

STATE OF NORTH CAROLINA
COUNTY OF IREDELL

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
FILE NO. : 15 DOJ 1032

JOSE ANTONIO PEREZ III)
)
 Petitioner,)
)
)
 VS.)
)
 NORTH CAROLINA SHERIFFS')
 EDUCATION AND TRAINING)
 STANDARDS COMMISSION)
)
 Respondent.)

PROPOSAL FOR DECISION

THIS CAUSE, coming on before the undersigned Administrative Law Judge at a noticed and scheduled contested case hearing in Charlotte, North Carolina on August 04, 2015;

The Petitioner was represented by J. Brantley Ostwalt, Jr., of the Iredell County Bar and the Respondent was represented by Lauren Talley Earnhardt of the North Carolina Attorney General's Office.

After hearing presentation of the evidence and arguments of counsel and after due and proper deliberations, the Undersigned hereby makes the following Findings of Fact, Conclusions of Law and Proposal for Decision. The Proposed Decision was submitted by Petitioner; Respondent did not submit comments for consideration. The Undersigned has reviewed the Proposed Decision and where she is in agreement it has been incorporated.

APPEARANCES

For Petitioner: J. Brantley Ostwalt, Jr.
1318 Davis Av. Suite B
Statesville, NC 28677

For Respondent: Lauren Tally Earnhardt
Assistant Attorney General
NC Dept. of Justice
PO Box 629
Raleigh, NC 27602

WITNESSES

On behalf of Petitioner: Jose Antonio Perez, III, Petitioner
Lt. A.D. Vanstory, Alexander County Sheriffs' Office

On behalf of Respondent: Diane Konopka, Deputy Director, Sheriffs' Standards Division

EXHIBITS

Petitioner offered no exhibits for admission.

Respondent's exhibit 1 was admitted.

ISSUE

Whether Petitioner's application for justice officer certification should be denied on the ground that Petitioner committed a felony when he was adjudicated delinquent as a juvenile?

FINDINGS OF FACT

1. The Petitioner is a citizen and resident of Alexander County, North Carolina.
2. The North Carolina Sheriffs' Education and Training Standards Commission (Respondent) has the authority granted under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10, Sub Chapter 10B, to certify Justice Officers as either Deputy Sheriffs or Jailers, and to deny, revoke or suspend such certification.
3. 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 Denial of Justice Officer's Certification letter, mailed by the Respondent North Carolina Sheriffs' Education and Training Standards Commission (hereinafter the "Commission") on June 12, 2012.
4. All parties properly are noticed before this Administrative Law Judge. The Office of Administrative Hearings has both personal and subject matter jurisdiction over the parties and issues raised herein.
5. The Petitioner currently is employed with the Alexander County Sheriff's Office and is assigned to the position of Detention Officer. He has worked for the Alexander County Sheriff's Office since his completion of Basic Law Enforcement Training through Catawba Valley Community College in 2013.

6. Lt. Vanstory is Petitioner's supervisor and participated in the hiring process. Petitioner listed his criminal background on his application for a position at the Alexander County Sheriff's Office. After he interviewed Petitioner, Lt. Vanstory discussed Petitioner's application with the Sheriff who agreed to hire him.

7. According to Lt. Vanstory, the Petitioner is an excellent and dedicated employee, and it is the desire of the Alexander County Sheriff's Office that he be promoted into a sworn position. He described Petitioner as having good skills to de-escalate an inmate, a good reputation and a professional manner, and he foresees future promotions for him.

8. Petitioner has applied for certification as a justice officer through the North Carolina Sheriffs' Education and Training Standards Commission.

9. During the application process, the Petitioner disclosed information regarding a juvenile delinquency proceeding surrounding an incident which occurred in Berwyn, IL, on November 04, 2003.

10. A subsequent background check confirmed that the Petitioner was adjudicated delinquent in connection with the felony offenses of "Burglary" in violation of Illinois Statute 5.0/19-1-A; "Retail Theft" in violation of Illinois Statute 5.0/16A-3-H; and "Knowingly Damage Property" in violation of Illinois Statute 5.0/21-1-1-A.

11. The Petitioner was fourteen (14) years old at the time of adjudication.

12. Respondent's Exhibit 1, introduced at the hearing in this matter, shows that the offense of Knowingly Damaging Property was Nolle Prosequi on May 06, 2004 and that the offense of Burglary was dismissed on October 13, 2005.

13. An order signed by the Honorable Richard F. Walsh, Judge of the Circuit Court of Cook County, entered in Juvenile File Number 03 JD 40331, Cook County, Illinois, states "By the Order of the Honorable Judge Richard F. Walsh On October 13, 2005 - Probation Terminated Satisfactorily - Motion To Vacate Granted - Case Closed."

14. Based upon the records obtained by Respondent from the State of Illinois, Petitioner was never convicted of a felony.

15. The Respondent has denied the Petitioner's application for certification.

16. Petitioner testified that both of his parents were drug addicts and his father was killed when he was ten years old.

17. After his probation was terminated in 2005, Petitioner moved to North Carolina to live with an Uncle and Aunt who treated him like a son, and helped him turn his life around. He

studied and earned his G.E.D., worked at Snappy Lube and later was promoted to the position of manager.

18. At the present time, Petitioner is twenty-six (26) years old, married and has a two-year-old son.

20. In a written statement, given to the Commission and dated June 1, 2014, Petitioner wrote in pertinent part:

...I want to be a positive role model for other people, and be the example that I never had growing up. Being a law enforcement officer gives me the opportunity to show others that life is about choices. I am proud of the man I have become today. Although my past is with me, I use it as a stepping stone and a reference of whom I could have been, but who I choose to be. I am a better person for the struggle that I went through. I do not use my situation as an excuse for my behavior, but allow it as an insight for the direction of where so many young men's lives are steered by way of poverty and peer pressure. This life was not for me, I made an active choice to leave and seek an honest life.

R. Ex. 1

21. Ms. Konopka testified that Petitioner made no attempt to hide or to not disclose his juvenile record.

22. North Carolina treats juvenile matters in a different manner than adult matters.

23. Since 1919, a juvenile, being a youth under the age of 16, is incapable of committing a crime and can only engage in delinquent behavior. Thomas R. Young, *North Carolina Juvenile Code: Practice and Procedure* 2003; 1919 N.C. Sess. Laws 97-3.

24. The North Carolina Juvenile Code addresses the legal effect of an adjudication of delinquency. Any adjudication that a juvenile has committed a delinquent act shall not be considered a conviction of any criminal offense and shall not cause the juvenile to forfeit any citizenship rights. N.C.G.S. §7B-2412.

25. Based upon all of the testimonial and documentary evidence offered, the Undersigned finds the Petitioner to be sincere, forthright, honest and credible in his acknowledgement of past mistakes when he was a juvenile and in his desire to be a good citizen, husband, father and responsible justice officer.

Based on the foregoing Findings of Fact, the Undersigned hereby enters the following Conclusions of Law:

CONCLUSIONS OF LAW

1. All parties properly are before this Administrative Law Judge. Both jurisdiction and venue are proper in this matter.

2. This Administrative Law Judge has the authority to make recommendations to the Respondent as it relates to Petitioner's justice officer certification through the North Carolina Sheriffs' Education and Training Standards Commission.

4. The 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.

5. 12 NCAC .0301 (a) (10) states:

Every Justice Officer employed or certified in North Carolina shall not have committed or been convicted of a crime or crimes as specified in 12 NCAC 10B .0307.

6. 12 NCAC 10B .0307 (a) (1) states:

Every Justice Officer employed in North Carolina shall not have committed or been convicted by a local, state, federal or military court of a felony.

7. 12 NCAC 10B .0204(a)(1) states that the Commission shall deny the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer has committed a felony.

8. Pursuant to 12 NCAC 10B .0103(11), "Felony" means any offense designated a felony by the laws, statutes, or ordinances of the jurisdiction in which the offense occurred.

9. 12 NCAC 10B .0204(b)(2) states that the Commission shall deny certification of a justice officer when the Commission finds that the applicant for certification fails to meet any of the certification standards required by 12 NCAC 10B .0300.

10. According to the records received from the State of Illinois, the felony charges against Petitioner as a juvenile were either nolle prosequi, dismissed or vacated.

11. Respondent's denial of the Petitioner's certification is unwarranted.

Based upon the foregoing Findings of Facts and Conclusions of Law it is hereby Ordered, Adjudged and Decreed:

PROPOSED DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned Administrative Law Judge hereby recommends that Respondent not revoke, suspend or deny the application of the Petitioner for certification through the North Carolina Sheriffs' Education and Training Standards Commission.

ORDER

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, in accordance with North Carolina General Statute 150B-36(b).

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions and proposed findings of fact and to present oral and written arguments to the agency. G.S. 150B-40(e).

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. G.S. 150B-42(a). It is requested that the agency furnish a copy to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the North Carolina Sheriffs' Education and Training Standards Commission.

This is the 23rd day of November, 2015.

Selina M. Brooks
Administrative Law Judge