

STATE OF NORTH CAROLINA
COUNTY OF MOORE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 DOJ 05259

<p>LARRY THOMPSON PETITIONER,</p> <p>v.</p> <p>N C SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION RESPONDENT. RESPONDENT.</p>	<p>PROPOSAL FOR DECISION</p>
------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------

On November 19, 2015, Administrative Law Judge J. Randall May heard this case in High Point, 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: Larry Thompson, *Pro Se*
651 Union Church Road
Carthage, North Carolina 28327

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

ISSUE

Has the Petitioner 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?

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 July 2, 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 Lee County Sheriff's Office.

4. Prior to seeking certification from the Sheriffs' Commission, Petitioner honorably served in the United States Army from 1979 until 1992. Petitioner held the rank of Sergeant at the time of Petitioner's honorable discharge from the Army. Petitioner left the army in 1992 and pursued employment with the Fayetteville Police Department. However, Petitioner was only employed by Fayetteville PD for approximately 60 days. Petitioner then worked for the Division of Adult Corrections as a corrections officer from approximately 2012 through 2014. Petitioner is now applying for detention officer certification through the Sheriffs' Commission. Petitioner has not previously held certification through the Sheriff's Commission.

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

6. The evidence presented at the administrative hearing establishes that Petitioner has been convicted of a combination of 4 or more criminal offenses, such that his application for certification is subject to denial pursuant to 12 NCAC 10B .0204(d)(5).

7. Petitioner's driving history reveals multiple driving while impaired and driving while license revoked convictions. On September 30, 1983, Petitioner was charged with Driving While Intoxicated in Robeson County, North Carolina, in case number 1983 CR 015762. On November 3, 1983, Petitioner was convicted of this Driving While Intoxicated offense. (See Respondent's Exhibit 3, Attachment A; see also Respondent's Exhibit 5)

8. On October 22, 1988, Petitioner was again charged with Driving While Impaired, this time in Cumberland County, North Carolina, in case number 1988 CR 036718. On March 14, 1990, Petitioner was convicted of Level 2 driving while impaired for Petitioner's second driving while impaired offense. (See Respondent's Exhibit 3, Attachment B; see also Respondent's Exhibit 5)

9. On February 16, 1990, Petitioner was charged with a third Driving While Impaired offense in Cumberland County, North Carolina. On September 14, 1990, Petitioner was convicted of this third Driving While Impaired offense. (Respondent's Exhibit 5)

10. On May 5, 1991, Petitioner was charged with a fourth Driving While Impaired offense in Cumberland County, North Carolina, case number 1991 CR 016924. On May 7, 1992, Petitioner was convicted of this Level 1 Driving While Impaired offense. (See Respondent's Exhibit 3, Attachment C; see also Respondent's Exhibit 5)

11. Petitioner does not dispute that the driving record admitted into evidence as Respondent's Exhibit 5 is a copy of Petitioner's North Carolina Driving History. Petitioner also disclosed the above-referenced four (4) driving while impaired convictions on Petitioner's F-3 Personal History Statement that was submitted to the Sheriffs' Commission by Petitioner. (Respondent's Exhibit 6, p.11-12)

12. The record also establishes that Petitioner has been convicted of Driving with a Permanently Revoked License on May 7, 1992. (Respondent's Exhibit 4, p.2; see also Respondent's Exhibit 3, Attachment D)

13. Petitioner's driving history also reveals that Petitioner was convicted of driving with a revoked license on January 6, 1994 and on July 18, 1985. (Respondent's Exhibit 5)

14. Finally, the record presented at the administrative hearing establishes that Petitioner received a misdemeanor conviction for disorderly conduct, simple assault, and a weapons offense in the State of South Carolina while Petitioner was a high school student. These charges were consolidated for purposes of judgment and Petitioner was ordered to pay a fine of \$82.00 in lieu of 15 days confinement. Petitioner recalls that he was told by a police officer that he had to appear before the school board based on these allegations, although Petitioner does not recall being convicted of these charges. Notwithstanding Petitioner's lack of memory regarding this issue, the record before this Court does show that Petitioner did receive a consolidated misdemeanor conviction in South Carolina for these offenses. Petitioner has not provided any evidence that this disposition has been set aside.

15. 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 misdemeanors such that his application for certification is 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 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. 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).

5. Pursuant to the Commission’s Rules, 12 NCAC 10B .0103, and the Class B Misdemeanor Manual adopted by the Respondent, Petitioner’s Level 1 Driving While Impaired conviction, 1991 CR/CRS 016924, constitutes a Class B misdemeanor conviction.

6. Pursuant to the Commission’s Rules, 12 NCAC 10B .0103, and the Class B Misdemeanor Manual adopted by the Respondent, Petitioner’s Level 2 Driving While Impaired conviction, 1988 CR 036718, also constitutes a Class B misdemeanor conviction.

7. Pursuant to the Commission’s Rules, 12 NCAC 10B .0103, and the Class B Misdemeanor Manual adopted by the Respondent, Petitioner’s Driving With License Revoked Permanently conviction, 1991 CRS 016924, also constitutes a Class B misdemeanor conviction.

8. Finally, Pursuant to the Commission’s Rules, 12 NCAC 10B .0103, and the Class B Misdemeanor Manual adopted by the Respondent, the following of Petitioner’s convictions constitute Class A misdemeanors: 1) Petitioner’s November 3, 1983 Driving While Intoxicated conviction in case 1983 CR 015762; 2) Petitioner’s September 14, 1990 conviction for Driving While Impaired in Cumberland County; and 3) Petitioner’s misdemeanor conviction from the State of South Carolina that resulted in Petitioner paying an \$82.00 fine in lieu of 15 days confinement. (Respondent’s Exhibit 3, Attachment E).

9. Petitioner has been convicted of a combination of 4 or more offenses classified as either Class A or Class B misdemeanors. Petitioner’s application for certification is, therefore, subject to denial for an indefinite period pursuant to 12 NCAC 10B .0204(d)(5).

10. As an applicant for certification through the Respondent Commission, the Petitioner has the burden of proof. The Petitioner has failed to show by a preponderance of the evidence that the Respondent Commission improperly proposed to deny Petitioner’s application for certification.

PROPOSAL FOR DECISION

Although several of these convictions were rather old and the Petitioner is sympathetic, it is difficult to ignore the foregoing Findings of Fact and Conclusions of Law. Pursuant to 12 NCAC 10B .0205, the undersigned recommends that Respondent deny the Petitioner's Justice Officer Certification for an indefinite period based on Petitioner having been convicted of a combination of four (4) or more class A or Class B misdemeanors, as set out in greater detail above.

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. 27699-6700.

This the 4th day of February, 2016.

J Randall May
Administrative Law Judge