

STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
14 DOJ 04118

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AISHA CHRISTINA BURSTON, )  
 Petitioner, )  
 )  
 v. )  
 )  
 NORTH CAROLINA CRIMINAL )  
 JUSTICE )  
 EDUCATION AND TRAINING )  
 STANDARDS COMMISSION, )  
 Respondent. )

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**PROPOSAL FOR DECISION**

**THE ABOVE-ENTITLED MATTER** was heard before the undersigned Augustus B. Elkins II, Administrative Law Judge, on October 30, 2014 in Raleigh, 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 December 2, 2014 which was received by the Undersigned on December 3, 2014. The Undersigned held the record open for seven additional business days for further submissions. Receiving nothing further from Petitioner, the record was closed on December 12, 2014.

**APPEARANCES**

For Petitioner:	Aisha Christina Burston, <i>pro se</i> 2941 Millbrook Drive, Apt. 308 Raleigh, North Carolina 27604
For Respondent:	William P. Hart, Jr. Attorney for the Commission Department of Justice Law Enforcement Liaison Section 9001 Mail Service Center Raleigh, North Carolina 27699-9001

## ISSUE

Whether the certification of Petitioner Aisha Christina Burston should be suspended for committing the misdemeanor criminal offense of larceny on or about the date of February 6, 2013?

## EXHIBITS

No exhibits for Petitioner were introduced.

Respondent's Exhibits 1-2 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. On or about February 20, 2014, the Commission's Probable Cause Committee determined there was probable cause to believe that Petitioner's certification as a correctional officer should be suspended because she had committed the DAC misdemeanor criminal offense of larceny on or about February 6, 2013 in violation of N.C. Gen. Stat. § 14-72(a). By letter dated March 13, 2014 and mailed to Petitioner, the Commission informed the Petitioner of its determination. Petitioner thereafter requested an administrative hearing, and the Commission requested an administrative law judge be assigned to hear the case.

2. Officer D.M. Robinson with the Town of Garner Police Department testified at this hearing. He did not independently have an awareness of this matter but responded to questions from the incident report. According to the report, on February 6, 2013 Officer Robinson had been called to a Walmart retail store on 4500 Fayetteville Road in Garner, N.C., in response to a suspected larceny by Petitioner and an associate named Angie Leah Wilkins-Speaks.

3. Upon arriving at the store, Officer Robinson spoke with Dirul Henderson, a loss prevention officer (LPO) employed at the store. The LPO reported to Officer Robinson that he had observed the two female suspects conceal merchandise from the store while shopping there, then attempt to leave the store by passing all points of purchase. The LPO had detained the women and escorted them to his office before calling the police. The LPO further reported to Officer

Robinson that Petitioner had stolen merchandise valued at \$26.12 and Ms. Wilkins-Speaks had stolen merchandise valued at \$65.16, totaling \$91.28 in what was identified on the police investigation report as clothing and food items.

4. As of the hearing date, the LPO, Mr. Henderson, was no longer employed at the Walmart store and did not testify at this hearing. According to Respondent's counsel, the Commission attempted service of subpoenas to multiple addresses, including the home address listed on the police investigation report, in order to command the LPO's presence to testify.

5. Officer Robinson did not obtain a statement from either Petitioner or from Ms. Wilkins-Speaks. He did not talk to the suspects or ask them to provide statements. The LPO did not have statements from the suspects to give to Officer Robinson. Officer Robinson testified that Mr. Henderson is the one who divides up amounts taken and he was unaware of how that came about in this case.

6. During Mr. Henderson's time as an LPO at the Walmart store in Garner, Officer Robinson came into contact with him while investigating various shoplifting reports from the store. He believed that Mr. Henderson would not have reported separately the stolen items attributable to multiple shoplifters without cause to do so.

7. Kevin Wallace, Investigator with the Criminal Justice Standards Division testified. He identified Respondent's Exhibit 1, the proposed suspension of Correctional Officer Certification, and Respondent's Exhibit 2, the Incident/Investigation Report. No other exhibits were identified or introduced by either party.

8. According to Mr. Wallace, Petitioner's criminal charge of misdemeanor larceny in the District Court, Wake County, was subsequently dismissed after her successful completion of a first offender's program.

9. Petitioner's testimony was largely consistent with the evidence presented except that she denied having been responsible for any of the merchandise stolen from the Walmart store. According to Petitioner, a God-child of Ms. Wilkins-Speaks had accompanied the two women to the store. Petitioner was pushing a cart, in which the child was seated for most of the time they were shopping. However, the two women separated at one point, and Ms. Wilkins-Speaks took the child with her.

10. Petitioner's testimony was that she was unaware of any stolen merchandise obtained by Ms. Wilkins-Speaks when Petitioner purchased a number of food items at one of the registers, and that the merchandise later attributed to her by the LPO was clothing found on the child who was again sitting in her shopping cart by the time of checkout.

11. Ms. Wilkins-Speaks did not testify at the hearing and there was no statement or affidavit from Ms. Wilkins-Speaks.

12. Petitioner testified that she was a Correctional Officer at Central Prison and had worked for approximately two years with the Department of Public Safety. She stated that she

attended the Probable Cause Hearing and gave a statement. Petitioner testified that Ms. Wilkins-Speaks had items in her purse and that the merchandise attributed to Petitioner was clothing on the child, whom she had never met before the incident. Petitioner testified that she had not been banned from going into that Walmart Super Center. She stated that she performed community service and that her charge was dismissed.

**BASED UPON** the foregoing Findings of Fact and Conclusions of Law the Undersigned makes the following Proposal for Decision.

### **CONCLUSIONS OF LAW**

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over the parties and this contested case respectively. The parties received proper notice of the hearing in this matter. The Undersigned takes notice of all relevant and applicable rules for the Commission as contained in Title 12, Chapter 9 of the North Carolina Administrative Code.

2. 12 NCAC 09G .0504(b)(3) states the Commission may suspend the certification of a corrections officer, based on the evidence for each case, when the Commission finds the certified officer “has committed or been convicted of a misdemeanor as defined in 12 NCAC 09G .0102 after certification.”

3. It is the understanding of the Undersigned that in order to enter a first offender’s program, Petitioner admitted in the General Court of Justice in Wake County to committing the offense. Though not a conviction, a preponderance of the evidence shows that, on or about February 6, 2013, Petitioner violated 12 NCAC 09G .0102 by committing misdemeanor larceny as defined by N.C. Gen. Stat. § 14-72(a).

**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, the Undersigned holds that the Respondent has carried its burden of proof by a greater weight of the evidence, and as such Respondent has not exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by law or rule. The weight of Respondent’s evidence overbears in that degree required by law the weight of evidence of

Petitioner and as such the decisions of the Probable Cause Committee of the North Carolina 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.

A copy of the final agency decision or order shall be served upon each party personally or by certified mail addresses to the party at the latest address given by the party to the agency and a copy shall be furnished to his attorney of record. N.C.G.S. § 150B-42(a). It is requested that the agency furnish a copy to the Office of Administrative Hearings.

**IT IS SO ORDERED.**

This is the 14th day of January, 2015.

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Augustus B. Elkins II  
Administrative Law Judge