

**IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14 DOJ 08258**

PROPOSAL FOR DECISION

1

ISSUE

Has Petitioner committed or been convicted of the felony offense of Larceny by Employee thereby supporting Respondent's finding of probable cause to deny Petitioner's justice officer certification?

EXHIBITS

Petitioner's Exhibits 1-3 were introduced and admitted.

Respondent's Exhibits 1-8 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. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, both parties received notice of hearing, and Petitioner received by mail the proposed Denial of Justice Officer's Certification letter mailed by Respondent Sheriffs' Commission. (Respondent's Exhibit 1)

2. The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter referred to as the "Commission" or "Sheriffs' Commission") has the authority granted under the North Carolina General Statutes and the North Carolina Administrative Code to certify justice officers and to deny, revoke, or suspend such certification.

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

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

5. On May 28, 1998, Petitioner was charged with the felony offense of larceny by employee in violation of N.C.G.S. § 14-74 in Vance County, North Carolina, case number 1998 CR 005459. (Respondent's Exhibit 3)

6. Petitioner was a cashier at the Wal-Mart retail store in Henderson, North Carolina from 1996 until her dismissal in May of 1998. Petitioner was dismissed from Wal-Mart in May 1998 upon the accusation that she had stolen a television valued at \$500.00.

7. On or about May 28, 1998, Petitioner was at work at Wal-Mart in Henderson when she was approached by loss prevention. Petitioner was accused of stealing a television from Wal-Mart and was advised that Wal-Mart possessed video surveillance of the theft. Though she never saw the video, Petitioner admitted at that time that she stole a \$500.00 television from Wal-Mart. Petitioner made this admission both verbally and in writing. This caused Petitioner to be charged with the offense of larceny by employee and also caused Petitioner to be dismissed from Wal-Mart. Petitioner testified at this hearing that she "stupidly admitted to stealing in writing to something I did not do."

8. Petitioner asserts that she purchased the television from Wal-Mart as a gift for her mother and that she admitted to guilt in 1998 to put the matter behind her. Petitioner admitted that she would have been provided with a receipt from Wal-Mart had she purchased the television. Petitioner could not account for why she did not disclose this information to Wal-Mart in 1998 when she was accused of the theft.

9. Petitioner was allowed to enter into a deferred prosecution agreement. (Respondent's Exhibit 4) Petitioner was placed on supervised probation for one (1) year and was ordered to pay the costs of court, in addition to a community service fee for probation. (Respondent's Exhibit 4)

10. Petitioner also paid restitution to Wal-Mart. In July of 1999, Petitioner issued a money order to Wal-Mart Stores in the amount of \$500.00. (Respondent's Exhibit 5)

11. Petitioner's "Larceny by Employee" offense was dismissed following Petitioner's completion of the Deferred Prosecution Program. (Respondent's Exhibit 3 and Petitioner's Exhibit 2)

12. On April 30, 2014, Petitioner's Petition for Expunction under N.C.G.S. § 15A-145 and 146 was granted. As ordered by the Court, "any and all entries relating to the petitioner's apprehension, charge, trial or conviction and any civil revocation of his/her drivers license resulting from the criminal charge shall be expunged from the records of the court." As further stated in the Court's Order, "all law enforcement agencies, the Division of Adult Correction, the division of Motor Vehicles, and any other State or local government agency identified on Side One and on any attachment to this petition shall expunge from all official records any entries relating to the person's conviction. . ." (Petitioner's Exhibit 3)

13. Petitioner's Exhibit 1 is a letter from the Supervising Attorney of Legal Aid of North Carolina, Inc., informing Petitioner that "expunction of a criminal record means the record is destroyed and you may now truthfully indicate that the expunged charge never occurred."

BASED UPON the foregoing Findings of Fact, the Undersigned makes the following Conclusions of Law.

CONCLUSIONS OF LAW

1. In accordance with the granting of the Petition and subsequent Order of Expunction by Superior Court Judge Paul Ridgeway, any and all entries relating to the Petitioner's apprehension, charge, trial or conviction resulting from the criminal charge of Larceny by Employee has been expunged from the records of the court.
2. In accordance with the granting of the Petition and subsequent Order of Expunction by Superior Court Judge Paul Ridgeway, all law enforcement agencies and other relevant government entities have expunged from all official records any entries relating to the Petitioner's commission or conviction of Larceny by Employee.
3. No Evidence exists in any law enforcement department, district attorney's office or the General Court of Justice that Petitioner in this matter committed or was convicted of the offense of Larceny by Employee.

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 totality of all evidence, including testimony and exhibits provided at the above-captioned case, the Undersigned holds that there is no probable cause to believe that Petitioner committed the felony offense of Larceny by Employee. The Undersigned holds that the Petitioner's request for certification as a Justice Officer should be allowed.

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 Sheriffs' 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 addressed 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 19th day of August, 2015.

Augustus B. Elkins II
Administrative Law Judge