

STATE OF NORTH CAROLINA  
COUNTY OF PERSON

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
15 DOJ 01537

Inah Latonna York Petitioner,  v.  N C Sheriffs' Education And Training Standards Commission Respondent.	<b>PROPOSAL FOR DECISION</b>
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THIS MATTER came on for hearing before Hon. J. Randolph Ward on February 26, 2016 in Raleigh, North Carolina, upon Respondent's request, pursuant to N.C. Gen. Stat. § 150B-40(e), for designation of an Administrative Law Judge to preside at the hearing of this contested case under Article 3A, Chapter 150B of the North Carolina General Statutes.

**APPEARANCES**

Petitioner: William J. Cotter  
Attorney at Law  
Durham, North Carolina

Respondent: Matthew L. Boyatt, Assistant Attorney General  
N.C. Department of Justice  
Raleigh, North Carolina

**ISSUE**

Does the preponderance of the evidence support the revocation of Petitioner's Certification as a Justice Officer due to the commission of four or more crimes or unlawful acts defined as Class A or Class B misdemeanors by the rules of the North Carolina Sheriffs' Education and Training Standards Commission?

**EXHIBITS**

Petitioner: Petitioner's Exhibit 1 was introduced and admitted.

Respondent: Respondent's Exhibits 1-5 were introduced and admitted.

**MEMORANDUM**

*Per 26 NCAC 03 .0127(c)(7)*

The parties were allowed 30 days following the closing of the hearing to submit proposed decisions and/or other arguments, and each indicated their intention to do so. However, following Petitioner's counsel's submission, counsel for Respondent noted that any issues concerning the Petitioner's convictions had been conceded, and declined to submit a separate proposed decision. Consequently, the undersigned has adopted, mostly verbatim, these findings and conclusions that both parties found acceptable, which were each supported by the evidence presented at the hearing.

**UPON DUE CONSIDERATION** of the arguments and stipulations of counsel; the exhibits admitted; and the sworn testimony of each of the witnesses, viewed in light of their opportunity to see, hear, know, and recall relevant facts and occurrences, any interests they may have, and whether their testimony is reasonable and consistent with other credible evidence; and, upon assessing the preponderance of the evidence from the record as a whole in accordance with the applicable law, the undersigned makes the following:

### **FINDINGS OF FACT**

1. The Petitioner was notified by certified mail on January 5, 2015 that the Commission found probable cause existed to believe that her justice officer's certification should be revoked. The statement of grounds in the *Notification of Probable Cause To Revoke Justice Officer Certification* states:

The authority for the proposed revocation exists in Rule .0204(d)(1) of Chapter 10B of Title 12 of the North Carolina Administrative Code which reads as follows:

*(d) The Commission may revoke, suspend, or deny the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer has committed or been convicted of:*

*(1) a crime or unlawful act defined in 12 NCAC 10B.0103(10)(b) as a Class B misdemeanor which occurred after the date of appointment; and,*

Facts and circumstances exist to show that on or about January 5, 2007, Petitioner committed the Class B misdemeanor offense of "Sell/Give MTBV/U-WN to < 21" in violation of North Carolina General Statute 18B-302(a)(1), when she unlawfully and willfully did sell a malt beverage to a person who at the time was less than 21 years old.

Additional facts and circumstances exist to show that on or about August 20, 2013, the Petitioner committed the Class B misdemeanor offense of "Sell F-WN/LQ/MIX BEV to < 21" in violation of North Carolina General Statute 18B-302(a)(2), when she unlawfully and willfully did sell spirituous liquor to a person who at the time was less than 21 years old.

You are further notified that the Commission has found probable cause to exist to believe that Petitioner's justice officer certification should be revoked pursuant to Rule .0204(d)(5) of Chapter 10B of Title 12 of the North Carolina Administrative Code which reads as follows:

*(d) The Commission may revoke, suspend or deny the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer has committed or been convicted of:*

*(1) any combination of four or more crimes or unlawful acts defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor regardless of the date of commission or conviction.*

Facts and circumstances exist to show that ... you were convicted of the following Class A misdemeanor offenses.

**Wake County**

1989CR 079680      Worthless Check [14-107]  
Disposition: 05/30/1990 - Guilty

1989CR 066521      Worthless Check [14-107]  
Disposition: 11/14/1989 - Guilty

1985CR 057169      Assault and Battery [14-33(a)]  
Disposition: 10/30/1985 - Guilty

**Franklin County**

2005CR 050519      Simple Worthless Check [14-107(d)(1)]  
Disposition: 03/28/2005- Guilty

Res. Ex. 1.<sup>1</sup>

2. Petitioner has been employed as a Durham County Detention Officer for 19 years. She was a single parent when she began working with the Durham County Sherriff's Department, and is now raising a grandchild by herself. Petitioner frequently worked two or three jobs to make ends meet, including jobs working nights at a convenience store and working at an ABC Store in Durham, North Carolina.

3. Petitioner stipulated to the fact that she committed the Class B misdemeanor of selling malt beverage to a person under the age of 21 years old on or about January 5, 2007 when she was working the night shift at a convenience store. She testified that she was very tired at the time and would not have sold the malt beverage if she had been aware that the person was under the age of 21 years old.

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<sup>1</sup> The "issued" dates of the three Wake County worthless checks alleged Respondent's *Notification* were November 23, 1989, October 3, 1989 and August 31, 1985, respectively. The "offense date" alleged for the worthless check charge in Franklin County was December 29, 2004.

4. Petitioner also stipulated to the fact that while working for an ABC Store in Durham, North Carolina on or about August 20, 2013 she sold an alcoholic beverage to a person under the age of 21 years old. She stated that she did not have her glasses at the time and that she looked at the person's license and mistakenly thought the person was over the age of twenty-one.

5. Petitioner stipulated to the fact that she was convicted of two worthless checks in Wake County in 1989, and convicted of assault and battery when she had an altercation with another female when they were both 18 years old in 1985.

6. Petitioner stipulated to the fact that in 2005 she was convicted of worthless check in Franklin County. Petitioner testified that at the times that she wrote worthless checks, she thought she had sufficient funds in her checking account.

7. A statement from Christopher Gillette, manager of the Guess Road ABC Store, dated February 22, 2016 was admitted into evidence as Petitioner's Exhibit 1. In essence, Mr. Gillette stated that Petitioner has worked with him for the past three years, and that he was impressed with her strong work ethic, dependability and honesty. He further stated that she took her job seriously, checked ID's of anyone who appeared to be under the age of 30 years old, and did not hesitate to refuse to sell to anyone who had been drinking. Mr. Gillette further stated that Petitioner always conducted herself in a professional manner, that large sums of cash were routinely handled by her and there were never any discrepancies, and that her pleasant demeanor while working with the public was appreciated by her customers and coworkers alike. He stated that he was disappointed when she said that she would no longer be working at the ABC store.

8. Staff Sergeant McQuaig testified that she was employed as a Detention Officer with the Durham County Sheriff's Department, that she was Petitioner's supervisor, and that Petitioner was honest, dependable, trustworthy and a valued employee with the Durham County Sheriff's Department.

9. Captain Barnes testified that she was employed as a Detention Officer with the Durham County Sheriff's Department, and that she had been Petitioner's previous supervisor for a number of years. Captain Barnes stated that Petitioner was dependable, honest and a trusted employee with the department.

10. Captain Kornegay testified that she was employed as a Detention Officer with the Durham County Sheriff's Department and was in Petitioner's chain of command. She further testified that Petitioner was a valued member of the Sheriff's Department and that she was trustworthy and dependable.

11. Major Couch testified that he was employed as a Detention Officer with the Durham County Sheriff's Department, had known Petitioner for many years, and concurred with previous witnesses' description of Petitioner as honest, trustworthy, dependable and a valuable member of the Durham County Sheriff's Department.

12. Witnesses attested to the fact that there is a shortage of Durham County Detention Officers, and that the general sentiment of people involved in the work of the Department was that they would like very much for Petitioner to continue in her position as a Durham County Detention Officer.

Based upon the foregoing Findings of Fact, the undersigned makes the following:

### **CONCLUSIONS OF LAW**

1. That the preponderance of the evidence in this case supports the conclusion that Petitioner did sell alcohol to an underage person on January 5, 2007 when she was working a second job at a convenience store, and that she did sell alcohol to an underage person on August 20, 2013 when she was working a second job in a Durham ABC Store.

2. The preponderance of the evidence supports the conclusion that Petitioner was convicted of worthless checks in 1989 in Wake County, a simple worthless check in 2005 in Franklin County and that when she was 18 years old she was convicted of assault and battery while fighting with another 18-year-old female in 1985.

3. The preponderance of the evidence supports the conclusion that, except for the worthless check conviction in 2005 and the sale of alcohol to an underage person in 2007 and in 2013, the Durham County Sheriff's Department was aware of all other convictions that Petitioner had when she applied for and was hired to be a Durham County Detention Officer.

4. The preponderance of the evidence overwhelmingly supports the conclusion that, as of the date of this hearing, Petitioner is a person of excellent character, is trustworthy, honest and a valuable employee as a Durham County Sheriff's Detention Officer.

5. The Commission may substitute a period of probation in lieu of revocation of certification based on facts ascertained in an administrative hearing. "This authority to reduce or suspend the period of sanction may be utilized by the Commission when extenuating circumstances brought out at the administrative hearing warrant such a reduction or suspension." 12 NCAC 10B .0205.

### **PROPOSAL FOR DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law and pursuant to 12 NCAC 10B .0204(a)(1) & (b)(2), the undersigned hereby finds that the decision of the Commission to sanction Petitioner is substantiated by the evidence, and therefore AFFIRMED.

In light of Petitioner's sterling performance and reputation as a detention officer, and other extenuating circumstances brought forward by the testimony at the hearing, the undersigned respectfully proposes that the Commission substitute a period of six (6) months' probation in lieu of revocation of Petitioner's Justice Officer Certification.

**NOTICE AND ORDER**

The North Carolina Sheriffs' Education and Training Standards Commission is the agency that will make the Final Decision in this contested case. As the final decision-maker, that agency 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 pursuant to N.C. Gen. Stat. § 150B-40(e).

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.

**IT IS SO ORDERED.**

This the 16th day of May, 2016.

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J Randolph Ward  
Administrative Law Judge