

STATE OF NORTH CAROLINA
COUNTY OF CHEROKEE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14 DOJ 05565

LAWRENCE JASON ROBERTS,)
)
 Petitioner,)
)
 v.)
)
 N.C. SHERIFFS' EDUCATION)
 AND TRAINING STANDARDS)
 COMMISSION,)
)
 Respondent.)
 _____)

PROPOSAL FOR DECISION

On November 3, 2014, Chief Administrative Law Judge Julian Mann III heard this case in Waynesville, North Carolina. This case was heard after Respondent requested, pursuant to N.C.G.S. § 150B-40(e), the 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 A. McNew, Attorney at Law
Respondent: Matthew L. Boyatt, Assistant Attorney General

ISSUES

Has the Petitioner been convicted of any combination of four (4) or more crimes or unlawful acts defined as either Class A or Class B misdemeanors pursuant to the Commissions' Rules, such that Petitioner's application for certification is subject to denial?

Did the Petitioner commit the Class B misdemeanor offenses of Stalking in September of 1994, and misdemeanor Injury to Personal Property on August 14, 2006?

FINDINGS OF FACT

1. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, both parties received notice of hearing, and that the Petitioner received by mail the proposed Denial of Justice Officer's Certification letter, mailed by Respondent Sheriffs' Commission on January 2, 2013.

2. The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter referred to as the "Commission" or "Sheriffs' Commission") has the authority

granted under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B, to certify justice officers and to deny, revoke, or suspend such certification.

3. Petitioner is an applicant for justice officer certification through the Cherokee County Sheriff's Office.

4. 12 NCAC 10B.0204(d)(5) states the Sheriffs' Commission may deny the certification of a justice officer when the Commission finds that the applicant has committed or been convicted of:

(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.

5. The Petitioner was appointed for certification as a justice officer through the Cherokee County Sheriff's Office on November 1, 2013.

6. The Petitioner testified at the administrative hearing and does not dispute that he has been convicted of four (4) misdemeanor offenses, as set out in greater detail below.

7. On August 13, 1993, Petitioner was convicted of misdemeanor possession of a malt beverage under the age of 19/20 in Cherokee County, North Carolina; Case No. 1993 CR 001139. (Respondent's Exhibit 2)

8. On July 9, 1996, Petitioner was convicted of Driving While Impaired (Level 5) in Cherokee County, North Carolina; Case No. 1996 CR 001501. (Respondent's Exhibit 3)

9. On July 9, 1996, Petitioner was also convicted of misdemeanor littering, which was associated with the above-referenced Driving While Impaired conviction, in Cherokee County, North Carolina; Case No. 1996 CR 001501. (Respondent's Exhibit 4)

10. Finally, on December 10, 1996, Petitioner was convicted of Driving While Impaired (Level 1) in Cherokee County, North Carolina; Case No. 1996 CR 002730. (Respondent's Exhibit 5)

11. Pursuant to the Commission's Rules, 12 NCAC 10B .0103, and the Class B Misdemeanor Manual adopted by the Respondent, the following of Petitioner's convictions constitute Class A misdemeanors: 1) Petitioner's Level 5 Driving While Impaired conviction, 1996 CR 001501; 2) Petitioner's littering conviction, 1996 CR 001501; and 3) Petitioner's possession of a malt beverage under the age of 19/20 conviction, 1993 CR 001139.

12. Pursuant to the Commission's Rules, 12 NCAC 10B .0103, and the Class B Misdemeanor Manual adopted by the Respondent, Petitioner's Level 1 Driving While Impaired conviction, 1996 CR 002730, constitutes a Class B misdemeanor conviction.

13. The above-referenced four (4) misdemeanor convictions occurred approximately 18 years ago. Petitioner was approximately 19 to 21 years of age at the time he committed these offenses. Petitioner regrets having committed these criminal acts and has fully accepted responsibility for his past actions.

14. Petitioner has grown considerably since his 1996 Driving While Impaired convictions. Petitioner is married and has four children residing in the marital home, ages 17, 14, 13, and 11. Being married and raising a family has changed Petitioner's life. The Petitioner no longer places himself in situations which could result in excessive drinking and drinking and driving. The Petitioner has the support of his family and is active in his community. The Petitioner has been open about his past drinking that resulted in the above-referenced criminal charges in the hopes that his children do not engage in similar activity.

15. Petitioner has been employed by the Cherokee County Sheriff's Office as a detention officer for approximately one year. Chief Deputy Joseph Wood testified at the administrative hearing. Chief Deputy Wood opined that Petitioner is a hard working, dependable officer. Chief Wood further opined that Petitioner is regarded highly in the community and that he possesses a respect for the law and for the rights of others.

16. Sheriff R.K. Lovin of Cherokee County also supports Petitioner's application for certification through the Respondent Commission. Sheriff Lovin indicates Petitioner is regarded highly in the community. Further, Sheriff Lovin believes Petitioner possesses the highest level of integrity and respect for the law. Sheriff Lovin would like to see Petitioner certified as a sworn justice officer in this State.

17. Sheriff Lovin provided a letter of support for Petitioner, which he would like the Commission to consider in rendering its decision. This letter was admitted as part of the record during the administrative hearing, as is marked as Petitioner's Exhibit 1.

18. This Court must also determine whether Petitioner committed the misdemeanor offenses of Injury to Personal Property on August 14, 2006, and misdemeanor stalking in September of 1994. Petitioner denies having committed either of these offenses.

19. The stalking matter arose out of a high school relationship between Petitioner and Melonie Elkins. Petitioner broke up with Ms. Elkins in 1996 and Petitioner believes the break up prompted Ms. Elkins to fabricate the stalking allegation. Petitioner denies stalking Ms. Elkins at any time. The undersigned finds that the evidence does not support a finding that Petitioner committed the misdemeanor offense of stalking.

20. The August 14, 2006 Injury to Personal Property allegation arose out of a family land dispute that included Petitioner's father, Daniel Roberts, and Daniel's sister, Elaine Passmore. This dispute continued for 10 years, during which a civil lawsuit was litigated and various allegations of misconduct were raised by both parties to the dispute. Petitioner denies injuring the personal property of Gail Hall on August 14, 2006. Criminal charges against Petitioner for Injury to Personal Property on the date in question were dismissed. The

undersigned finds that the evidence does not support a finding that Petitioner committed the misdemeanor offense of Injury to Personal Property on August 14, 2006.

CONCLUSIONS OF LAW

1. The parties are properly before the undersigned Administrative Law Judge and jurisdiction and venue are proper.

2. Pursuant to 12 NCAC 10B .0204(d)(5), the Commission may revoke, suspend, or deny the certification of a justice officer when the Commission finds that the applicant for certification or certified officer has committed or been convicted of:

(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.

3. The evidence presented at the administrative hearing does not support a finding that Petitioner committed the misdemeanor offense of Injury to Personal Property on August 14, 2006. The undersigned finds that Petitioner did not commit this offense on the date in question.

4. The evidence presented at the administrative hearing does not support a finding that Petitioner committed the misdemeanor offense of stalking in 1996. The undersigned finds that Petitioner did not stalk Melonie Elkins in 1994.

5. However, the preponderance of the evidence presented at the administrative hearing does establish that Petitioner has been convicted of a combination of 4 or more Class A or Class B misdemeanors, as set out in greater detail below.

6. Pursuant to 12 NCAC 10B .0103(2), “convicted” or “conviction” means and includes, for purposes of that Chapter, the entry of (a) a plea of guilty; (b) a verdict or finding of guilt by a jury, judge, magistrate, or other duly constituted, established, and recognized adjudicating body, tribunal, or official, either civilian or military; or (c) a plea of no contest, nolo contendere, or the equivalent.

7. Pursuant to 12 NCAC 10B .0205(3)(d), when the Commission denies the certification of a justice officer for a combination of 4 or more misdemeanor convictions, 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 commission or conviction of offenses as specified in 12 NCAC 10B .0204(d)(5).

8. Level 5 Driving While Impaired, misdemeanor possession of a malt beverage under the age of 19/20, and misdemeanor littering are each classified as Class A misdemeanors pursuant to 12 NCAC 10B .0103 and the Class B Misdemeanor Manual adopted by Respondent. Petitioner has been convicted of three (3) separate Class A misdemeanor offenses, as set out in Findings of Fact 7 through 9. Petitioner does not dispute this record.

9. The criminal offense of Driving While Impaired, Level 1, is classified as a Class B misdemeanor pursuant to 12 NCAC 10B .0103 and the Class B Misdemeanor Manual adopted by Respondent. The record in this case establishes that Petitioner has been convicted of the Class B misdemeanor offense of Driving While Impaired, Level 1, in Case Number 1996 CR 002730. (Respondent's Exhibit 5)

10. Petitioner has a combination of four (4) Class A or Class B misdemeanor convictions on Petitioner's record, and his application for certification is therefore subject to denial pursuant to 12 NCAC 10B .0204(d)(5).

11. However, all of Petitioner's convictions occurred approximately 18 years ago when Petitioner was between the ages of 19 and 21. Petitioner has been a law abiding citizen since that time, and Petitioner is now married and is raising a family. Petitioner has demonstrated that he is a responsible, mature adult. Petitioner has the support of the Cherokee County Sheriff's Office, who has characterized Petitioner as having the highest level of professionalism and respect for the law.

12. Pursuant to 12 NCAC 10B .0205, the Respondent may, in its discretion, reduce or suspend the period of sanction imposed for the Petitioner's record of a combination of four or more Class A or Class B misdemeanor convictions "when extenuating circumstances brought out at the administrative hearing warrant such a reduction or suspension."

PROPOSAL FOR DECISION

Based upon the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, the undersigned recommends the Respondent issue Petitioner's justice officer certification. Petitioner has matured considerably since his alcohol related offenses that occurred nearly 20 years ago. Petitioner is married and is a father of 4 children that reside within the marital home. Petitioner is regarded as having the highest level of professionalism within the law enforcement community. Further, the Petitioner has a desire to succeed in the field of law enforcement and has demonstrated the likelihood of success in this profession. Extenuating circumstances brought out at the administrative hearing justify the issuance of certification.

NOTICE

The Agency making the Final Decision in this contested case are 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 Sheriffs' Education and Training Standards Commission.

This the 4th day of December, 2014.

Julian Mann III
Chief Administrative Law Judge

