

STATE OF NORTH CAROLINA  
COUNTY OF DURHAM

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
15 DOJ 05547

WALTER THALTON GRAHAM, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 N.C. SHERIFFS' EDUCATION )  
 AND TRAINING STANDARDS )  
 COMMISSION, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

**PROPOSAL FOR DECISION**

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 hearing of a contested case under Article 3A, Chapter 150B of the North Carolina General Statutes. On December 15, 2015, the undersigned issued an Order finding that Respondent had probable cause to deny Petitioner's justice officer certification: (1) pursuant to 12 NCAC 09A.0204(d)(1), for being convicted of a DWI offense and a "Hit & Run" offense, and (2) pursuant to 12 NCAC 10B.0301(a)(8), for lack of good moral character. On January 19, 2015, pursuant to the undersigned's Order and request, Respondent filed a proposed Proposal for Decision in accordance with the December 15, 2015 Order.

**APPEARANCES**

For Petitioner: William Cotter, Attorney at Law, 343 West Main Street, Suite 203, Durham, North Carolina 27701

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

**ISSUE**

Whether Respondent's proposed revocation of Petitioner's justice officer certification is supported by a preponderance of the evidence presented at the administrative hearing?

**APPLICABLE RULES**

12 NCAC 10B .0204(d)(1)  
12 NCAC 10B .0301(a)(8)

**FINDINGS OF FACT**

After careful consideration of the sworn testimony of the witnesses at hearing, the documents, and exhibits received and admitted into evidence, and the entire record in the proceeding, having weighed all the evidence and assessed the credibility of the witnesses by judging, including, but not limited to the demeanor of the witnesses, any interests, bias or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether reasonableness of the witnesses' testimony is reasonable, and whether the testimony is consistent with all other believable evidence in the case, the undersigned finds as follows:

1. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, and both parties received Notice of Hearing in a timely manner.

2. On July 2, 2015, Respondent mailed to Petitioner, by certified mail, return receipt requested, Respondent's Notification of Probable Cause to Revoke Petitioner's Justice Officer's Certification letter for being:

(1) convicted of a Class B misdemeanor offense of "Hit & Run, Leave Scene, Property Damage" in violation of N.C.G.S. § 20-166 (c)(1), and being convicted of the Class A misdemeanor offense of "Driving while Impaired in 2014, and

(2) no longer possessing the good moral character required of all justice officer based on the facts surrounding Petitioner's "Hit & Run" conviction.

(Respondent's Exhibit 1)

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

4. The record established that Petitioner has been certified by the Commission for 6 years, and that Petitioner has been employed, and working as a detention officer with the Durham County Sheriff during this period.

5. 12 NCAC 10B .0204(d)(1) provides that the Sheriffs' Commission may revoke the certification of a justice officer when the Commission finds that the officer has committed or been convicted of a Class B misdemeanor after being appointed as a justice officer.

6. The evidence presented at the administrative hearing established that Petitioner was convicted of the Class A misdemeanor offense of "Driving While Impaired" on February 4, 2014,

was placed on probation for a period of 12 months for such conviction, and ordered to pay costs and community service fees. (Respondent's Exhibit 3).

7. Following Petitioner's "Driving While Impaired" conviction, Petitioner provided the Commission with a written statement regarding this conviction. Petitioner advised that he was remorseful for his actions, and further advised that this criminal conduct was "well outside my character." (Respondent's Exhibit 6). The Commission took no action to revoke Petitioner's certification following Petitioner's 2014 "Driving While Impaired" conviction.

8. On October 16, 2014, Petitioner was operating his motor vehicle on Fayetteville Road in Durham, North Carolina. At the intersection of Fayetteville Road and Crooked Creek Parkway, Petitioner crashed into the rear of a motor vehicle driven by Ms. Patricia Cheng. Ms. Cheng moved her vehicle to the side of the road. Petitioner observed Ms. Cheng motioning for Petitioner to pull over. Petitioner was fully aware at that time that he had struck the rear of Ms. Cheng's vehicle. The traffic conditions were heavy at the time Petitioner collided into the rear of Ms. Cheng's vehicle. Petitioner waited for traffic to begin to move, and then suddenly fled from the scene of the collision. Petitioner left Ms. Cheng stranded on Fayetteville Road without checking to verify that she was uninjured from the accident.

9. At the administrative hearing, Petitioner admitted that he panicked when he struck Ms. Cheng's vehicle. Petitioner thought about that fact that he already had a limited driving license based on the "Driving While Impaired" conviction. Petitioner claimed he wasn't thinking clearly and fled the scene. Petitioner claimed at that time that his unlawful behavior was out of character for him. He acknowledged that his actions in fleeing the scene were not respectful of Ms. Cheng's rights, dishonest, and not a display of integrity at that moment.

10. Petitioner's testimony at hearing was self-serving, and not credible. Petitioner was on probation for the "Driving While Impaired" conviction at the time he struck the back of Ms. Cheng's vehicle. The evidence at hearing showed that Petitioner intentionally fled the scene of the accident in order to avoid the police, and to avoid a further moving violation when Petitioner was already on probation. Petitioner did not attempt to contact the police after striking the rear of Ms. Cheng vehicle on October 16, 2014. Later in the day on October 16, 2014, Durham Police Department Officer A.P. Reuther located Petitioner at his residence, and charged Petitioner with "Hit and Run" offense in violation of N.C.G.S. § 20-166 (c)(1), and with violating a license restriction.

11. Petitioner's actions demonstrated a complete disregard for the rights and safety of Ms. Cheng. Petitioner's actions further demonstrate Petitioner lacks honest and integrity. Petitioner's crime against Ms. Cheng was particularly egregious, and Petitioner engaged in this unlawful conduct at a time when he held certification as a justice officer in the State of North Carolina.

12. On January 27, 2015, Petitioner was convicted of "Hit and Run" offense in violation of N.C.G.S. § 20-166 (c)(1). (Respondent's Exhibit 4). Petitioner does not dispute that this misdemeanor conviction remains on Petitioner's criminal record. The evidence also established

that Petitioner committed the offense of "Hit and Run" on October 16, 2014, in violation of N.C.G.S. § 20-166 (c)(1).

13. The evidence presented at the administrative hearing showed that Petitioner has demonstrated a pattern of unlawful behavior and a willingness to break the laws of this State, and that Petitioner no longer possesses the good moral character that is required of a sworn justice officer in North Carolina.

14. Captain Cynthia Kornegay and Major Julian Couch, both detention officers at the Durham County Sheriff's Office, appeared and testified on behalf of Petitioner at the administrative hearing. These witnesses opined that Petitioner was a hard worker and a good detention officer. Capt. Kornegay would like Petitioner to keep his job. However, it is clear from the witnesses that the Durham County Sheriff's Office did not investigate the "Hit & Run" offense Petitioner committed on October 16, 2014. The Durham County Sheriff's Office made no effort to interview Petitioner or speak with the responding officer or the victim regarding that matter.

15. Petitioner was convicted of a "Hit and Run" misdemeanor in violation of N.C.G.S. § 20-166 (c)(1) after being appointed as a justice officer and receiving his certification from the Commission. The evidence at hearing established that Petitioner does not comply with 12 NCAC 10B .0204(d)(1).

### **CONCLUSIONS OF LAW**

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

2. Pursuant to 12 NCAC 10B .0204(d)(1), 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:

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.

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. The criminal offense of "Hit and Run" in violation of N.C.G.S. § 20-166(c) (1) is classified as a Class B misdemeanor pursuant to 12 NCAC 10B .0103 and the Class B Misdemeanor Manual adopted by Respondent. The record in this case established that Petitioner has been convicted of the Class B misdemeanor offense of "Hit and run" in Case Number 2014 CR 710365. (Respondent's Exhibit 4) Petitioner was convicted of this offense after being appointed as a justice officer, and after receiving his certification from the Commission. A

preponderance of the evidence presented at the administrative hearing supports revocation of Petitioner's certification pursuant to 12 NCAC 10B .0204(d)(1).

5. Pursuant to 12 NCAC 10B.0301(a)(8), every justice officer employed or certified in North Carolina shall be of good moral character. 12 NCAC 10B.0204(b)(2) further provides the Sheriff's Commission shall revoke, deny, or suspend a justice officer's certification when the Commission finds that the justice officer no longer possesses the good moral character that is required of all sworn justice officers.

6. In *In Re Willis*, 288 N.C. 1, 10 (1975), the NC Supreme Court defined "good moral character" as "honesty, fairness, and respect for the rights of others and for the laws of the state and nation."

7. Given the totality of the evidence presented at the administrative hearing, the undersigned concludes that Petitioner no longer possesses the good moral character that is required of a sworn justice officer in this State.

8. Petitioner was convicted of Driving While Impaired on February 4, 2014. Petitioner claimed at that time that his unlawful behavior was out of character for him. While on probation for his "Driving While Impaired" offense, Petitioner again committed a crime when he struck the back of a motor vehicle on Fayetteville Road in Durham, North Carolina, and intentionally fled from the scene in order to avoid the police and a potential moving violation citation. Petitioner's conduct of abandoning Ms. Cheng on the side of the road is particularly egregious. Petitioner's actions in fleeing the scene of an accident demonstrated a lack of respect for the rights of others and for the laws of this State, and a lack of honesty and integrity required of a justice officer.

9. A preponderance of the evidence at the administrative hearing supports Respondent's proposed revocation of Petitioner's justice officer certification due to Petitioner's lack of good moral character and failure to maintain the minimum standards required of all sworn justice officers under 12 NCAC 10B .0301.

10. Petitioner has the burden of proof, and failed to show, by a preponderance of the evidence that, the Respondent Commission improperly proposed to revoke Petitioner's certification.

### **PROPOSAL FOR DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law and pursuant to 12 NCAC 10B .0204 and 12 NCAC 10B .0301, the undersigned recommends Respondent revoke Petitioner's justice officer certification.

### **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 25<sup>th</sup> day of January, 2016.

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Melissa Owens Lassiter  
Administrative Law Judge