

STATE OF NORTH CAROLINA
COUNTY OF BERTIE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 DOJ 03887

Dana Lee Ellis, Petitioner, v. N C Sheriffs' Education and Training Standards Commission, Respondent.	PROPOSAL FOR DECISION
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THIS MATTER comes before the undersigned Augustus B. Elkins II, Administrative Law Judge, 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. The parties have reached agreement and jointly submitted Findings of Fact and Conclusions of Law, and requested that this Tribunal issue a Proposal for Decision and recommendation to the Commission based on those stipulations agreed to by the parties.

The Undersigned finds upon review of all matters in the record and upon the joint submission of Petitioner and Respondent, that the Stipulated Findings of Fact and Stipulated Conclusions of Law are reasonable.

APPEARANCES

For Petitioner: Ernest L. Conner, Esq.
P.O. Box 7384
Greenville, North Carolina 27835

For Respondent: Matthew L. Boyatt, Assistant Attorney General
N.C. Department of Justice
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Raleigh, North Carolina 27699-9001

ISSUES

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?

Did Petitioner knowingly make a material misrepresentation of information required for certification on his March 22, 2013, Personal History Statement?

Exhibits Offered By Petitioner

The following exhibits for Petitioner have been admitted into the record by stipulation of the parties:

1. Order of Voluntary Dismissal in State v. Dana Lee Ellis, Martin County File Number 83-CR-00170.
2. Order in State v. Dana Lee Ellis, Martin County File Number 86-CR-03214
3. Order of Voluntary Dismissal in State v. Dana Lee Ellis, Tyrrell County File Number 96-CR-00810.
4. Continuing Education Certificates from Pitt Community College.
5. Miscellaneous Correctional Officer Training Certificates.

STIPULATED 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 North Carolina Sheriffs' Education and Training Standards Commission on March 26, 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 detention officer certification through the Bertie County Sheriff's Office.

4. 12 NCAC 10B .0204(c)(1) and (2) provides 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 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.

5. Petitioner completed an F-3 Personal History Statement on March 22, 2013, in furtherance of his application for certification through Bertie County. Petitioner was 53 years of

age at the time he completed the F-3. In that Personal History Statement, Petitioner disclosed his four driving while impaired convictions, fishing without a license, and transporting alcohol with a broken seal conviction, and other traffic violations. However, Petitioner inadvertently failed to disclose that he had been convicted of misdemeanor assault in 1986, and Petitioner therefore omitted this information from the 2013 Personal History Statement. Petitioner's accidental omission of this conviction does not constitute a violation of 12 NCAC 10B .0204(c)(1) or (2). Petitioner's omission on the F-3 occurred approximately 28 years after the conviction, and Petitioner had forgotten about this misdemeanor at the time he completed the form.

6. There is insufficient evidence to establish that Petitioner made a material misrepresentation of information required for certification on the 2013 F-3 Personal History Statement within the meaning of 12 NCAC 10B .0204(c)(1) and/or (c) (2).

7. 12 NCAC 10B .0204(d)(5) provides 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.

8. The Petitioner does not dispute that he has been convicted of a combination of 4 or more misdemeanor offenses, such that his application for certification is subject to denial pursuant to 12 NCAC 10B .0204(d)(5). Petitioner takes full responsibility for his prior unlawful conduct and regrets having made poor decisions as a young adult.

9. Petitioner remains convicted of the following 4 Class A and/or Class B misdemeanor offenses:

- i. Case No. 71772 (1984) DUI, Fulton County, Georgia (Class A misdemeanor);
- ii. 1986CR003214, Misdemeanor Assault Inflicting Serious Injury, in which a prayer for judgment upon payment of costs was entered following Petitioner's plea of responsible (Class B misdemeanor conviction);
- iii. 1996CR001380, DWI level 5 (Class A misdemeanor conviction); and
- iv. 2000CR000113, DWI level 2 (Class B misdemeanor conviction).

10. A preponderance of the evidence presented at the administrative hearing establishes that Petitioner has been convicted of a combination of four or more class A or class B misdemeanor offenses such that his application for certification is subject to denial pursuant to 12 NCAC 10B .0204(d)(5). However, pursuant to 12 NCAC 10B .0205, the Commission has the authority to issue a lesser sanction than denial of certification where extenuating circumstances warrant such a lesser sanction.

11. Petitioner is gainfully employed with the Bertie Martin Regional Jail where he has been employed since April of 2013. Petitioner's supervisor, Bertie Martin Regional Jail Administrator Craig Freidman considers Petitioner a valued employee, providing valuable services as a detention officer for the citizens of Bertie and Martin counties.

12. Petitioner was previously employed as a correctional officer for the Bertie Correctional Institute from 2006 until 2012. Petitioner has more than 10 years as a correctional officer. At Bertie Correctional Institute, Petitioner was a member of the Prison Emergency Response Team.

13. Petitioner has more than 300 hours training in areas important to and relevant to Petitioner's employment as a correctional officer. Petitioner's training and experience enables Petitioner to better serve his community and the State as a correctional officer.

14. Petitioner provides volunteer services to his community, and has a good reputation in his community.

STIPULATED CONCLUSIONS OF LAW

1. The parties are properly before the undersigned Administrative Law Judge and jurisdiction and venue are proper.

2. 12 NCAC 10B .0204(c)(1) and (2) provides 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 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 has not made a material misrepresentation on his March 22, 2013, Bertie County F-3 Personal History Statement within the meaning of 12 NCAC 10B .0204(c)(1) and/or (c) (2). Petitioner's failure to disclose his 1986 Georgia assault conviction arose out of mistake. Petitioner had forgotten about this 28-year-old offense at the time he completed the 2013 F-3.

4. 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 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. 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.

6. Pursuant to 12 NCAC 10B .0205(3)(d), when the Commission denies the certification of a justice officer, the period of sanction shall be for an indefinite period, but continuing so long as the stated deficiency, infraction, or impairment continues to exist, where the cause of sanction is commission or conviction of offenses as specified in 12 NCAC 10B .0204(d)(5).

7. Petitioner has been convicted of a combination of 4 or more offenses classified as either Class A or Class B misdemeanors pursuant to the Commission’s rules, as set out above in Finding of Fact Number 9. Petitioner does not dispute that these misdemeanor convictions remain on his record. Petitioner’s application for certification is therefore subject to denial pursuant to 12 NCAC 10B .0204(d)(5).

8. However, pursuant to 12 NCAC 10B .0205, the Commission has the authority to issue a lesser sanction than outright denial of certification where extenuating circumstances warrant a lesser sanction.

BASED UPON the above Stipulated Findings of Fact and Stipulated Conclusions of Law, the Undersigned holds the following Proposal for Decision is supported by the record in this case.

PROPOSAL FOR DECISION

Based upon the foregoing and pursuant to 12 NCAC 10B .0205, the Undersigned recommends Petitioner’s application for certification be approved. Petitioner’s convictions occurred over 16 years ago and were primarily alcohol related. Petitioner has since made a commitment to better serve his community through various civic activities and does not appear to pose a risk of reoffending in the future. Petitioner has the support of the Bertie County Sheriff’s

Office and is a valued detention officer. Upon issuance of certification, Petitioner shall remain in compliance with all rules established by the Commission and shall not engage in unlawful activity.

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.

IT IS SO ORDERED.

This the 1st day of November, 2016.

Augustus B Elkins II
Administrative Law Judge