

STATE OF NORTH CAROLINA  
COUNTY OF RICHMOND

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
14DOJ05504

<p>ROBERT BOYCE SHERRILL JR. PETITIONER,</p> <p>V.</p> <p>N C CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION RESPONDENT.</p>	<p><b>PROPOSAL FOR DECISION</b></p>
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This case came on for hearing on January 21, 2015 before Administrative Law Judge J. Randall May in High Point, 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: Robert Boyce Sherrill, Jr.  
437 Wiregrass Road  
Rockingham, North Carolina 28379

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

**ISSUES**

1. Does substantial evidence exist to deny Petitioner's application for certification as a correctional officer?
2. Does substantial evidence exist to suspend Petitioner's certification as a law enforcement officer?

## **RULES**

12 NCAC 09G .0206  
12 NCAC 09G .0505(c)(2)  
12 NCAC 09A .0204(b)(2)  
12 NCAC 09B .0101(3)

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 these FINDINGS OF FACT, the undersigned has weighted 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 interest, 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 the undersigned Administrative Law Judge, in that jurisdiction and venue are proper; both parties received Notice of Hearing; and Petitioner received the notification of Proposed Denial of Correctional Officer and Proposed Suspension of Law Enforcement Certification through a letter mailed by Respondent on June 11, 2014. (Respondent's Exhibit 2) Respondent's letter stated that the probable cause committee found probable cause existed to deny Petitioner's correctional officer certification and suspend Petitioner's law enforcement certification because he failed to meet the minimum standards required for correctional officers; and because he lacked good moral character based on his misconduct as the Assistant Chief of Police for the Mount Gilead Police Department.

2. The 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 9G, to certify correctional officers and to revoke, suspend, or deny such certifications.

3. The 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 law enforcement officers and to revoke, suspend, or deny such certification.

4. Petitioner held certification as a law enforcement officer with Mount Gilead Police Department from February 6, 2008 until his separation on August 30, 2011. On October 14, 2013, Petitioner applied for certification as a correctional officer with North Carolina's Division of Adult Correction. Upon receipt of this application for certification, Kevin Wallace, an investigator for

Respondent, looked into the reason Petitioner had left his employment with Mount Gilead Police Department.

5. On March 7, 2011, the Mount Gilead Police Department received a call from the Tillery Chase Adult Care Facility, which is located within the town limits of Mount Gilead. This call was placed by Ms. Cynthia Majors, the facilities Director of Operation, in response to an incident between two of the care facility's residents. Ms. Majors spoke directly with Petitioner and asked if he could go to the facility and diffuse the situation. Following this conversation, Petitioner called Officer David Crisco via telephone and informed him that he would be heading to the care facility.

6. Pamela Smith testified at the hearing. On March 7, 2011, she was training Officer Crisco when Officer Crisco received a call from Petitioner. Both Officer Crisco and Sergeant Pamela Smith proceeded to the adult care facility. After arriving, they found Petitioner talking with a resident that would later be identified as Mr. Allred. Petitioner engaged in a conversation with Mr. Allred, in which he stated something along the lines of "If I come back here you know what's going to happen." Mr. Allred replied, "I ain't done nothing wrong," or something to that effect, and, at that point, Petitioner stepped up to Mr. Allred and asked him, "what did you say?" Mr. Allred told Petitioner to "get out of his face."

7. Petitioner then grabbed Mr. Allred by the neck, placing his right hand between Mr. Allred's lower neck and upper chest, and slammed him up against the brick wall of the adult care facility. This action choked Mr. Allred to the point that he turned visibly blue, and to the point that he could not speak. Petitioner then released his hold of Mr. Allred and let him down from the brick wall. When Mr. Allred attempted to take a breath, Petitioner struck Mr. Allred right under Mr. Allred's throat in an open-handed manner with his right hand. Mr. Allred was then returned to his room.

8. Following this incident, Petitioner called the Mount Gilead Chief of Police and informed him that he had laid hands on one of the residents of the adult care facility, and that person was at the hospital claiming to have been assaulted by the police. Petitioner was advised by his Chief that he needed to charge Mr. Allred, and Petitioner went to the Magistrate's office in Troy and swore out warrants on Mr. Allred for Communicating Threats and Resist, Delay, and Obstructing a Public Official. At the hearing, Petitioner admitted that Mr. Allred did not resist, delay, or obstruct him, and did not communicate any threats and that the warrant he received was not justified; however, Petitioner did not correct this at any stage in the criminal proceedings. He did not let the district attorney's office or any judge know that the warrant against Mr. Allred was baseless and without legal justification.

9. On April 26, 2011, Petitioner was served with a misdemeanor criminal summons against him for simple assault. The summons alleged that Petitioner did "unlawfully and willfully assault and strike Franklin Allred by choking him and striking him about the head." (Respondent's Exhibit 1 attachment 7-8) The summons was secured by Agent P. M. Daly with the North Carolina State Bureau of Investigation.

10. On August 30, 2011, Petitioner entered into a deferred prosecution contract where he admitted that he committed the offense of simple assault. The terms of the contract stated that Petitioner would not be involved in any criminal conduct and that he would “surrender his law enforcement certification to the North Carolina Criminal Justice Standards Commission and show proof of compliance to the District Attorney’s office by September 9, 2011.” (Respondent’s Exhibit 1 attachment 9-10) Respondent Commission has no record of Petitioner surrendering his law enforcement certification. When pressed, Petitioner admitted that he did not remember signing any paper work surrendering his certification and that he thought his attorney handled it. Petitioner indicated that he did not care about his law enforcement certification, but instead was only concerned with his ability to be certified as a corrections officer.

11. At the hearing, Petitioner admitted to his actions, losing his temper with Mr. Allred, and striking him in the mouth. Petitioner also testified that no one at the hearing could judge him or his morals, and that he knew his career as a law enforcement officer was over the minute he struck Mr. Allred. Petitioner agrees that his striking Mr. Allred was an unlawful use of excessive force because Mr. Allred did not place his hands on Petitioner; Petitioner was not attempting to arrest Mr. Allred; and Mr. Allred was only talking to Petitioner.

12. Petitioner called no witnesses and presented no exhibits at the hearing.

### **CONCLUSIONS OF LAW**

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. The parties received proper notice of the hearing in this 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.

2. 12 NCAC 09G. 0504 provides:

(b) The Commission may, based on the evidence for each case, suspend, revoke, or deny the certification of a corrections officer when the Commission finds that the applicant for certification or the certified officer: . . .

(2) fails to meet or maintain one or more of the employment standards required by 12 NCAC 09G.0200 for the category of the officer’s certification . . .

3. 12 NCAC 09G.0206 provides: Every person employed as a correctional officer. . . shall demonstrate good moral character.

4. 12 NCAC 09G.0505 provides: (c) When the Commission suspends or denies the certification of a corrections 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 cause of sanction is: . . .

(2) failure to meet or maintain the minimum standards for certification.

5. 12 NCAC 09A.0204 provides:

(b) The Commission may suspend, revoke, or deny the certification of a criminal justice officer when the Commission finds that the applicant for certification or the certified officer: . . .

(2) fails to meet or maintain one or more of the minimum employment standards required by 12 NCAC 09B.0100.

6. 12 NCAC 09B.0101 provides: Every criminal justice officer employed by an agency in North Carolina shall: . . .

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

7. 12 NCAC 09A. 0205 provides:

(c) When the Commission suspends or denies the certification of a criminal justice officer, the period of sanction shall be for an indefinitely period, but continuing so long as the stated deficiency, infraction, or impairment continues to exist, where the cause of sanction is: . . .

(2) failure to meet or maintain the minimum standards of employment.

8. The party with the burden of proof in a contested case must establish the facts required by N.C.G.S. § 150B-23(a) by a preponderance of the evidence.

9. Petitioner has the burden of proof in the case at bar for his correctional officer certification. Petitioner has failed to show by a preponderance of the evidence that Respondent's proposed denial of Petitioner's correctional officer certification is not supported by substantial evidence.

10. Respondent has the burden of proof in the case at bar for Petitioner's law enforcement certification. Respondent has shown by a preponderance of the evidence that Respondent's proposed suspension of Petitioner law enforcement certification is supported by substantial evidence.

11. A preponderance of evidence exists to support the conclusion that Petitioner fails to meet the minimum standards required of a correctional officer because he lacks good moral character based on his unlawful use of force against Mr. Allred; securing warrants against Mr. Allred when he knew those warrants had no legal basis; and his failure to notify anyone during the criminal proceedings that the charges against Mr. Allred were unjustified.

12. A preponderance of the evidence exists to support the conclusion that Petitioner fails to meet the minimum standards required of a law enforcement officer because he lacks good moral character based on his unlawful use of force against Mr. Allred; securing warrants against

Mr. Allred when he knew those warrants had no legal basis; and his failure to notify anyone during the criminal proceedings that the charges against Mr. Allred were unjustified.

13. No evidence was offered to show Petitioner's moral character has been restored or rehabilitated.

14. The findings of the Probable Cause Committee of Respondent are supported by substantial evidence and are not arbitrary or capricious.

### **PROPOSAL FOR DECISION**

NOW, THEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned recommends that Respondent Commission deny Petitioner's correctional officer certification for an indefinite period because he fails to meet the minimum standards required for a correctional officer because he lacks good moral character. The undersigned also recommends that Respondent Commission suspend Petitioner's law enforcement certification for an indefinite period because he fails to meet the minimum standards required of all law enforcement because he lacks good moral character.

### **NOTICE AND ORDER**

The North Carolina Criminal Justice 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 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.

IT IS SO ORDERED.

This the 4<sup>th</sup> day of March, 2015.

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J. Randall May  
Administrative Law Judge