

STATE OF NORTH CAROLINA
COUNTY OF HAYWOOD

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 DOJ 06163

<p>MICHAEL EUGENE RICH PETITIONER,</p> <p>v.</p> <p>N C SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION RESPONDENT.</p>	<p>PROPOSAL FOR DECISION</p>
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This case came on for hearing on March 10, 2016 before Administrative Law Judge J. Randall May in Waynesville, North Carolina. This case was heard after Respondent requested, pursuant to N.C.G.S. § 150B-40(e), 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: Michael Eugene Rich
111 Cable Lane
Maggie Valley, North Carolina 28751

Respondent: Matthew L. Boyatt
Attorney for Respondent
Department of Justice
Law Enforcement Liaison Section
9001 Mail Service Center
Raleigh, North Carolina 27699-9001

ISSUE

Does substantial evidence exist to deny Petitioner's justice officer certification for the commission or conviction of four or more Class A or Class B misdemeanors?

APPLICABLE RULES

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

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 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 7, 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 Haywood County Sheriff's Office.

4. 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.

5. The evidence presented at the administrative hearing establishes that Petitioner has been convicted of the following three (3) misdemeanors:

- i. Attempt to obtain alcohol with a fake identification, 1987 CR 004785;
- ii. Possess illegal loaded weapon on game land, 1995 CR 006476; and
- iii. Possession marijuana, less than ½ ounce, 1995 CR 001826.

Petitioner does not contest that these convictions remain on Petitioner's record. *See* Respondent's Exhibits 3 through 5. Each of the above-referenced misdemeanors are classified as Class A misdemeanors pursuant to the Commission's Rules and the Class B Misdemeanor Manual adopted by Respondent Commission.

6. On January 20, 1992, Petitioner was charged with hit and run resulting in property damage in violation of N.C.G.S. § 20-166(c), in Haywood County, North Carolina, in Case No. 1992 CR 000378. (Respondent's Exhibit 6) On the date in question, Petitioner was visiting a friend in an apartment located above Realty World Heritage in Haywood County, North Carolina. At the time, Petitioner worked for Realty World Heritage.

7. Petitioner left his friend's apartment on January 20, 1992 at approximately 12:00 in the morning. Petitioner had pulled his vehicle in the parking space head-on when he arrived at the residence, thus requiring Petitioner to reverse his vehicle out of the parking space in order to

leave. When Petitioner attempted to leave he placed his vehicle in drive instead of reverse. As a result, the vehicle moved forward when Petitioner hit the accelerator, thereby crashing into the 2x4 posts that were supporting a deck structure on Realty World Heritage.

8. After Petitioner struck the deck, he immediately placed his vehicle in reverse and left the premises. At the time, Petitioner was fully aware that he had struck the 2x4 supporting members and that he caused damage to the property. Petitioner made no attempt to call the police or to write a note and place it in a conspicuous place on the front of the business. Petitioner could have easily gone back to his friend's apartment to call the police and report the damage, or to retrieve pencil and paper to write a note for the business owners. Petitioner left the scene of the collision immediately and went back to his home in order to sleep.

9. Petitioner testified that he intended to contact the business owners (also his employers) the following day in order to report the damage. However, another resident living next to Realty World Heritage called the police when Petitioner struck the business. As a result, the Police investigated and were able to track Petitioner down at his residence later in the early morning of January 20, 1992.

10. Petitioner further testified that the Sherriff of Haywood County supported him and would send a letter of recommendation to the undersigned within thirty days of the hearing. The letter never arrived.

10. Petitioner was charged with misdemeanor hit and run in violation of N.C.G.S. § 20-166(c). The district attorney agreed to dismiss this charge upon Petitioner's payment of restitution in the amount of \$350.00. Petitioner complied and the criminal charge was dismissed.

11. A preponderance of the evidence presented at the administrative hearing establishes that Petitioner has been convicted of three Class A misdemeanor offenses. Furthermore, the evidence presented at the administrative hearing establishes that Petitioner committed the Class B misdemeanor offense of hit and run in violation of N.C.G.S. § 20-166(c), as set out in the Conclusions of Law below.

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 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.

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 12 NCAC 10B .0103(10)(a), Petitioner’s three (3) convictions in the following cases constitute Class A misdemeanor convictions pursuant to the Commission’s Rules:

- i. 1987 CR 004785 (purchase alcohol with fake I.D.);
- ii. 1995 CR 006476 (loaded weapon on game land); and
- iii. 1995 CR 001826 (marijuana less than ½ ounce)

6. Failing to stop and report a crash in violation of N.C.G.S. § 20-166(c) is classified as a Class B misdemeanor pursuant to 12 NCAC 10B .0103(10)(b) and the Class B Misdemeanor Manual adopted by Respondent.

7. N.C.G.S. § 20-166(c) (1992) provided that a motorist who knows or should know his vehicle is involved in a collision involving property damage “shall immediately stop his vehicle at the scene of the accident or collision.” The statute further provided “[a] violation of this subsection is a misdemeanor ...” The language contained in subsection (c) of N.C.G.S. § 20-166 (1992) is unapologetically mandatory. The driver of the vehicle “shall” stop at the scene of an accident or collision. Failure to stop at the scene of a collision is the gist of this offense. *See State v. Smith*, 264 N.C. 575, 142 S.E. 2d 149 (1965).

The requirement to immediately stop is still mandated under this Statute. *See State v. Barnes*, 770 S.E. 2d 389, 2015 N.C. App. LEXIS 108 (N.C. Ct. App. 2015), wherein the North Carolina Court of Appeals noted that the fifth and sixth elements of this offense are that the defendant “failed to immediately stop at the scene” and that this failure to “immediately stop” was either “intentional or willful.”

8. A preponderance of the evidence presented at the administrative hearing establishes that Petitioner violated § 20-166(c) by failing to immediately stop his vehicle when he crashed into the 2x4 deck posts at Realty World Heritage, thereby causing \$350.00 in damage. The uncontroverted evidence establishes Petitioner knew he damaged the property and that Petitioner made no effort to stop his vehicle at the scene of the collision. Instead, Petitioner immediately placed his vehicle in reverse and left the scene. Although Petitioner’s familiarity with the business owners may serve to mitigate any punishment for a violation of this statute, this does not change the fact that Petitioner violated N.C. Gen. Stat. § 20-166(c) when he intentionally failed to stop his vehicle at the scene on January 20, 1992.

9. A preponderance of the evidence presented at the hearing of this case establishes Petitioner has committed and/or been convicted of a combination of four (4) or more Class A or Class B misdemeanor offenses. Petitioner's application for certification is therefore subject to denial pursuant to 12 NCAC 10B .0204(d)(5).

10. The Petitioner has the burden of proof in this contested case. 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

Based on the foregoing Findings of Fact and Conclusions of Law, because of the length of time (almost twenty (20) to thirty (30) years) from the commission of the subject offenses, and considering the growth of Petitioner, the undersigned would recommend that the Respondent Commission consider suspending the suspension of Petitioner. However, Petitioner stated that the Sheriff of Haywood County supported him and that he would, within thirty (30) days of the hearing, submit a letter from the Sheriff, recommending his certification. This letter never arrived; therefore, the undersigned concurs with the recommended suspension by the Respondent Commission.

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.

A copy of the final agency decision or order shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency and a copy shall be furnished to any attorney of record. N.C.G.S. § 150B-42(a).

IT IS SO ORDERED.

This the 12th day of May, 2016.

J Randall May
Administrative Law Judge