

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14DOJ04127

<p>Donald Edward Cottle II Petitioner</p> <p>v.</p> <p>N C Alarm Systems Licensing Board Respondent</p>	<p>PROPOSAL FOR DECISION</p>
---	-------------------------------------

On July 29, 2014, Administrative Law Judge J. Randolph Ward called this case for hearing in Raleigh, North Carolina.

APPEARANCES

Petitioner appeared *pro se*.

Respondent was represented by attorney Jeffrey P. Gray, Bailey & Dixon, LLP, P.O. Box 1351, Raleigh, North Carolina 27602.

ISSUE

Whether Petitioner should be denied an alarm registration permit based on Petitioner's lack of good moral character and demonstration of intemperate habits, as evidenced by a conviction of felony Accessory After the Fact to Shooting into an Occupied Dwelling.

APPLICABLE STATUTES AND RULES

Official notice is taken of the following statutes and rules applicable to this case:
N.C.G.S. §§ 74D-2; 74D-6; 74D-8; 74D-10; 12 NCAC 11 .0300.

FINDINGS OF FACT

1. Respondent Board is established pursuant to N.C. Gen. Stat. § 74D-2, *et seq.*, and is charged with the duty of licensing and registering individuals engaged in the alarm systems installation business.
2. Petitioner applied to Respondent Board for an alarm installation registration permit.

3. Respondent denied the alarm installation registration due to Petitioner's criminal record which showed the following:

A conviction in Wake County, State of North Carolina, on May 13, 1996 for felony Accessory After the Fact to Shooting into an Occupied Dwelling.

4. Petitioner requested a hearing on Respondent's denial of the alarm installation registration.
5. By Notice of Hearing dated June 9, 2014, and mailed via certified mail, Respondent advised Petitioner that a hearing on the denial of his alarm installation registration would be held at the Office of Administrative Hearings, 1711 New Hope Church Road, Raleigh, North Carolina 27609 on July 29, 2014 at 2:00pm. Petitioner appeared at the hearing.
6. Petitioner testified that in 1995 he was 19 years old and living in Apex, NC with his stepfather. On December 21, 1995 at approximately 8:30 p.m., two of his friends came to visit him at his house. They came in a car owned by one of his friends. Later, they decided to go for a drive. He told his friends that he would drive. Unbeknownst to him, the owner of the car had a gun under the backseat of the car.
7. While they were driving through a neighborhood, his friends and the owner of the car pulled the gun out from under the seat and started shooting. One of the bullets entered a home through a window. It was dark outside. The shots "startled" Petitioner, and he wrecked the car, striking a mailbox. The car came to rest in a ditch in front of a house. He backed out of the ditch and drove away from the scene.
8. When Petitioner arrived home, he told his stepfather what had happened and turned himself in to the police. The police considered him an accessory to the crime. He had a court-appointed attorney and pled guilty to felony Accessory After the Fact to Shooting into an Occupied Dwelling. Petitioner was sentenced to two years of supervised probation, six months unsupervised probation, and was ordered to pay a fine.
9. Petitioner testified that he offered to drive the car because the owner had scared him while driving the previous weekend.
10. This offense was 18 years ago. Petitioner had never been in trouble before this incident, and otherwise has a clean criminal record.
11. Petitioner is married and has five (5) children, including stepchildren.
12. His pastor, Nathan Redinger of Lifepoint Community Church, testified to Petitioner's good character. He has known Petitioner since 2011, counseled him and his current wife before their marriage, and baptized him when he accepted Christ. Pastor Redinger also knows Petitioner's wife's family.
13. Pastor Redinger is a homeowner and testified that he would trust Petitioner in his home.

14. Petitioner has worked for Speed Wire, Inc. for eight months as an installer for residential property.

CONCLUSIONS OF LAW

1. The parties properly are before the Office of Administrative Hearings.
2. Under G.S. § 74D-6(3), Respondent Board may refuse to grant an alarm installation registration if it is determined that the applicant has demonstrated intemperate habits or lacks good moral character.
3. Under G.S. § 74D-6(2), Respondent Board may refuse to grant an alarm installation registration if it is determined that the applicant has been convicted of a crime involving violence.
4. Under G.S. §§ 74D-6(2) & 74D-10(a)(4), conviction of any crime involving an act of violence is *prima facie* evidence that the applicant does not have good moral character or demonstrates intemperate habits.
5. Respondent Board presented evidence that Petitioner had demonstrated intemperate habits and lacked good moral character through conviction in Wake County, North Carolina for felony Accessory After the Fact to Shooting into an Occupied Dwelling, a crime involving violence.
6. Petitioner presented sufficient evidence to explain the factual basis for the charge, establish his good character, and has rebutted the presumption.

Based on the foregoing, the undersigned makes the following:

FINAL DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby recommends that Petitioner be issued an alarm installation registration.

NOTICE AND ORDER

The N C Alarm Systems Licensing Board 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 27th day of August, 2014.

J. Randolph Ward
Administrative Law Judge