

STATE OF NORTH CAROLINA
COUNTY OF ROBESON

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 DOJ 07704

Devon Locklear Petitioner, v. N C Criminal Justice Education and Training Standards Commission Respondent.	PROPOSAL FOR DECISION
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On June 15, 2016, Administrative Law Judge David F. Sutton called this case for hearing in Fayetteville, North Carolina. This case was heard after Respondent requested, pursuant to N.C. Gen. Stat § 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 was represented by attorney G. Lawrence Reeves, Jr., Bailey & Dixon, LLP, P.O. Box 1351, Raleigh, North Carolina 27602.

Respondent was represented by attorney Whitney Hendrix Belich, Department of Justice, Law Enforcement Liaison Section, P.O. Box 629, Raleigh, North Carolina 27602.

ISSUES

1. Does substantial evidence exist for Respondent to suspend Petitioner's correctional officer certification for commission of the DAC Misdemeanor of Resist Delay or Obstruct a Public Officer?

2. If substantial evidence does exist for Respondent to suspend Petitioner's correctional officer certification, is there substantial evidence to warrant the imposition of a reduction or suspension of the suspension or to substitute a period of probation in lieu of suspension?

APPLICABLE STATUTES AND RULES

Official notice is taken of the following:

N.C.G.S. § 17C-10, et seq.
12 NCAC 09G .0102 (1)

12 NCAC 09G .0102 (9) (cc)
12 NCAC 09G .0504(b) (3)
12 NCAC 09G .0505(b) (1)

EXHIBITS ADMITTED INTO EVIDENCE

Respondent's Exhibit 1: Memorandum from Michelle Schilling to Members of Probable Cause Committee dated July 15, 2015

Respondent's Exhibit 2: Letter from the Criminal Justice Standards Division to Devon Locklear dated September 15, 2015

Petitioner's Exhibit 3: Certified copy of Petitioner's Personnel File

Petitioner's Exhibit 4: Respondent's Responses to Petitioner's First Set of Interrogatories, Request for Admissions, and Request for Production of Documents

Petitioner's Exhibit 5: Petitioner's First Set of Interrogatories, Request for Admissions, and Request for Production of Documents

Petitioner's Exhibit 6: Petitioner's Certification File

WITNESSES

For Petitioner:

1. Sondrea Cuvilje, Substance Abuse Counselor, KV Consultants, Lumberton, NC
2. Capt. Althea Maddox, Lumberton Correctional Institution
3. James McCrae, Assistant Superintendent, Lumberton Correctional Institution
4. Capt. Rose Locklear, Lumberton Correctional Institution
5. Brad Perritt, Correctional Administrator, Tabor Correctional Institution
6. Devon Locklear, Petitioner

For Respondent:

1. Deputy Dearmitt, New Hanover Sheriff's Office
2. Michelle Schilling, Investigator, North Carolina Criminal Justice Education and Training Standards Commission

BASED UPON careful consideration of the sworn testimony of the witnesses present at the hearing, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the Undersigned makes the following findings of fact. In making the findings of fact, the Undersigned has weighed all the evidence and has assessed the credibility

of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witness, any bias or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts to which the witness testified, and whether the testimony is consistent with all other evidence in this case. In the absence of a transcript, the Undersigned has relied upon his notes to refresh his recollection.

WHEREFORE, the Undersigned makes the following Findings of Fact and Conclusions of Law.

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 certified mail, the proposed suspension letter, mailed by Respondent, the North Carolina Criminal Justice Education and Training Standards Commission (hereinafter “the Commission”), on September 15, 2015.

2. Respondent, North Carolina Criminal Justice Education and Training Standards Commission, has the authority granted under Chapter 17C of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 09G, to certify correctional officers and to revoke, suspend, or deny such certification.

3. Petitioner was awarded a Probationary Certification as a Correctional Officer by Respondent on November 29, 2012, and a General Certification on November 5, 2013.

4. On October 10, 2013, Petitioner was charged with one count of Resist, Delay or Obstruct a Public Officer, a misdemeanor pursuant to North Carolina General Statute §14-288.4 in New Hanover County, North Carolina.

5. Resist, Delay or Obstruct a Public Officer is a Class B misdemeanor as defined in 12 NCAC 09G.0102(9) (cc).

6. Deputy Dearnitt of the New Hanover Sheriff’s Office testified at the hearing. On October 10, 2013, Deputy Dearnitt was assigned the “Downtown Task Force,” a division of the Sheriff’s Office assigned to patrol downtown Wilmington. At this time, Deputy Dearnitt was wearing a shirt that identified him as “Police.”

7. A bouncer working at a club downtown that night motioned for assistance from Deputy Dearnitt and he noticed Petitioner and another male engaging in an affray as they exited the establishment.

8. Deputy Dearnitt attempted to break up the two males. At that point, Petitioner broke away from Deputy Dearnitt and ran away. Deputy Dearnitt chased him, telling him to stop and identifying himself as a Deputy.

9. Soon after the foot chase began, Petitioner seemed to trip and fall, at which time

Deputy Dearthmitt was able to catch up with him and detain him.

10. Deputy Dearthmitt recognized that Petitioner was impaired as he spoke with him. Petitioner identified himself as a correctional officer and was permitted to call his superior and was released with a citation for Resist, Delay and Obstruct a Public Officer for failing to heed Deputy Dearthmitt's commands to stop running from him.

11. Michelle Schilling, Investigator for Respondent, testified at the hearing. An officer is considered certified by Respondent when they receive their probationary certification. In the case of correctional officers, the only difference between those holding probationary certification and those holding general certification is that, during the year-long probationary period, officers must complete mandatory training. Correctional officers with probationary certification are permitted to hold all positions including those requiring certification, as was held by Petitioner during his probationary period.

12. Petitioner entered into an "informal deferred prosecution" agreement with the District Attorney's Office which allowed his charges to be dismissed once he completed community service. Petitioner subsequently completed community service and the criminal charges were subsequently dismissed.

13. Sondrea Cuvilje testified at the hearing, offering testimony that proved the following facts:

Ms. Cuvilje is a Certified Substance Abuse Counselor (certification #1948), having received her certification in 2004 from the North Carolina Substance Abuse Professional Practice Board. Among the conditions of this certification is that Ms. Cuvilje have 6000 hours of substance abuse employment and that she receive 60 hours of specialized training annually. Ms. Cuvilje has been working with substance abuse patients since 1990 and has treated or assessed thousands of alcohol-addicted people. Ms. Cuvilje presently works as a supervisor for KV Consultants in Fayetteville, N.C. Her work includes assessing and treating people referred to her by the District Attorney's office and lawyers.

(The Undersigned accepted Ms. Cuvilje as an expert in alcohol addiction, diagnosis, and treatment.)

Alcoholism is a mental and physical disease. The DSM (Diagnostic and Statistical Manual of Mental Disorders) calls alcoholism a disease. People suffering from alcoholism are not responsible--in a non-legal sense of the term--for their behavior when they are abusing alcohol. There is no cure for alcoholism, but it is treatable.

On March 11, 2016, Devon Locklear, Petitioner, met with Ms. Cuvilje for an alcoholism assessment. This assessment included interviewing Mr. Locklear about his family and obtaining childhood and adult histories. Ms.

Cuvilje diagnosed Mr. Locklear as suffering from severe alcohol dependency, or alcoholism, which started in Mr. Locklear's early twenties. Among the characteristics of Mr. Locklear's alcoholism is that he has blackout spells, meaning that he does things that he cannot remember later.

Ms. Cuvilje recommended that Mr. Locklear undergo long term treatment for alcoholism. The first part of the recommended treatment was to attend 15 classes on substance abuse, each class lasting two and a half hours. Ms. Cuvilje determined that Mr. Locklear fully completed this part of the treatment program. Ms. Cuvilje also recommended that Mr. Locklear continue his treatment by attending regularly Alcohol Anonymous meeting. Mr. Locklear has brought documentation to Ms. Cuvilje showing that he has been attending AA meetings regularly and has found someone to sponsor him in the AA program.

As June 15, 2016, Mr. Locklear is in recovery from his alcoholism. His disease is in early remission. Mr. Locklear is abstaining from the use of alcohol. To have a successful recovery, Mr. Locklear will have to abstain for using alcohol the rest of his life. In Ms. Cuvilje's opinion, the prognosis for Mr. Locklear's achieving a successful recovery is "pretty good."

Mr. Locklear will be able to act professionally at work as long as his disease stays in remission.

14. Captain Althea Maddox testified at the hearing, offering testimony that proved the following facts:

Capt. Maddox has been employed at the Lumberton Correctional Institution ("LCI") for 22 years. Capt. Maddox was promoted to her current position in 2005. When on duty, Capt. Maddox is responsible for the management of the LCI.

Capt. Maddox knows Devon Locklear. He is a correctional officer at LCI. Capt. Maddox has supervised Mr. Locklear from time to time and has observed Mr. Locklear's professional conduct at work. Capt. Maddox has always found Mr. Locklear to be professional and cheerful. He can manage the inmates at LCI and complies with all instructions issued to him. Mr. Locklear follows Department of Public Safety policy and does his job. Capt. Maddox has never known Mr. Locklear to be under the influence of alcohol while on duty at LCI. Mr. Locklear is a good officer. Capt. Maddox knows nothing bad about him.

15. James McCrae testified at the hearing, offering testimony that proved the following facts:

Mr. McCrae is the Assistant Superintendent of LCI, a job he has held since 2012. Mr. McCrae has known Mr. Locklear for three and a half to four years. He interacts with Mr. Locklear two to three, sometimes four to five times a day. Mr. McCrae has never known Mr. Locklear to be untruthful. Mr. Locklear is a good officer who is willing to work at LCI on his days off. Mr. Locklear is a “model officer” such that new officers are assigned to him for training. New officers shadow Mr. Locklear to make sure they are on the right path as correctional officers. Mr. McCrae would like to keep Mr. Locklear as a correctional officer at LCI. There have been no discussions about firing Mr. Locklear. Mr. McCrae can remember having no disciplinary problems with Mr. Locklear except in connection with the matter now before the OAH.

16. Captain Rose Locklear testified at the hearing, offering testimony that proved the following facts:

Captain Locklear has been working at LCI for 21 years. Capt. Locklear was promoted to her current position in 2007. Capt. Locklear is Mr. Locklear’s supervisor. She has supervised Mr. Locklear off and on for 16 months, interacting with him four to six times a day. Mr. Locklear is very professional at his job. Capt. Locklear has never known Mr. Locklear to come to work under the influence of alcohol. Mr. Locklear has to deal with staff, visitors, and state officers, as well as inmates. Mr. Locklear is often subject to verbal abuse from inmates, yet he maintains his professionalism. Mr. Locklear is very trustworthy and very honest. If you give Mr. Locklear a task, you know it will be done. He does his job according to DPS policy. Capt. Locklear knows Mr. Locklear on and off the job and has found him to be honest and trustworthy on and off the job. (Capt. Locklear is not related to Mr. Locklear.)

Capt. Locklear would like to keep Mr. Locklear as a correctional officer at LCI. Mr. Locklear’s departure from LCI would be a loss for Capt. Locklear’s shift. Mr. Locklear and other correctional officers have a dangerous job. They have to manage and handle inmates who are sick and have mental health problems. Mr. Locklear handles those challenges very professionally.

17. Brad Perritt testified at the hearing, offering testimony that proved the following facts:

Mr. Perritt is the correctional administrator at Tabor Correctional Institute (TCI). He was promoted to that position in January 2016. Prior to his promotion at TCI, Mr. Perritt was an administrator at LCI with overall responsibility for staff and inmates there. Mr.

Perritt knows Mr. Locklear personally because he knows Mr. Locklear's father. Mr. Perritt also knows Mr. Locklear professionally as a correctional officer at LCI.

Mr. Locklear works at the front gate at LCI, handling staff and visitors who want to enter the LCI facility. Testy situations often occur at the front gate, but Mr. Locklear always handles those problems professionally.

When Mr. Locklear was charged with resisting arrest in Wilmington on October 10, 2013, he did not delay or wait until the next day to report the incident to his superiors. Instead, Mr. Locklear reported the matter to Capt. Maddox immediately after it happened, while Deputy Dearnitt still had Mr. Locklear in the deputy's patrol car.

18. Petitioner, Devon Locklear, testified at the hearing, offering testimony that proved the following facts:

Mr. Locklear is employed as a correctional officer at the LCI. On November 5, 2016, Mr. Locklear will have been employed for four years at LCI. Mr. Locklear's education includes a high school diploma received in 2010.

Mr. Locklear was highly intoxicated the night of October 10, 2013, when Deputy Dearnitt chased him, detained him, and released him with a citation for Resist, Delay, and Obstructing a Public Officer. Mr. Locklear has trouble remembering what happened that night because of his intoxication. He remembers starting to drink that night at 8 pm at a friend's house and he remembers being in a bar and drinking \$1 shots of alcohol. The next thing he remembers is being on the ground and being handcuffed. He also remembers sitting in a patrol car talking to his supervisor, Capt. Maddox. Mr. Locklear has no memory of what happened between the time he was in the bar and the time he was in handcuffs.

Mr. Locklear has no reason to doubt that he ran from Officer Dearnitt. Mr. Locklear has admitted committing the offense charged in the citation Deputy Dearnitt gave him.

Mr. Locklear has an alcohol problem. He understands that he suffers from alcoholism. He used to drink alcohol to excess. He suffered memory problems when he drank. Mr. Locklear formerly used alcohol as a problem solver. When Mr. Locklear drank alcohol, he would blame others for his problems, not himself. Initially he blamed Deputy Dearnitt for the arrest on October 10, 2013.

Mr. Locklear has been alcohol-free for three months. He has to work at abstaining from alcohol day to day. Mr. Locklear has learned that there is more to life than alcohol. From the substance abuse classes Mr. Locklear has attended recently he has learned that he is a raging alcoholic. He has learned that he used to drink alcohol to get mad. He has learned that he cannot control his consumption of alcohol because he does not know when to stop.

The last time Mr. Locklear drank any alcohol was March 12, 2016. Mr. Locklear started substance abuse classes on March 14, 2016. He started attending AA meetings in May 2016.

Abstaining from alcohol is a day to day process for Mr. Locklear. It has not been easy for Mr. Locklear to abstain from alcohol. But it has been easier not to drink now that Mr. Locklear is in AA. People in AA talk about other ways to have fun. Mr. Locklear has an AA sponsor, Mr. Ricky.

Mr. Locklear has accepted that he is an alcoholic. He recognizes that he has made many mistakes by drinking. He intends never to ever drink the rest of his life, but he knows that abstaining is a day to day process and that he will have to work day to day at staying alcohol-free for the rest of his life.

Mr. Locklear now blames himself for the mistakes he made when intoxicated. During the course of his testimony, Mr. Locklear apologized to Deputy Dearth for what Mr. Locklear did the night of October 10, 2013.

19. Mr. Locklear is good at his job as a correctional officer at LCI. He comes to work on time every day and comes in for extra work when he is asked. Mr. Locklear works with 132 prison inmates at LCI. He has the good social skills required to maintain good relationships with inmates. Mr. Locklear would like to keep his job as a correctional officer at LCI.

20. Petitioner's Exhibit 3 is a certified copy of Mr. Locklear personnel file. Exhibit 3 shows that Mr. Locklear has repeatedly received good and very good job performance assessments from his DPS supervisors. Among the "good" performance ratings given to Mr. Locklear is one dated about ten days after the October 10, 2013, incident. Among the compliments Mr. Locklear's supervisors have given him is that he "performs his job as a correctional officer in a professional manner."

21. Mr. Locklear admitted guilt to the charge of resisting arrest as part of a deferred prosecution agreement. He successfully completed the agreement and then the charge was dismissed. Mr. Locklear accepts responsibility for his behavior the night of October 10, 2013.

22. The Commission was timely notified that Petitioner had allegedly committed or been convicted of a misdemeanor as defined in 12 NCAC 09G. 0102.

23. On July 27, 2015, the Probable Cause Committee of the Commission gave Petitioner notice of the Committee's intention to hold a meeting about whether the Commission should take action against Petitioner's certification. The meeting itself was conducted on August 20, 2015, 22 months after the October 10, 2013, resisting arrest incident, and 7 ½ months after the dismissal of the criminal charge on January 7, 2015.

24. Petitioner complied with all DPS policies relevant to reporting or disclosing the misdemeanor citation Petitioner received on October 10, 2013.

25. Petitioner suffers from severe alcoholism and was suffering from alcoholism on October 10, 2013, when the resisting arrest incident occurred. Petitioner was not aware of his alcoholism on October 10, 2013.

26. Alcoholism is a mental and physical disease.

27. Petitioner's alcoholism was a material and contributing cause of the resisting arrest incident that occurred on October 10, 2013.

28. Petitioner has undergone treatment for alcoholism and is in recovery from his alcoholism. Petitioner's alcoholism is in early remission but a successful long-term recovery requires that Petitioner abstain from the use of alcohol. Petitioner has abstained from the use of alcohol continuously since March 12, 2016, and has demonstrated in good faith the intent to abstain on a day to day basis.

29. Petitioner's current employer, the North Carolina Department of Public Safety, considers Petitioner to be a model employee and a credit to the Department, the October 10, 2013, incident notwithstanding.

30. The North Carolina Department of Public Safety wishes to retain Petitioner as an employee.

31. Petitioner's wishes to retain his job with the North Carolina Department of Public Safety.

CONCLUSIONS OF LAW

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

2. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. The parties received proper notice of the hearing in this matter. To the extent that the findings of fact contain conclusions of law, or that the conclusions of law contain findings of fact, they should be so considered without regard to the given labels.

3. 12 NCAC 09G.0504(b)(3) states that Respondent may suspend, revoke, or deny the certification of a corrections officer who has committed or been convicted of a misdemeanor as defined by 12 NCAC 09G.0102.

4. 12 NCAC 09G.0102(9)(cc) lists Resist, Delay, or Obstruct a Public Officer as a misdemeanor which may result in the suspension, revocation, or denial of a corrections officer's certification.

5. On October 10, 2013, Petitioner committed a misdemeanor as defined in 12 NCAC 09G.0102(9)(cc).

6. Respondent has the authority granted under Chapter 17C of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 9G to certify correctional officers and to revoke, suspend or deny such certification.

7. The findings of the Probable Cause Committee of the Respondent are supported by substantial evidence and are not arbitrary and capricious

8. The party with the burden of proof in a contested case must establish the facts required by N.C.G.S. § 150B-23(a) by a preponderance of the evidence. N.C.G.S. § 150B-29(a). The administrative law judge shall decide the case based upon the preponderance of the evidence. N.C.G.S. § 150B-34(a).

9. The preponderance of the evidence is that Respondent's proposed suspension of Petitioner's correctional officer certification is supported by substantial evidence.

10. 12 NCAC 09G.0505(b)(1) provides:

When the Commission suspends or denies the certification of a corrections officer pursuant to 12 NCAC 09G .0504 of this Section, the period of sanction shall be not less than three years; however, the Commission may either reduce or suspend the period of sanction under Paragraph (c) of this Rule or substitute a period of probation in lieu of suspension of certification following an administrative hearing, where the cause of sanction is:

(1) commission or conviction of a misdemeanor as defined in 12 CAC 09G .0102;

Thus, under 12 NCAC 09G .0505(b)(1), Respondent has the discretion to substitute a period of probation in lieu of a suspension of certification.

11. Considering the facts before the Undersigned, including those related to (a) Petitioner's alcoholism and his good faith and thus far successful efforts at recovering from that disease; (b) his acceptance of responsibility for the events of October 10, 2013; (c) his

commendable work record; and (d) his employer's wish that Petitioner remain employed, the Undersigned concludes that the preponderance of the evidence supports the imposition of a period of probation in lieu of suspension of Petitioner's certification.

PROPOSAL FOR DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby recommends that a period of probation be substituted for any suspension of Petitioner's certification as authorized under 12 NCAC 09G .0505 (b). This period of probation will extend for one year from the date of this decision. This period of probation is subject to the condition that during said period Petitioner not violate any law (other than infractions as defined under North Carolina law) of this state or any other state, any federal laws, or any rules of this Commission, the Company and Campus Police Program or the North Carolina Sheriffs' Education and Training Standards 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. Gen. Stat. §150B-40(e).

The Agency that will make the Final Decision in this contested case is the North Carolina Criminal Justice 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).

This the 19th day of August, 2016.

David F Sutton
Administrative Law Judge