

STATE OF NORTH CAROLINA  
COUNTY OF WARREN

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
15 DOJ 05546

Phillip Joel Trivette Petitioner,  v.  N C Sheriffs' Education And Training Standards Commission Respondent.	<b>PROPOSAL FOR DECISION</b>
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On November 17, 2015, Administrative Law Judge Melissa Owens Lassiter heard this case in Raleigh, North Carolina after Respondent requested, pursuant to N.C.G.S. § 150B-40(e), the designation of an administrative law judge to preside at the contested case hearing under Article 3A, Chapter 150B of the North Carolina General Statutes.

#### **APPEARANCES**

For Petitioner: Phillip Joel Trivette, *Pro Se*, 2146 Warren Plains Road, Warrenton, North Carolina 27589

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

#### **ISSUE**

Whether Petitioner has 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 justice officer certification through the Halifax County Sheriff's Office.

4. Before seeking certification from the Sheriffs' Commission, Petitioner worked as a police officer with the Rolesville Police Department, Bunn Police Department, and the Lake Royal Police Department. Petitioner is no longer certified through the North Carolina Criminal Justice Education and Training Standards Commission. Petitioner has not previously held certification through the Sheriff's Commission.

5. 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.

6. The evidence presented at the administrative hearing established 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. On April 7, 1989, Petitioner was convicted of one (1) count of misdemeanor Worthless Check in violation of N.C.G.S. § 14-107, in Watauga County, North Carolina, in Case No. 1989 CR 001347. (Respondent's Exhibit 3, Attachment A) Petitioner does not dispute that this misdemeanor conviction remains on his criminal record.

8. On April 7, 1989, Petitioner was convicted of a second count of misdemeanor Worthless Check in violation of N.C.G.S. § 14-107, in Watauga County, North Carolina, in Case No. 1989 CR 001348. (Respondent's Exhibit 3, Attachment B) Petitioner does not dispute that this misdemeanor conviction remains on his criminal record.

9. On April 7, 1989, Petitioner was convicted of a third count of misdemeanor Worthless Check in violation of N.C.G.S. § 14-107, in Watauga County, North Carolina, in Case No. 1989 CR 001349. (Respondent's Exhibit 3, Attachment C) Petitioner does not dispute that this misdemeanor conviction remains on his criminal record.

10. Finally, on October 29, 1999, Petitioner was convicted of a fourth misdemeanor Worthless Check offense in violation of N.C.G.S. § 14-107, in Watauga County, North Carolina, in Case No. 1999 CR 005428. (Respondent's Exhibit 3, Attachment D) Petitioner does not dispute that this misdemeanor conviction remains on his criminal record.

11. Petitioner has obtained legal counsel in order to have some of the above criminal convictions set aside and possibly expunged. However, such expunction has not taken place as of

the disposition of this matter before the Office of Administrative Hearings. In the event Petitioner is able to get one or more of his convictions set aside and expunged, Petitioner would be free to reapply for certification.

12. Pursuant to 12 NCAC 10B .0103 (10)(a), Petitioner's first three (3) worthless check convictions constitute Class A misdemeanor convictions pursuant to the Commission's Rules. However, pursuant to North Carolina General Statute § 14-104 (d)(1), and more specifically 12 NCAC 10B .0103 (10)(b), a fourth (4<sup>th</sup>) and all subsequent convictions for misdemeanor worthless check pursuant to N.C.G.S. § 14-107 constitute Class B misdemeanors as set forth in the Class B Misdemeanor Manual adopted by the Commission. Therefore, the record establishes Petitioner stands convicted of one (1) Class B misdemeanor and three (3) Class A misdemeanors.

13. A preponderance of the evidence presented at the administrative hearing established 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. 12 NCAC 10B .0103 (10)(a), provides that Petitioner's first three (3) worthless check convictions (1989 CR 001347, 1989 CR 001348, and 1989 CR 001349) constitute Class A misdemeanor convictions pursuant to the Commission's Rules.

6. North Carolina General Statute § 14-104 (d)(1), and more specifically 12 NCAC 10B .0103 (10)(b), provides that a fourth (4<sup>th</sup>) and all subsequent convictions for misdemeanor worthless check, pursuant to N.C.G.S. § 14-107, constitute Class B misdemeanor convictions as set forth in the Class B Misdemeanor Manual adopted by the Commission. Therefore, Petitioner's fourth worthless check conviction, 1999 CR 005428, constitutes a Class B misdemeanor conviction.

7. Petitioner has been convicted of a combination of 4 or more offenses classified as either Class A or Class B misdemeanors. All of these convictions were worthless check offenses in violation of N.C.G.S. 14-107 (d)(1). Petitioner's application for certification is, therefore, subject to denial for an indefinite period pursuant to 12 NCAC 10B .0204(d)(5).

8. As an applicant for certification through the Respondent Commission, the Petitioner has the burden of proof.

9. In this case, Petitioner has failed to show by a preponderance of the evidence that Respondent Commission improperly proposed to deny Petitioner's application for certification.

### **PROPOSAL FOR DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law and pursuant to 12 NCAC 10B .0205, the undersigned hereby recommends Respondent **DENY** Petitioner's application for 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**

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

This 13<sup>th</sup> day of January, 2016.

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Melissa Owens Lassiter  
Administrative Law Judge