

STATE OF NORTH CAROLINA  
COUNTY OF GREENE

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
14DOJ03029

Joe Louis Mason Petitioner  v.  N C Sheriffs' Education And Training Standards Commission Respondent	<b>PROPOSED DECISION</b>
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THIS MATTER came on for hearing before Hon. J. Randolph Ward, on August 20, 2014, in Greenville, upon Respondent's request, pursuant to N.C.G.S. § 150B-40(e), for designation of an Administrative Law Judge to preside at the hearing of this contested case under Article 3A, Chapter 150B of the North Carolina General Statutes.

#### **APPEARANCES**

Petitioner: Robert L. White  
Attorney at Law  
PO Box 6044  
Greenville, NC 27834

Respondent: William P. Hart, Jr.  
Assistant Attorney General  
Department of Justice  
Law Enforcement Liaison Section  
9001 Mail Service Center  
Raleigh, NC 27699

#### **ISSUES**

1. Whether Petitioner has been convicted of a Class B misdemeanor within five years prior to his date of appointment?
2. Whether Petitioner has been convicted of four or more Class B and Class A misdemeanors?
3. What sanction, if any, should the Commission impose against Petitioner's application for justice officer certification?

## **STATUTES AND RULES AT ISSUE**

N.C. Gen. Stat. §§ 150B-40(e); 14-74; **14-107(d)(1)**; 150B-23(b); 15A-145(c); 17E-7(c); and 17E-9. 12 NCAC 10B .0204; 12 NCAC 10B .0103(10)(a) & (b); 12 NCAC 10B .0204(d)(2); 12 NCAC 10B.0103(2)(a); 12 NCAC 10B .0204(d)(5); and 12 NCAC 10B.0205.

**UPON DUE CONSIDERATION** of the arguments of counsel, the sworn testimony of each witness, and the documents and exhibits admitted, assessing the greater weight of the evidence from the record as a whole, and in light of the applicable law, the undersigned Administrative Law Judge makes the following:

## **FINDINGS OF FACT**

1. On March 18, 2014, Respondent North Carolina Sheriffs' Education and Training Standards Commission (hereinafter, "Respondent" or "Commission") sent Petitioner its *Notification of Probable Cause to Deny Justice Officer Certification*, with the appropriate notice of his right to this hearing, and upon Petitioner's timely his request for a contested case hearing, and the Commission's request for designation of an administrative law judge, the undersigned was assignment this matter, and the parties were given proper notice of hearing.
2. Petitioner Joe Louis Mason is a 30-year veteran of what is now the Division of Adult Correction, having retired as a Correctional Sgt. in 2005. He lives with his wife, who suffers from discord lupus, and had three heart surgeries in 2011. They are, of necessity, raising their eight-year-old granddaughter. At the time of the hearing, Petitioner had been employed by the Greene County Sheriff's office for 14 months and had passed the Detention Officer Certification course. His application for that certification through his current employer led to the present contested case.
3. The Commission has the authority, granted under Chapter 17E of the North Carolina General Statutes and administered pursuant to Title 12, Chapter 10B, of the North Carolina Administrative Code, to certify justice officers and to deny, revoke, or suspend those certifications.
4. The Commission's *Notification* addressed to Petitioner referenced the following pertinent provisions of 12 NCAC 10B .0204:
  - (d) The Commission may revoke, suspend or deny the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer has committed or been convicted of:
    - (2) a crime or unlawful act defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor within the five-year period prior to the date of appointment;

(3) four or more crimes or unlawful acts defined in 12 NCAC 10B .0103(10)(b) as Class B misdemeanors regardless of the date of commission or conviction;

(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.

The *Notification* recites as the basis for possible denial of Justice Officer Certification that Petitioner had been found “Guilty” of “Larceny [14-74],” a “class B misdemeanor;” and, that he was convicted of 23 charges of “Simple Worthless Check,” which were “considered a Class A misdemeanor, however ... the fourth and subsequent worthless check charges are considered class B misdemeanors,” per § 14-107(d)(1).

5. In 1995, Petitioner worked as a Zone Manager for Wal-Mart in Greenville, N.C. At the conclusion of his shift one evening, Petitioner realized he did not have enough money for gasoline to drive home. He took a \$25 gift card from his office to buy gas and replaced the card the next morning. However, this violated company policies, and he was charged with larceny. As a Zone Manager, Mr. Mason had direct access to \$20,000 or more of his employer’s cash register currency on daily basis, but was never charged with misappropriating anything else of value.
6. Upon the parties’ stipulation, a certified copy of the Magistrate’s Order concerning the larceny charge referenced in the Commission’s *Notification* was received into evidence, showing that the larceny charge was disposed of with a plea and verdict of “guilty,” and it was ordered that, “judgment is continued upon payment of costs” – the disposition known at law as the “prayer for judgment continued” (“PJC”). “[P]er prior agreement,” the costs of Court were remitted, and no fine was imposed. “[C]onvictions in which prayer for judgment was continued and no fines or other conditions imposed” are not “‘prior convictions’ under the Fair Sentencing Act.” *State v. Southern*, 314 N.C. 110, 110, 331 S.E.2d 688, 689 (1985); *State v. Whitfield*, 184 N.C. App. 190, 645 S.E.2d 899 (No. COA06-1097, 19 June 2007; rept. per Rule 30(e)). The primary purpose of a “PJC” entry is to carry out an agreement of the parties to a criminal case that no conviction will go on the defendant’s record. However, 12 NCAC 10B.0103(2)(a) defines “Convicted” as including “a plea of guilty” for the purpose of categorizing offenses for the Commission’s consideration. As a perhaps unintended consequence, it has been held that a “plea of no contest to class B misdemeanor, followed by trial court’s entry of **prayer for judgment continued**, was ‘conviction’ under regulations allowing for revocation of justice officer’s certification based on prior conviction within five years prior to appointment.” *Britt v. N.C. Sheriffs’ Educ. & Training Standards Comm’n*, 348 N.C. 573, 501 S.E.2d 75 (1998).
7. N.C. Gen. Stat. §14-74, “Larceny by servants and other employees,” in pertinent part, provides:

If any ... employee, to whom any money ... by his master shall be delivered safely to be kept to the use of his master, shall withdraw himself from his master and go away with such money ... **with intent to steal the same** and defraud his master thereof, contrary to the trust and confidence in him reposed by his said master... the servant so offending shall be guilty....

(Emphasis added.) “[T]he elements of larceny by employee are: (1) the defendant was an employee of the owner of the stolen goods; (2) the goods were entrusted to the defendant for the use of the employer; (3) the goods were taken without the permission of the employer; and (4) the defendant **had the intent to steal the goods or to defraud his employer**. [Cites omitted]. To establish a conviction for larceny by employee, the State must prove each of the above elements beyond a reasonable doubt.” *State v. Frazier*, 142 N.C. App. 207, 209, 541 S.E.2d 800, 801-02 (2001). On the uncontroverted facts and circumstances of record, it is found that Petitioner did not take the gift card with the intent to steal from his employer.

8. By his plea agreement to dispose of his larceny charge with a “prayer for judgment continued,” Petitioner did not intend to accept a conviction on his record or to make an admission that he had intended to steal from his employer.
9. Petitioner testified, without contradiction, that his “worthless check” convictions, between 1985 and 1990, resulted from problems with the Department of Corrections’ then-new “direct deposit” payroll system. Petitioner has not had a worthless check charge in the 24 years that have since elapsed.
10. The parties stipulated at hearing that Petitioner had two misdemeanor convictions for worthless check in Lenoir County, one in Wayne County, and the remainder in Pitt County; and that subsequent to the Commission’s March 18, 2014 *Notification* of probable cause in this matter and with the sympathetic assistance of Pitt County District Attorney, all of Petitioner’s worthless check convictions in Pitt County were expunged and Petitioner was restored, in the contemplation of law, to the status he occupied before arrest for these charges. N.C. Gen. Stat. § 15A-145(c).
11. To the extent that portions of the following Conclusions of Law include Findings of Fact, such are incorporated by reference into these Findings of Fact.

Upon the foregoing Findings of Fact, the undersigned makes the following:

#### **CONCLUSIONS OF LAW**

1. To the extent that portions of the foregoing Findings of Fact include Conclusions of Law, such are incorporated by reference into these Conclusions of Law.
2. The parties and the subject matter of this hearing are properly before the Office of

Administrative Hearings. N.C. Gen. Stat. §150B-40(e).

3. The undersigned takes notice of the relevant and applicable rules for the Commission codified in Title 12, Chapter 10B of the North Carolina Administrative Code; and, N.C. Gen. Stat. §§ 14-107, “Worthless checks,” and 14-74, “Larceny by servants and other employees.”
4. Under N.C. Gen. Stat. §§17E-7(c), 17E-9 and 12 NCAC 10B .0204(d), the Commission may deny Petitioner’s application for justice officer certification upon a finding that he has committed or been convicted of “a crime or unlawful act defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor within the five-year period prior to the date of appointment.”
5. Petitioner did not “commit” larceny within the meaning of N.C. Gen. Stat. § 14-74 or 12 NCAC 10B .0204(d). “The taker must have had the intent to steal at the time he unlawfully takes the property” to be guilty of the crime of larceny. *State v. Bowers*, 273 N.C. 652, 655, 161 S.E.2d 11, 14 (1968).
6. On September 1, 2010, Petitioner was “convicted” -- within the meaning of 12 NCAC 10B .0204(d)(2), as defined for this purpose by 12 NCAC 10B.0103(2)(a) -- of N.C. Gen. Stat. § 14-74, “Larceny by servants and other employees,” a Class B misdemeanor. *Britt v. N.C. Sheriffs' Educ. & Training Standards Comm'n*, 348 N.C. 573, 501 S.E.2d 75 (1998).
7. Petitioner has three (3) convictions for N.C. Gen. Stat. §§ 14-107, “Worthless checks,” defined in 12 NCAC 10B .0103(10)(a) as Class A misdemeanors. Together with his “conviction” for Larceny hereinabove described, Petitioner has been convicted of four or more Class B and Class A misdemeanors, within the meaning of 12 NCAC 10B .0204(d)(5).
8. The Commission may deny Petitioner’s application for certification of a justice officer. 12 NCAC 10B .0204(d). The Commission may either reduce or suspend the periods of this sanction or substitute a period of probation in lieu of revocation, in light of extenuating circumstances brought out at the administrative hearing. 12 NCAC 10B.0205.

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned offers the following:

### **PROPOSAL FOR DECISION**

In light of the extenuating circumstances brought out at the administrative hearing, including the facts underlying the convictions, particularly the “conviction” for the most serious charge, Larceny; the passage of time since the convictions, and the applicant’s good behavior during that time; and, the applicant’s honorable service as a Correctional Officer, and with the

Greene County Sheriff's office, it is respectfully recommended that the Detention Officer Certification be granted, subject to a period of probation.

**NOTICE AND ORDER**

The North Carolina Sheriffs' Education And Training Standards Commission is the agency that will make the Final Decision in this contested case. As the final decision-maker, that agency 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 pursuant to N.C. Gen. Stat. § 150B-40(e).

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

This the 6<sup>th</sup> day of November, 2014.

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J. Randolph Ward  
Administrative Law Judge