

STATE OF NORTH CAROLINA  
COUNTY OF SCOTLAND

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
15DOJ00214

DEFFERSON LUVONTAE GRAHAM PETITIONER,  V.  N C CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION RESPONDENT.	<b>PROPOSAL FOR DECISION</b>
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This case came on for hearing on June 8, 2015 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:	Defferson Luvontae Graham, <i>pro se</i> 15743 Hamlet Road Gibson, North Carolina 28343
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 suspend Petitioner's correctional officer certification for three (3) years for the commission of the DAC Misdemeanor offense of assault on a female?

## **RULES AT ISSUE**

12 NCAC 09G .0102(9)(g)

12 NCAC 09G .0504(b)(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 FACTS.

In making the FINDINGS OF FACTS, the undersigned Administrative Law Judge has weighed all the evidence and has assessed the credibility of the witnesses 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 suspension letter, mailed by Respondent, the North Carolina Criminal Justice Education and Training Standards Commission (hereinafter "The Commission"), on November 19, 2014.

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 09G, to certify correctional officers and to revoke, suspend, or deny such certification.

3. Petitioner testified and admitted that he was employed as a correctional officer and had notice of the proceedings and charges against him as he had received a copy of the Proposed Suspension of Correctional Officer Certification mailed to him. (Respondent's Exhibit 1)

4. Petitioner was charged criminally with assault on a female, victim Elizabeth Graham, on offense date 7 March, 2014, in violation of N.C.G.S. § 14-33. The charges against Petitioner were voluntarily dismissed pursuant to negotiations on 28 March, 2014. (Respondent's Exhibit 3)

5. Subsequently, Respondent found probable cause to suspend Petitioner's certification as a correctional officer as a result of the *commission* of the DAC misdemeanor assault on a female in violation of N.C.G.S. § 14-33. (Respondent's Exhibit 1)

6. Deputy C.R. Smith of the Richmond County Sheriff's Office testified that he personally knew Petitioner from having previously worked with him, and that on 7 March, 2014

he was on duty and responded to a call for assistance at 545 Battle Dairy Road in Rockingham County. He responded to the residence within two minutes of receiving the call; hereupon he had to separate Petitioner and Elizabeth Flowers Graham who were or had been engaged in a domestic confrontation regarding Petitioner's attempts to exercise visitation rights with his children.

7. Ms. Graham complained of a cut to her wrist allegedly caused by Petitioner slamming a door on her wrist when he attempted to enter the home against her will. Petitioner did not reside at the residence on 7 March, 2014.

8. Deputy Smith observed a small cut on Ms. Graham's wrist. Petitioner had no injuries. In accordance with his standard procedure, Deputy Smith removed the uninjured party from the scene by requesting Petitioner to drive his vehicle to the Rockingham County magistrate's office.

9. At the magistrate's office, Petitioner was charged with the criminal offenses of assault on a female and domestic criminal trespass as shown in Respondent's Exhibit 3, as introduced into evidence herein.

10. Deputy Smith's written report of incident was identified and introduced into evidence as Respondent's Exhibit 4.

11. Petitioner offered testimony that he had gone to the residence on 7 March, 2014 to exercise visitation with his children, but when he arrived, his wife, Elizabeth Graham, from whom he is estranged, attempted to prevent him from entering the residence and slammed the door in his face. As a defensive reflex he put his hands out and caused the door to strike his wife's arm and bracelet, causing the injury to his wife.

12. Petitioner further testified that he did not reside with his wife at the time, but lived separately. When he went to court on the criminal charges he was represented by legal counsel and was advised to enter into an agreement in order to have the charges dismissed.

13. Petitioner's testimony and explanation of how the injuries to Elizabeth Graham were caused by Petitioner's "defense reflex" is not credible in light of all the evidence presented.

BASED UPON the foregoing Findings of Fact and upon the preponderance or greater weight of the evidence in the whole record, the undersigned makes the following:

### **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 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.

2. The North Carolina Criminal Justice Education and Training Standards Commission has 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 probation/parole officers and to revoke, suspend, or deny such certification.

3. Pursuant to 12 NCAC 09G .0504(b)(3), the Commission may suspend, revoke, or deny certification of a correctional officer when the Commission finds the applicant for certification or the certified officer ... has committed or been convicted of a misdemeanor as defined in 12 NCAC 09G .0102 after certification.

4. Pursuant to 12 NCAC 09G .0102(9), a “Misdemeanor” means those criminal offenses not classified under the laws, statutes, or ordinances as felonies. Misdemeanor offenses are classified by the Commission as the following as set forth in G.S. Or other state or federal law . . . (g) 14-33(c) Assault, battery with circumstances.

5. Pursuant to 12 NCAC 09G .0505(b)(1), when the Commission suspends or denies the certification of a corrections officer (including probation/parole officers), the period of sanction shall be not less than three years; however, the Commission may substitute a period of probation in lieu of suspension of certification following an administrative hearing where the cause of sanction is ... commission or conviction of a misdemeanor as defined in 12 NCAC 09G .0102.

6. A preponderance of evidence exists to support the conclusion that Petitioner committed the DAC misdemeanor offense of assault on a female by shoving an open door on her, thereby cutting her wrist with a bracelet she was wearing on 7 March 2014.

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

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. 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).

9. Petitioner has the burden of proof in the case at bar. Overcash v. N.C. Dep’t. Of Env’t & Natural Resources, 172 N.C. App 6971, 635 S.E. 2d 442 (2006).

10. Petitioner has failed to show by a preponderance of the evidence that Respondent’s proposed suspension of Petitioner’s correctional officer certification is not supported by substantial evidence.

### **PROPOSAL FOR DECISION**

NOW, THEREFORE, based on the foregoing Findings of Fact and Conclusions of Law, the undersigned recommends Respondent suspend Petitioner's correctional officer certification for a period for not less than three (3) years based upon Petitioner's commission of the DAC misdemeanor- assault on a female.

### **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.

IT IS SO ORDERED.

This the 17<sup>th</sup> day of July, 2015.

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J. Randall May  
Administrative Law Judge