

STATE OF NORTH CAROLINA
COUNTY OF ROBESON

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 DOJ 01533

HARFEL CLEMENTA DAVIS,)
)
Petitioner,)
)
v.)
)
N.C. SHERIFFS' EDUCATION)
AND TRAINING STANDARDS)
COMMISSION,)
)
Respondent.)
_____)

PROPOSAL FOR DECISION

On July 15, 2015, Administrative Law Judge Melissa Owens Lassiter heard this case in Fayetteville, 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: Alan I. Maynard
Maynard Law Firm
Post Office Box 875
Elizabethtown, North Carolina 28337

Respondent: Matthew L. Boyatt, Assistant Attorney General
NC Department of Justice
Post Office Box 629
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ISSUE

Has the Petitioner committed or 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?

Pursuant to N.C.G.S. §150B-41, the parties do hereby stipulate to the following Findings of Fact and Conclusions of Law.

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 5, 2015.

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 Bladen 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. On April 12, 1997, Petitioner was convicted of misdemeanor simple worthless check in Bladen County, North Carolina; Case No. 97 CR 000654. This single conviction is classified as a Class A misdemeanor conviction pursuant to the Commission's rules.

6. On November 26, 2001, Petitioner was charged with the misdemeanor offense of assault on a female in violation of N.C.G.S. § 14-33(c)(2) in Bladen County, North Carolina; Case No. 01 CR 051439. Petitioner does not dispute that he committed the offense of assault on a female on November 26, 2001 within the meaning of N.C.G.S. § 14-33(c)(2), by grabbing Rosalind Davis' arm during a verbal argument, thereby leaving a bruise. However, Petitioner was not convicted of assault on a female in Case No. 01 CR 051439, as the matter was dismissed by the District Attorney. Assault on a female in violation of N.C.G.S. § 14-33(c)(2) is classified as a Class B misdemeanor pursuant to the Commission's Rules.

7. The Respondent found probable cause to believe that Petitioner committed two (2) other criminal offenses, an alleged assault on a female against Petrina Chisholm on June 28, 2009, in addition to alleged communicating threats on the same date against Ms. Chisholm.

8. Petitioner denies ever communicating any threat to Ms. Chisholm and denies ever assaulting Ms. Chisholm. Petitioner was never charged criminally with assaulting or communicating a threat towards Ms. Chisholm.

9. A preponderance of the evidence supports a finding that Petitioner did not assault Petrina Chisholm on June 28, 2009.

10. A preponderance of the evidence supports a finding that Petitioner did not communicate a threat to Petrina Chisholm on June 28, 2009.

11. James A. McVicker is the Sheriff of Bladen County. Sheriff McVicker believes Petitioner is a reliable law enforcement officer that conducts himself professionally. Petitioner has the support of Sheriff McVicker, who would like to see Petitioner certified so that he may continue his service in Bladen County as a deputy sheriff. It is Sheriff McVicker's intent to continue to employ Petitioner should he be issued certification through the Respondent Commission.

12. Lieutenant David Shaw of the Bladen County Sheriff's Office appeared at the administrative hearing in support of Petitioner's application for certification. Lieutenant Shaw is of the opinion that Petitioner is a reliable and professional law enforcement officer. Lieutenant Shaw would like to see Petitioner issued certification so that he may continue to serve the citizens of Bladen County as a deputy sheriff.

13. Sergeant Warren Holder of the Bladen County Sheriff's Office also appeared at the administrative hearing in support of Petitioner's application for certification. Sergeant Holder is also of the opinion that Petitioner is a reliable and professional law enforcement officer. Sergeant Holder would like to see Petitioner issued certification so that he may continue to serve the citizens of Bladen County as a deputy sheriff.

14. Prentis Benston is the former Sheriff of Bladen County. Former Sheriff Benston has known Petitioner for over 10 years, and has characterized Petitioner as an outstanding law enforcement officer. Mr. Benston has observed that Petitioner is respected within the community for his professionalism and good work.

15. Petitioner does not dispute that he has been convicted of one (1) class A misdemeanor (simple worthless check) and that he committed one (1) Class B misdemeanor offense of assault on a female on November 26, 2001.

16. Petitioner has not committed or been convicted of 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. Petitioner's application for certification is therefore not subject to denial pursuant to 12 NCAC 10B .0204(d)(5).

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. 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.

4. Simple worthless check in violation of N.C.G.S. § 14-107(d)(1) is classified as a Class A misdemeanor pursuant to 12 NCAC 10B .0103 and the Class B Misdemeanor Manual adopted by Respondent. Petitioner has been convicted of one (1) count of misdemeanor worthless check in case number 97 CR 000654, in Bladen County, North Carolina.

5. The criminal offense of assault on a female under N.C.G.S. § 14-33 (c)(2) is classified as a Class B misdemeanor pursuant to 12 NCAC 10B .0103 and the Class B Misdemeanor Manual adopted by Respondent.

6. The record in this case establishes that Petitioner committed the offense of assault on a female on or about November 26, 2001, when Petitioner grabbed Rosalind Davis’ arm during the course of an argument.

7. Petitioner did not communicate a threat to Petrina Chisholm on June 28, 2009.

8. Petitioner did not assault Pertina Chisholm on June 28, 2009.

9. Petitioner has not committed or been convicted of 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. Petitioner’s application for certification is therefore not subject to denial pursuant to 12 NCAC 10B .0204(d)(5).

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.

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.

This the 5th day of August, 2015.

Melissa Owens Lassiter
ADMINISTRATIVE LAW JUDGE