

STATE OF NORTH CAROLINA
COUNTY OF SAMPSON

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 DOJ 03886

<p>Nathaniel Shayne Hobbs, Petitioner,</p> <p>v.</p> <p>N C Sheriffs' Education And Training Standards Commission, Respondent.</p>	<p style="text-align: center;">PROPOSAL FOR DECISION</p>
--	---

THIS MATTER came on for hearing before Hon. J. Randolph Ward on October 15, 2015 in Fayetteville, 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: Melissa I. Hales, Attorney
Law Offices of Melissa I. Hales, PLLC
Clinton, North Carolina

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

ISSUE

Is Respondent's proposed denial of Petitioner's application for certification as a justice officer on the grounds that Petitioner knowingly made material misrepresentations on applications for certification to the N.C. Criminal Justice Education and Training Standards Commission and the N.C. Sheriffs' Education and Training Standards Commission supported by a preponderance of 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, including adoption of facts on which both parties agree in paragraphs 1 through 8:

FINDINGS OF FACT

1. The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter, "Respondent" or "Sheriffs' Commission") has the authority granted under Chapter 17E of the North Carolina General Statutes, and Title 12, Chapter 10B of the North Carolina Administrative Code, to certify justice officers, and to deny, revoke, or suspend such certification.

2. 12 NCAC 10B .0204(c)(1) and (2) provides that the Sheriffs' Commission may deny justice officer certification when the Commission finds that the applicant has:

(1) knowingly made a material misrepresentation of any information required for certification or accreditation from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission; or

(2) knowingly and designedly by any means of false pretense, deception, defraud, misrepresentation, or cheating whatsoever, obtained or attempted to obtain credit, training or certification from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission.

3. Petitioner earned his high school diploma in May 2001. He subsequently attended Wayne County Community College for four (4) months for Basic Law Enforcement Training ("BLET") in 2011, and graduated with a BLET certificate in December 2011. (Respondent's Exhibit 12.) Petitioner applied to be a deputy sheriff or a detention officer with the Sampson County Sheriff's Office in December 2013, and that Office was the "appointing agency" for his application to the Respondent for justice officer certification.

4. Petitioner's criminal record involves four episodes in his late teens and early twenties. On October 12, 2001, Goldsboro police charged Petitioner with possession of an open container in a motor vehicle and with underage possession of a malt beverage. (Respondent's Exhibit 3, Case No. 2001 CR 010395.) Petitioner was 18 years of age at the time. Petitioner recalls having attended court and to entering a plea of guilty to the charge of underage possession of a malt beverage, and that the district attorney dismissed the possession of a malt beverage and a motor vehicle charge.

5. On February 23, 2005, at the age of 21, Petitioner was charged with two (2) counts of "solid waste violations." Petitioner testified that, at the time, he was living in a rural area where there was no trash pickup. Petitioner discarded two bags of garbage outside, which resulted in these charges by the Wayne County Sheriff's Office. (Respondent's Exhibit 4, Case No. 2005 CR 001642.) Petitioner recalls going to court for the solid waste violations with photographs showing he had cleaned up the garbage, and pleading guilty to both counts before a District Court judge. The judge entered a prayer for judgment continued upon payment of costs.

6. On May 19, 2006, at the age 22, Petitioner was charged by Goldsboro police with disorderly conduct. (Respondent's Exhibit 5, 2006 CR 053700.) Petitioner admitted to interfering

with police responding to a disturbance. When ordered to disperse by police, Petitioner refused, and was arrested. Petitioner testified that he was required to go to court for this offense as well. Petitioner met with an assistant district attorney on the assigned court date, and a voluntary dismissal of the charge was entered.

7. Petitioner's most recent arrests, on August 12, 2006, at the age of 23, were for assault with a deadly weapon, communicating threats, second degree trespass, simple assault, and communicating threats. (Respondent's Exhibit 6, Case Nos. 2006 CR 055907 and 2006 CR 055882.) Petitioner testified that these five charges resulted from an altercation that occurred between Petitioner and his friends after they had been drinking. Petitioner opined that he was required to use a knife to defend himself in the fight. He recalled going to court, and that the charges were voluntarily dismissed at his first court appearance, based on the desire of the prosecuting witnesses to drop the matter.

8. Petitioner previously applied for certification through the North Carolina Criminal Justice Education and Training Standards Commission (hereinafter "CJ Commission") in 2012 when he sought employment with the Pikeville Police Department. The Petitioner completed the CJ Commission's "Report of Appointment/Application for Certification for Law Enforcement Officer," Form F-5A (LE) ("F-5A Form") on December 8, 2012, as a part of that employment application process. The F-5A Form requires applicants to list all criminal charges, regardless of the date of the offense or the disposition of the case. It asks applicants to disclose all "Offenses Charged," the "Date of Offense," and the "Disposition of Case and Date." On that form, Petitioner checked the block indicating that he had "No Criminal Charges other than Minor Traffic Offenses," and initialed this response. (Respondent's Exhibit 9.) On the "Personal History Statement" portion of this application, Petitioner disclosed only his convictions for "possession [of an] open container" of alcohol when he was 18, and a speeding ticket in 2008. (Respondent's Exhibit 10.) None of the other arrests listed above were disclosed to the CJ Commission, although Petitioner admitted having appeared in court for each of them.

9. Petitioner attested that the information provided on Form F-5A was "thorough, complete and accurate" with his signature immediately below the portion of the form for listing "any and all criminal charges regardless of the date of offense and disposition (to include dismissals)" Above the applicant's signature line, the form cautioned that "any omission, falsification or misrepresentation ... can be the sole basis for termination of my employment and/or denial, suspension or revocation of my certification at any time." Petitioner testified he signed the form, but does not recall reading the attestation paragraph above his signature. Petitioner was not rushed to complete the Form F-5A, and that section of the form is uncomplicated. He understood his obligation to disclose his history of criminal charges to the CJ Commission. In light of the number of criminal charges he had, arising on four different occasions, the fact that he left this space on the Form F-5A wholly blank evidences a knowing misrepresentation of specific material facts.

10. Petitioner completed the "Personal History Statement" portion of the CJ Commission's application on September 4, 2012. Question No. 47 again asked Petitioner to disclose whether or not he "had ever been arrested ... or otherwise charged with a criminal offense," and if so, to provide the offense charged, the charging law enforcement agency, the date

of the offense, and the disposition of the matter. The instructions advise applicants that, “If any doubt exists in your mind as to whether you were arrested or charged with a criminal a criminal offense ... you should answer ‘Yes.’” Petitioner disclosed only a speeding ticket and conviction of an alcohol offense in his youth. (Respondent’s Exhibit 10, p.11.) He recalls that he completed this form at his home. He signed his Personal History Statement before a Notary.

11. During the Mandated Background Investigation in December 2012, on behalf of the Pikeville Police Department, an investigator interviewed the Petitioner. His answers are reflected in the “Applicant Interview Questions” section of the Mandated Background Investigation form. (Respondent’s Exhibit 11, pgs. 17-33.) He was asked whether he had ever “committed an illegal act” since age 16, no matter how trivial, whether he had been arrested or detained, or issued a criminal summons to appear in court, and whether he had ever been convicted of crime. Petitioner disclosed only his underage drinking at age 18 in response to these questions. Petitioner knowingly omitted his other criminal charges, citations, and arrests listed above. (Respondent’s Exhibit 11, pgs. 21-22.)

12. Petitioner also gave contradictory statements about his use of marijuana. On the September 4, 2012 Personal History Statement, Question No. 44 asks, “Have you ever used marijuana?” Petitioner checked “No.” (Respondent’s Exhibit 10, p.11.) However, when Petitioner was interviewed in December 2012, and was asked about drug use, Petitioner he disclosed to the investigator doing the background check for the Pikeville Police that he had used marijuana when he was 16 years old. (Respondent’s Exhibit 11, p.23.) On December 10, 2013, Petitioner completed the Personal History Statement submitted to the Sheriffs’ Commission when he sought employment with the Sampson County Sheriff’s Office. Question No. 39 in this form asks, “Have you ever used any illegal drugs including but not limited to marijuana ... even one time use or experimentation?” Petitioner answered “No” to question No. 39. (Respondent’s Exhibit 12, p.11.)

13. A preponderance of the evidence presented at the hearing of this matter shows that the Petitioner knowingly misrepresented facts or failed to disclose information when he knew that he had a duty to disclose it, as outlined above; that these facts were material to the inquiries of the Respondent and the JC Commission; and, that Petitioner knew that these agencies relied upon his answers to their specific inquiries in deciding whether to grant law enforcement certifications, and required truthful answers as a condition for granting such certifications.

14. On April 2, 2015, the Sheriff’s Commission issued a Notification of Probable Cause to Deny Justice Officer Certification to the Petitioner. The Petitioner timely requested a contested case hearing before the Office of Administrative Hearings to appeal that determination. The parties were properly served with notice of hearing, and appeared as noticed, with counsel, and without objection, and participated in the hearing.

Upon the foregoing Findings of Fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. The parties and the cause are properly before the Office of Administrative Hearings, at the initiative of the respondent N.C. Sheriffs' Education and Training Standards Commission. N.C. Gen. Stat. § 150B-40(e).

2. The Petitioner has the burden of proving by a preponderance of the evidence that the Respondent erroneously or improperly proposed to deny Petitioner's application for certification. N.C. Gen. Stat. §§ 150B-29(a). Petitioner has failed to show by a preponderance of the evidence that Respondent's proposed denial of justice officer certification is not supported by substantial evidence.

3. 12 NCAC 10B .0204(c)(1) and (2) states, in pertinent part, that the Sheriffs' Commission may deny the certification of a justice officer when the Commission finds that the applicant has:

(1) knowingly made a material misrepresentation of any information required for certification ... from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission; or

(2) knowingly and designedly by any means of ... misrepresentation ... obtained or attempted to obtain ... certification from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission.

4. Petitioner knowingly made material misrepresentations of information required to be disclosed to the CJ Commission and to the Sheriffs' Commission for the purpose of obtaining certification within the meaning of 12 NCAC 10B .0204(c)(1) and (2).

5. Petitioner's application for certification is subject to denial for a period of not less than five (5) years due to material misrepresentation of information required for certification from the Commission. 12 NCAC 10B .0205(2)(b) and (c).

Upon the foregoing Conclusions of Law, the undersigned respectfully offers the following:

PROPOSAL FOR DECISION

The undersigned recommends that the North Carolina Sheriffs' Education and Training Standards Commission deny the Petitioner's application for certification for a period of five (5) years.

NOTICE

The North Carolina Sheriffs' Education and Training Standards Commission will make the Final Decision in this contested case, and 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 Sheriffs' Commission. N.C.G.S. § 150B-40(e).

IT IS SO ORDERED.

This the 21st day of January, 2016.

J. Randolph Ward
Administrative Law Judge