

STATE OF NORTH CAROLINA

COUNTY OF BERTIE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 DOJ 00055

RONALD CORBETT, JR.,)

Petitioner,)

v.)

NORTH CAROLINA CRIMINAL)

JUSTICE EDUCATION AND)

TRAININGSTANDARDS)

COMMISSION,)

Respondent.)

PROPOSAL FOR DECISION

This case came on for hearing on April 22, 2015 before Administrative Law Judge Donald W. Overby in Elizabeth City, 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: Ronald Corbett, Jr.
Post Office Box 884
Windsor, North Carolina 27983

Respondent: Hal F. Askins, Special Deputy Attorney General
Attorney for Respondent
Department of Justice
Law Enforcement Liaison Section
9001 Mail Service Center
Raleigh, North Carolina 27699-9001

ISSUES

Does substantial evidence exist for Respondent to revoke Petitioner's correctional officer certification for 10 years for the commission of the felony offense of Attempting to Carry Pistol Outside Home/Business?

RULES AT ISSUE

12 NCAC 09G .0504(a)
12 NCAC 09G .0505(a)(1)

BASED UPON careful consideration of the sworn testimony of the witness 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 FACTS.

In making the FINDINGS OF FACTS, the undersigned Administrative Law Judge has weighed all the evidence and has assessed the credibility of the witness by taking into account the appropriate facts 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 that the Petitioner received by certified mail, the proposed Revocation of Correctional Officer Certification letter, mailed by Respondent, the North Carolina Criminal Justice Education and Training Standards Commission (hereinafter "The Commission"), on December 3, 2014. (Respondent's Exhibit 1)

2. Respondent, 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 certification.

3. On April 6, 2014, Petitioner provided a written employee/witness statement form in which he stated that "on April 5, 2014 around 12:30 am I was asked to have a search of my vehicle. I had a registered handgun locked in the car. I have a permit to carry a concealed [sic] weapon. I was placed under arrest they state that I had an unregistered weapon." (Respondent's Exhibit 3)

4. On August 29, 2014, Petitioner provided a written employee/witness statement form in which he stated that "on April 5th 2014 the District of Columbia filed charges against me for carrying my concealed [sic] weapon. I have a registered pistol and concealed [sic] permit for my pistol in N.C. I was unaware of the gun laws in D.C. On June 13, 2014 I plead Guilty to the misdemeanor [sic] charges rather than going to trial with a felony charge. I was ordered to pay \$50.00 on each of the (3) charges and (6) months probation (unsupervised) ending on December 13th 2014." (Respondent's Exhibit 4)

5. Petitioner testified at the hearing in this matter that:

a) he had in fact travelled to Washington D.C. and on or about April 5, 2014 attempted to enter a night club while in possession of a concealed weapon, a pistol,

due to a mistaken belief that he was permitted to carry a concealed weapon in the District;

b) he was confronted upon his entry into the club and told he could not bring a weapon into the club. He voluntarily took his pistol to his car and placed it under the driver's seat;

c) he was later confronted by members of the Washington D.C. Police Department concerning his possession of a firearm and allowed the officers to retrieve his pistol from his car; and

d) he was charged by the officers with the felony violation of D.C. Code §22-4504 (Respondent's Exhibit 6), carrying a pistol on or about his person, as well as two other charges.

6. Petitioner further testified that the facts and circumstances surrounding the charges were accurately reported in a police report written by members of the Washington D.C. Police Department (Respondent's Exhibit 5), that he was represented by legal counsel before the court on the charges, and was allowed as a part of a plea bargain to plead to lesser misdemeanor charges in order to resolve all criminal charges arising from the incident. (Respondent's Exhibit 8)

7. Petitioner provided to the Commission and to the ALJ an explanation of the justification and reasoning for the plea agreement provided by his legal counsel in the form of a letter. (Respondent's Exhibit 9)

8. Based on all of the evidence presented, the Court finds that the Petitioner committed the felony offense of carrying a pistol in a place other than the person's dwelling place, place of business, or on other land possessed by the Petitioner in violation of D.C. Code §22-4504(a)(1).

CONCLUSIONS OF LAW

1. The parties are properly before the undersigned Administrative Law Judge 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 this matter. To the extent that the findings of Facts contain Conclusions of Law, or that the Conclusions or Law are Findings of Fact, they should be so considered without regard to the given labels.

3. 12 NCAC 09G .0504(a) provides that the Commission shall revoke the certification of a correctional officer when the Commission finds that the officer has committed or been convicted of a felony offense.

4. 12 NCAC 09G .0505(a)(1) provides that when the Commission revokes or denies the certification of a corrections officer for the commission of a felony offense, the period of the sanction shall be 10 years.

5. D.C. Code § 22-4504 states that “no person shall carry within the District of Columbia either openly or concealed on or about their person, a pistol, or any deadly or dangerous weapon capable of being so concealed . . . by carrying a pistol in a place other than the person’s dwelling place, place of business, or on other land possessed by the person” and that a violation is punishable by imprisonment for not more than 5 years.

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

7. 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. N.C.G.S. § 150B-29(a). The administrative law judge shall decide the case based upon the preponderance of the evidence. N.C.G.S. § 150B-34(a).

8. Respondent has the burden of proof in the case at bar. Respondent has shown by a preponderance of the evidence that Petitioner committed the felony offense of Carry Pistol Outside Home/Business.

PROPOSAL FOR DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, it is proposed that Petitioner’s correctional officer certification be revoked for a period of 10 years.

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 Criminal Justice Education and Training Standards Commission.

This the 4th day of May, 2015.

Donald W. Overby
Administrative Law Judge