

STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14DOJ05066

CHARLES CORNELIUS GUNNING PETITIONER, V. N C CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION RESPONDENT.	PROPOSAL FOR DECISION
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THIS CASE CAME ON FOR HEARING on December 11, 2014 before Administrative Law Judge J. Randall May, in Lillington, North Carolina. This case was heard after Respondent requested, pursuant to N.C.G.S. § 150B-40(e), 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.

APPEARANCES

Petitioner: Charles Cornelius Gunnings, *pro se*
1135 Helmsley Drive
Fayetteville, North Carolina 28314

Respondent: William P. Hart, Jr.
Attorney for Respondent
Department of Justice
Law Enforcement Liaison Section
P.O. Box 629
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ISSUES

1. Whether Petitioner knowingly made one or more material misrepresentations of any information required for certification?
2. What sanction, if any, should be imposed against Petitioner's justice officer certification?

PROPOSED FINDINGS OF FACT

1. Petitioner applied for certification as a law enforcement officer with the Laurinburg Police Department on September 13, 2013. He has not been previously certified.

2. Prior to the year 2000, Petitioner had been charged with the following offenses in the State of North Carolina, with the respective final dispositions indicated in parentheses: (1) DWI – Provisional License (Scotland Co. No. 92 CR 930) (guilty); (2) DWI (Scotland Co. No. 92 CR 931) (guilty); (3) DWI Level 2 (Pasquotank Co. No. 94 CR 1521) (guilty); (4) (M) Larceny (Pasquotank Co. No. 96 CR 816) (vol. dismissal); (5) DWI (Pasquotank Co. No. 97 CR 933) (guilty of lesser offense of Reckless Driving to Endanger); (6) (M) Simple Assault (Pasquotank Co. No. 95 CR 5264) (vol. dismissal); (7) Assault on a Female (Mecklenburg Co. No. 95 CR 53388) (vol. dismissal); (8) Assault on a Female (Mecklenburg Co. No. 95 CR 53389) (prayer for judgment); and (9) Resisting a Public Officer (Pasquotank Co. No. 99 CR 494) (vol. dismissal).

3. In his application for appointment and certification as a justice officer with the Laurinburg Police Department in or about 2013, Petitioner was required to fill out, sign, and submit a Form F-5A Report of Appointment/Application for Certification—Law Enforcement Officer. This document contains, *inter alia*, a section with the heading of “ALL APPLICANTS AND TRANSFERS READ AND COMPLETE THIS CRIMINAL RECORD SECTION.” Petitioner failed to list the following offenses: (1) DWI – Provisional License (Scotland Co. No. 92 CR 930) (guilty); (2) Assault on a Female (Mecklenburg Co. No. 95 CR 53388) (vol. dismissal); and (3) Assault on a Female (Mecklenburg Co. No. 95 CR 53389) (prayer for judgment).

4. Petitioner’s signature on the Laurinburg P.D. Form F-5A, dated September 13, 2013, indicated, among other things, his understanding and agreement that “any omission, falsification, or misrepresentation of any factor or portion of such information can be the sole basis for termination of my employment and/or denial, suspension or revocation of my certification at any time, now or later. Petitioner also attested by his signature “that the information provided above and all other information submitted by me, both oral and written throughout the employment and certification process, is thorough, complete, and accurate to the best of my knowledge.” As of the date of his Laurinburg P.D. Form F-5A, Petitioner had never previously been certified as a Law Enforcement Officer.

5. Also in support of his application for appointment and certification as a justice officer with the Laurinburg Police Department in or about 2013, Petitioner was required to fill out, sign, and submit a Form F-3 Personal History Statement. On the second page of the Form F-3 is a section headed “CRIMINAL OFFENSE RECORD AND DISCIPLINARY ACTIONS.” The questions in this section are preceded by introductory language which reads in pertinent part as follows:

NOTE: Include all offenses other than minor traffic offenses. . . .

Answer all of the following questions completely and accurately. Any falsifications or misstatements of fact may be sufficient to disqualify you. If any doubt exists in your mind as to whether or not you were arrested or charged with a criminal offense at some point in your life or whether an offense remains on your record, you should answer "Yes." You should answer "No" **only** if you have never been arrested or charged, or your record was expunged by a judge's court order.

6. Question number 47 under the criminal offense section of the Form F-3 reads: "Have you ever been arrested by a law enforcement officer or otherwise charged with a criminal offense?" In his response to this question, Petitioner checked the box indicating his answer to be "Yes." However, Petitioner failed to list (1) DWI – Provisional License (Scotland Co. No. 92 CR 930) (guilty); (2) Assault on a Female (Mecklenburg Co. No. 95 CR 53388) (vol. dismissal); (3) Assault on a Female (Mecklenburg Co. No. 95 CR 53389) (prayer for judgment); and (4) (M) Simple Assault (Pasquotank Co. No. 95 CR 5264) (vol. dismissal). This Form F-3 was signed by Petitioner and notarized on April 24, 2013. Petitioner's signature indicated his certification "that each and every statement made on this form is true and complete and I understand that any misstatement or omission of information will subject me to disqualification or dismissal."

7. Petitioner provided a notarized written statement regarding his omission of the following offense: (1) DWI – Provisional License (Scotland Co. No. 92 CR 930) (guilty). According to his written statement and his testimony at the hearing, Petitioner was unaware that the Provisional DWI offense was separate from the DWI offense for which he was charged on the same date pursuant to the same traffic stop. By a preponderance of the evidence, it is found that Petitioner's omission of the DWI – Provisional License charge was not knowingly made.

8. Petitioner also provided a notarized written statement regarding his omission of the following offenses: (1) Assault on a Female (Mecklenburg Co. No. 95 CR 53388) (vol. dismissal); and (2) Assault on a Female (Mecklenburg Co. No. 95 CR 53389) (prayer for judgment). Petitioner has stated both that he did not recall the charges and that he was told they would not appear on his record. However, according to Petitioner's own statement, he was taken to the police station at the time he was charged and he subsequently appeared in court for the matters. The preponderance of the evidence supports a finding that Petitioner did know of these charges as of when he omitted them from his Form F-3 and Form F-5 without apparently raising the subject with his hiring agency. Moreover, these charges were significant in nature and material to Petitioner's application for justice officer certification.

9. With regard to the omission on Petitioner's Form F-3 of the (M) Simple Assault offense, it was included on Petitioner's Form F-5A and therefore, by a preponderance of the evidence, was not a knowing misrepresentation.

10. Question number 11 on the Form F-8 reads: "How many tickets have you received in your driving career?" In response to this question, the officer who interviewed Petitioner wrote "3." However, Petitioner has approximately eight (8) tickets for the following offenses: (1) DWI, Civil Revocation Driver License (Scotland Co. No. 92 CR 931); (2) DWI Provisional License (Scotland Co. No. 92 CR 930); (3) Speeding, Driving While License

Revoked (Pasquotank Co. No. 97 CR 979); (4) DWI, reduced to Reckless Driving to Endanger, Civil Revocation (Pasquotank Co. No. 97 CR 933); (5) Fail to Wear Seatbelt-Driver, No Operator License (Pasquotank Co. No. 94 CR 1564); (6) DWI-Level 2, Fictitious Info to Officer, Civil Revocation (Pasquotank Co. No. 94 CR 1521); (7) Expired Registration Card/Tag, Expired/No Inspection (Cumberland Co. No. 09 CR 725531); and (8) Location of TV in Vehicle (Cumberland Co. No. 02 CR 21700).

11. Question number 12 on the Form F-8 reads: "Starting with the most recent ticket, give the year, location, violation, and disposition. This should include any tickets that were dismissed or given a prayer for judgment?" In his response to this question, the interviewing officer listed two offenses, but failed to disclose the following: (1) DWI Provisional License (Scotland Co. No. 92 CR 930); (2) Speeding, Driving While License Revoked (Pasquotank Co. No. 97 CR 979); (3) DWI, reduced to Reckless Driving to Endanger, Civil Revocation (Pasquotank Co. No. 97 CR 933); (4) Fail to Wear Seatbelt-Driver, No Operator License (Pasquotank Co. No. 94 CR 1564); (5) DWI-Level 2, Fictitious Info to Officer, Civil Revocation (Pasquotank Co. No. 94 CR 1521); and (6) Location of TV in Vehicle (Cumberland Co. No. 02 CR 21700).

12. Question 32 on the Form F-8 reads: "Describe any criminal involvement you may have in the past?" In response to this question, the interviewing officer wrote: "None beside the DWI." Also Question 35 on the Form F-8 reads: "Have you ever been arrested, detained, or charged with a crime, even if the charges against you have been dismissed?" In response to this question, the interviewing officer wrote: "Yes, DWI." As stated above, Petitioner has been charged with the following additional criminal offenses which were omitted: (1) (M) Larceny (Pasquotank Co. No. 96 CR 816) (vol. dismissal); (2) (M) Simple Assault (Pasquotank Co. No. 95 CR 5264) (vol. dismissal); (3) Assault on a Female (Mecklenburg Co. No. 95 CR 53388) (vol. dismissal); (4) Assault on a Female (Mecklenburg Co. No. 95 CR 53389) (prayer for judgment); and (5) Resisting a Public Officer (Pasquotank Co. No. 99 CR 494) (vol. dismissal).

13. Question 40 on the Form F-8 reads: "Have you ever been convicted of a crime?" The recorded response to this question was: "Yes, DWI." Nothing was listed with respect to the Assault on a Female prayer for judgment (Mecklenburg Co. No. 95 CR 53389).

14. Petitioner's Form F-8 was filled out by the Investigator, D. Williams, and not by Petitioner himself as his F-3 and F-5A forms were. With respect to the traffic citations not listed on the Form F-8, these were all included in the Form F-3 and/or the Form F-5A, and therefore the omission of these matters from the Form F-8 does not constitute a material misrepresentation. With respect to the Pasquotank County simple assault charge, this was also not a material misrepresentation for the reason that it was addressed in Petitioner's Form F-5A. However, with respect to the two 1995 assault on a female charges from Mecklenburg County, Petitioner's failure to apprise the interviewing officer for his Form F-8 was a knowing material misrepresentation by a preponderance of the evidence.

15. At the hearing in this matter, Petitioner did not deny any of the foregoing omissions from his prior application and certification documents.

16. The forms associated with Petitioner's application for employment and certification through Laurinburg P.D. were unequivocal in requesting criminal background information from Petitioner. He did not make any inquiry to Laurinburg P.D. regarding the assault on a female charges in order to address any concerns about whether these were required to be disclosed. Nor did petitioner provide a plausible reason for omitting them. In fact, there could have been no doubt for any person of ordinary intelligence that the F-5A and F-3 both sought the very information which Petitioner omitted. Therefore, Petitioner's omission of his criminal charges in association with his application for appointment and certification as a law enforcement officer with Laurinburg P.D. constitute knowing and material misrepresentations in violation of the Commission's rules.

17. Due consideration has been given to the fact the omitted charges were filed against Petitioner approximately 18 years prior to his application for certification, and that Petitioner had not previously applied for certification as a law enforcement officer. Petitioner is active in his community as a football coach and mentor to youth. He has steady employment as an assistant manager at a retail store in the Laurinburg area. Petitioner's criminal charges, including the charges for DWI, all pre-date the year 2000, and most of his charges were included on his application forms.

CONCLUSIONS OF LAW

1. The parties are properly before the Office of Administrative Hearings, 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 or Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels.

3. Pursuant to 12 NCAC 09A .0204(b)(6), the Commission may suspend or revoke the certification of a justice officer when the Commission finds the certified officer "has knowingly made a material misrepresentation of any information required for certification." The sanction for such a violation, if imposed, "shall be for a period of not less than five years" unless reduced or suspended following an administrative hearing. 12 NCAC 09A .0205(b). Alternatively, a period of probation may be imposed, instead. *Id.*

4. The threshold for the element of "knowingly" must be lower than the threshold for the violation of 12 NCAC 09A .0204(b)(7), which prohibits an applicant or certified officer from obtaining or attempting to obtain certification from the Commission "knowingly and willfully, by any means of false pretense, deception, defraudation, misrepresentation or cheating whatsoever." The intention to deceive is not necessary to be proven for violations of 12 NCAC 09A .0204(b)(6), which is charged here.

5. Given the nature of the law enforcement provision and the fact that criminal charges and convictions are highly pertinent to the investigation of possible violations of other

rules of the Commission and the assessment of an applicant's character and qualifications to obtain certification, Petitioner's misrepresentations were material.

6. By a preponderance of the evidence, Petitioner violated 12 NCAC 09A .0204(b)(6) when he knowingly omitted criminal background information during his application for appointment and employment with Laurinburg P.D. Therefore, his justice officer certification is subject to denial for a period of not less than five years.

PROPOSAL FOR DECISION

Based on the foregoing Proposed Findings of Fact and Proposed Conclusions of Law, the undersigned recommends Petitioner's application for Law Enforcement Certification be denied. The Commission may consider reducing this sanction or instead imposing a period of probation based on the evidence presented at the administrative hearing and the foregoing findings in mitigation.

NOTICE AND ORDER

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 hereby 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 20th day of January, 2015.

J. Randall May
Administrative Law Judge