2011, Respondent received documentation from the Department of Juvenile Justice and gathered information that Petitioner was charged on December 23, 2010 with "Possession of Less than One Half Ounce of Marijuana." On July 12, 2011, Respondent received documentation from the Department of Juvenile Justice indicating Petitioner was charged on May 27, 2011 with the offense of "Driving while License Revoked." On October 18, 2011, Petitioner pled guilty to a lesser charge of "Fail to Notify DMV of Address Change." On July 26, 2013, Respondent received documents from the Department of Juvenile Justice indicating Petitioner was charged on December 19, 2011 with "Driving while License Revoked" and "Reckless Driving." Petitioner was found not guilty of those offenses on July 9, 2013.

5. Respondent performed an Administrative Office of the Courts inquiry and learned that on December 19, 2011, Petitioner was charged with "Resisting a Public Officer." This "Resisting a Public Officer" charge was never reported to Respondent. Petitioner's "Driving while License Revoked" and "Reckless Driving" charges are class A misdemeanors and would not impact Petitioner's certification but the offense of "Resisting a Public Officer" is a class B misdemeanor, could subject Petitioner to a five year suspension under Respondent's administrative code and was required to be reported. Each of these charges originates from an incident on December 6, 2011.

6. Mr. Wallace prepared a memorandum summarizing his findings and that memorandum was presented to Respondent's Probable Cause Committee on February 20, 2014. Petitioner was present at the Committee meeting and was able to speak with the Committee members and present evidence. The Probable Cause Committee found probable cause to believe that Petitioner committed the Class B Misdemeanor offense of "Resisting a Public Officer," failed to notify Respondent of all criminal charges and lacked good moral character.

7. North Carolina State Trooper Gary Ipock testified at this hearing. He has 11 years' experience as a trooper in Lenoir County, NC. On December 6, 2011, around 2:50 p.m., Trooper Ipock, along with at least two other officers set up and conducted a license check point on Poole Road in Lenoir County. Poole Road is a two lane road about half a mile off the main highway. Officers were checking drivers for valid driver's licenses and registrations. At about

2:50 p.m. Trooper Ipock heard screeching tires and looked towards the direction of Rebecca Lane and observed a silver car quickly turn off Poole road into a driveway in what appeared to be an attempt to avoid the checkpoint. Trooper Ipock got into his patrol car and drove the 200 to 300 yards to Rebecca Lane to investigate. When he arrived at the car, the silver Mitsubishi had no occupants and no one was found in the area around the vehicle. The area was searched and no driver was found. Trooper Ipock opened the unlocked car and observed an adult size work type coat with a Dobbs School patch. He also found two different wallets. One wallet had a North Carolina Identification card with the Petitioner's name on it, and the other wallet contained credit cards in Petitioner's name.

8. Trooper Ipock continued to investigate the matter and a few days later went to Dobb's School. He spoke with Mr. Glenn Elmore, who confirmed that Petitioner is employed at Dobbs as a juvenile justice officer and that he worked on December 6, 2011. Mr. Elmore checked Petitioner's time sheets and found that Petitioner got off work between 2:30 p.m. and 2:45 p.m. on December 6, 2011. Trooper Ipock observed the area of the checkpoint was less than two miles from Petitioner's residence and actually on the way from Dobb's school to Petitioner's residence.

9. Based on his investigation Trooper Ipock went to the magistrates office and secured warrants for Petitioner's arrest for "Driving while License Revoked", "Reckless Driving" and "Resisting a Public Officer." The warrants were placed into the NCAWARE system but were not served for over one year.

10. Officer Kevin Jenkins testified at the hearing regarding the December 2010 charge of "Possession of Less than One Half Ounce of Marijuana." Officer Jenkins is employed with the Department of Public Safety in Kinston, North Carolina as a narcotics investigator and has been so employed for the past ten years. In December of 2010, the residence of 1507 George Avenue in Kinston was under investigation for being a house from which drugs were being sold. Officer Jenkins had used a confidential informant to make multiple purchases of narcotics at the residence. At 3:04 p.m. on December 23, 2010, Officer Jenkins, and other law enforcement officers executed a search warrant at the residence. The search warrant allowed officers to search the residence, curtilage and anyone on the property or curtilage. Upon Officer Jenkin's arrival at 1507 George Avenue he observed Petitioner in a dark in color juvenile justice uniform standing outside the residence standing beside a gray Mitsubishi vehicle. Petitioner and all other individuals at the residence were detained while the residence was searched. Petitioner was placed in handcuffs and had a heated exchange with Officer Jenkins' supervisor about being detained. The search of the residence resulted in marijuana and prescription pills, drug paraphernalia and U.S. currency being found. No children or females were found in the residence. A K-9 Officer ran a dog around Petitioner's vehicle and the K-9 alerted on the vehicle. Petitioner's vehicle was searched and located a small amount of marijuana in the driver's side door of the vehicle. Petitioner was cited for possession of marijuana less than one half ounce. After Petitioner was cited, Officer Jenkins was shocked to learn Petitioner was a certified juvenile justice officer. Officer Jenkins explained that the area was a known drug area and the town of Kinston had a lot of problems with that residence and no certified officer should be there unless they were performing law enforcement duties.

11. Petitioner testified at the hearing. Petitioner stated that a friend named “Bug” was driving his car on December 6, 2011 and avoided the check point. Petitioner testified that Bug had been a driver for him for approximately three years. Bug did not appear to testify on Petitioner’s behalf. Petitioner does not know where Bug resides, or his last name or phone number. Petitioner asserted that he was at a UNC Basketball game on December 6, 2011 and could not have been present in the location at the checkpoint around 2:50 p.m. In a review of the calendar, it appeared that the UNC Basketball game began at 7:00 p.m. Petitioner testified that he told his supervisor, Mr. Elmore, about all his charges stemming from the December 6, 2011 check point and does not know why one charge was left off the paperwork submitted to Respondent. Mr. Elmore did not testify at the hearing.

12. Petitioner asserted that he was at the 1507 George Avenue residence on December 23, 2010 to look for his niece, that he does not smoke marijuana and does not know how it got into his vehicle

13. Petitioner presented no witnesses at the hearing and did not offer any documents as exhibits. Petitioner’s testimony was inconsistent with the other evidence and testimony presented in the case.

CONCLUSIONS OF LAW

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

2. 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.

3. N.C.G.S § 17C-2 (3) defines “criminal justice officer” to include “juvenile justice officers.”

4. 12 NCAC 09A .0204(b)(3)(A) provides that the North Carolina Criminal Justice Education and Training Standards Commission may, based on the evidence for each case, suspend, revoke, or deny the certification of a criminal justice 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 09A.0103 as a class B misdemeanor.

5. 12 NCAC 09A .0205(b)(1) provides that when the North Carolina Criminal Justice Education and Training Standards Commission suspends or denies the certification of a criminal justice officer for the commission of a class B misdemeanor, the period of sanction shall be 5 years.

6. “Resisting a Public Officer” in violation of N.C.G.S. § 14-223 is a class B misdemeanor as defined in 12 NCAC 09A. 0103(23)(b).

7. N.C.G.S. §14-223 states that if any person shall willfully and unlawfully resist, delay or obstruct a public officer in discharging or attempting to discharge a duty of his office, he shall be guilty of a class 2 misdemeanor.

8. 12 NCAC 09A .0204(b)(9) provides that Respondent may suspend revoke or deny the certification of a criminal justice officer when the Commission finds the applicant for certification or the certified officer has failed to make either of the notifications as required by 12 NCAC 09B.0101(8).

9. 12 NCAC 09B. 0101(8) requires every criminal justice officer to notify Respondent of all criminal offenses which the officer is arrested for or charged with, pleads no contest to, pleads guilty to or is found guilty of.

10. 12 NCAC 09A .0205(b)(6) provides that when the North Carolina Criminal Justice Education and Training Standards Commission suspends or denies the certification of a criminal justice officer for failure to make either notification required by 12 NCAC 09B.0101(8), the period of sanction shall be 5 years.

11. 12 NCAC 09B .0101(3) lists the minimum standards of employment for criminal justice officers and states that: Every criminal justice officer employed by an agency in North Carolina shall:

(3) be of good moral character pursuant to G.S.17C-10 and as determined by a thorough background investigation[.]

12. 12 NCAC 09A.0205(c)(2) provides when the commission suspends or denies the certification of a criminal 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 period of sanction is failure to meet or maintain the minimum standards of employment.

13. The findings of the Probable Cause Committee of the Respondent are supported by the greater weight of the evidence. Respondent has shown by a preponderance of the evidence that Petitioner committed the class B misdemeanor of “Resisting a Public Officer.” Respondent has shown by a preponderance of the evidence that Petitioner failed to notify Respondent that Petitioner was charged with the offense of “Resisting a Public Officer.” The preponderance of the evidence presented by the Respondent supports Petitioner’s failure to meet or maintain the moral character employment standard when he was charged with the following offenses while certified: Driving while License Revoked on May 27, 2011, Driving while License Revoked on December 19, 2011, Resisting a Public Officer on December 6, 2011, and Possession of Less than One Half Ounce Marijuana on December 23, 2010.

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, Respondent's determination that probable cause existed regarding each of the three allegations set forth in Respondent's letter to Petitioner proposing suspension of Juvenile Justice Officer Certification is supported by the testimony and evidence in this case. A holding of the existence of probable cause in each of the allegations is not erroneous, is not arbitrary or capricious, and is not an abuse of discretion. 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 decisions of the Probable Cause Committee of the Criminal Justice Education and Training Standards 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 Criminal Justice Education and Training Standards Commission.

IT IS SO ORDERED.

This is the 10th day of November, 2014.

Augustus B. Elkins II
Administrative Law Judge