

STATE OF NORTH CAROLINA
COUNTY OF NASH

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 DOJ 08604

<p>Tony Bernard Richardson Petitioner,</p> <p>v.</p> <p>N C Sheriffs' Education And Training Standards Commission Respondent.</p>	<p>PROPOSAL FOR DECISION</p>
---	-------------------------------------

THIS MATTER came on for hearing before Hon. J. Randolph Ward, on May 19, 2016 in New Bern, upon the Respondent's request, pursuant to N.C.G.S. § 150B-40(e), for designation of an Administrative Law Judge to preside at the hearing of this contested case under Article 3A, Chapter 150B of the North Carolina General Statutes.

APPEARANCES

Petitioner: Tony Bernard Richardson, *pro se*
Middlesex, North Carolina

Respondent: Matthew L. Boyatt, Assistant Attorney General
N.C. Department of Justice
Raleigh, North Carolina

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 Commission's rules, such that Petitioner's certification is subject to revocation?

EXHIBITS ADMITTED INTO EVIDENCE

Petitioner's Exhibit 1. [Received post-hearing by stipulation.]

Respondent's Exhibits 1 through 4.

UPON DUE CONSIDERATION of the arguments and stipulations of counsel; the exhibits admitted; and the sworn testimony of each of the witnesses, viewed in light of their

opportunity to see, hear, know, and recall relevant facts and occurrences, any interests they may have, and whether their testimony is reasonable and consistent with other credible evidence; and, upon assessing the preponderance of the evidence from the record as a whole in accordance with the applicable law, the undersigned makes the following:

FINDINGS OF FACT

1. The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter referred to as the "Respondent" or "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.

2. Petitioner Tony Bernard Richardson is currently a Detention Officer with the Wake County Sheriff's Office, and holds a General Detention Officer Certification issued by the Respondent on March 23, 2007. *See*, Respondent's Exhibit 2 (hereinafter, "R Ex 2.")

3. On September 24, 2015, Respondent sent Petitioner a *Notification of Probable Cause to Revoke Justice Officer Certification*, due to his accumulation of four misdemeanors characterized as "Class A" or "B" offenses. (R Ex 1.)

4. The evidence adduced at hearing establishes that:

(a) On April 4, 1995, Petitioner was convicted of one (1) count of misdemeanor Worthless Check in violation of N.C.G.S. § 14-107(D)(1), in Johnston County, North Carolina, in Case No. 1994 CR 18219. (R Ex 3, p. 3.)

(b) On February 13, 1998, Petitioner was convicted of driving while impaired in violation of N.C.G.S. § 20-138.1(A) (sentencing level 5), in Wake County, North Carolina, in Case No. 1997 CR 56304. (R Ex 3, p. 4.)

(c) On August 31, 1988, Petitioner was convicted of selling a malt beverage to a minor in violation of N.C.G.S. § 18B-302, in Wake County, North Carolina, in Case No. 1988 CR 036600. (R Ex 3, p. 5.) Petitioner testified that he was working at a convenience store at the time and he glanced at the patron's license, but did not make an effort to check the date of birth on the license because there was a line of customers waiting. Petitioner was notified by the charging officer that the patron was underage and Petitioner was ultimately convicted of this offense.

(d) On April 14, 2015, Petitioner was convicted of a fourth misdemeanor offense. Petitioner was convicted of driving while impaired (Level 5) in violation of N.C.G.S. § 20-138.1, in Johnston County, North Carolina, in Case No. 14 CR 50041. (R Ex 3, p. 1-2.)

5. Petitioner does not dispute that he was convicted of these four misdemeanors, or that these convictions remain on his criminal record.

6. Petitioner testified that he concluded a 30-year career in the National Guard in 2005. He retired with the rank of Staff Sergeant, and was classified as being honorably discharged. Petitioner was deployed to Iraq for 12 months in 2004-2005, where he served as a platoon leader. Petitioner was responsible for leading and supervising eighteen men and three women during his deployment in Iraq, and was involved in active combat.

7. Petitioner candidly admitted that his combat experiences led him to drink irresponsibly at times, including the occasion leading to his 2015 conviction for driving while impaired. Following that arrest, he underwent alcohol and drug assessment and has received treatment for alcohol abuse. On the date of the hearing, Petitioner had not consumed alcohol for more than a year.

8. Petitioner began his employment at the Wake County Sheriff's Office in 2006. He is a detention officer who holds the rank of Master Officer, and has received good evaluations for his service. (P Ex 1.) Petitioner supervises four pods of inmates and is responsible for mentoring younger detention officers. He expressed a sincere desire to continue to serve the citizens of Wake County in this capacity.

9. Based on Petitioner's demeanor at the administrative hearing, his sincere remorse for his offenses, and his extended period of sobriety, the Petitioner appears to be at low risk for committing another criminal offense. Petitioner remains employed by the Wake County Sheriff's Office and appears to have the support of that agency, notwithstanding their knowledge of the 2015 driving while impaired conviction.

10. Respondent gave Petitioner due notice of its finding of probable cause to revoke his certification on September 24, 2015, and Petitioner timely requested a hearing on the issue. The Office of Administrative Hearings gave the parties timely notice of this hearing.

Based upon the foregoing findings of fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. To the extent that the foregoing Findings of Fact contain conclusions of law, or that the Conclusions of Law below are findings of fact, they should be so considered without regard to their given labels. *Charlotte v. Heath*, 226 N.C. 750, 755, 40 S.E.2d 600, 604 (1946); *Peters v. Pennington*, 210 N.C. App. 1, 15, 707 S.E.2d 724, 735 (2011).

2. The parties and the cause are properly before the Office of Administrative Hearings upon the request of Respondent N.C. Sheriffs' Education and Training Standards Commission for the designation of an Administrative Law Judge to preside at this hearing. N.C. Gen. Stat. § 150B-40(e).

3. The Respondent has the authority under Chapter 17E of the North Carolina General Statutes to revoke a justice officer's General Detention Officer Certification for grounds specified in Title 12, Chapter 10B of the North Carolina Administrative Code.

4. The Petitioner has the burden in this contested case of proving by a preponderance of the evidence that the Respondent erroneously or improperly proposed to deny Petitioner's application for certification. N.C. Gen. Stat. § 150B-29(a).

5. The Sheriffs' Commission may deny the certification of a justice officer when the Commission finds that the applicant has committed or been convicted of 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 crimes of the acts or conviction of the crimes. 12 NCAC 10B .0204(d)(5).

6. The criminal offense of driving while impaired, sentencing level 5, in violation of N.C.G.S. § 20-138.1(A) is classified as a Class A misdemeanor pursuant to 12 NCAC 10B .0103(10)(a) and the Class B Misdemeanor Manual adopted by Respondent. The record in this case establishes that Petitioner has been convicted of two (2) separate driving while impaired offenses, each of which are classified as Class A misdemeanor convictions, in case numbers 1997 CR 56304 and 14 CR 50041.

7. The criminal offense of misdemeanor worthless check, in violation of N.C.G.S. § 14-107(D)(1), is classified as a Class A misdemeanor pursuant to 12 NCAC 10B .0103(10)(a), and the Class B Misdemeanor Manual adopted by Respondent. Petitioner stands convicted of the Class A misdemeanor offense of worthless check in case number 1994 CR 018219.

8. The offense of selling a malt beverage to a minor in violation of N.C.G.S. § 18B-302 is classified as a Class B misdemeanor pursuant to 12 NCAC 10B .0103(10)(b) and the Class B Misdemeanor Manual adopted by Respondent. The record in this case establishes that Petitioner has been convicted of the Class B misdemeanor offense of selling a malt beverage to a minor in case number 1988 CR 036600.

9. The evidence presented at the administrative hearing establishes that Petitioner has been convicted of a combination of four (4) offenses 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. 12 NCAC 10B .0204(d)(5).

10. "When the Commission suspends, revokes, or 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)." 12 NCAC 10B .0205(3)(d).

11. Pursuant to 12 NCAC 10B .0205, in cases in which the officer's certification is subject to revocation pursuant to 12 NCAC 10B .0204(d)(5), the Commission may substitute a period of probation in lieu of revocation, when extenuating circumstances brought out at the administrative hearing warrant a lesser sanction.

12. Extenuating circumstances brought out at the administrative hearing -- notably including the Petitioner's honorable service in the National Guard, including combat leadership in Iraq, his candor about his former drinking problem and success at abating it, and his ongoing career as a detention officer in Wake County -- warrant consideration of a lesser sanction than revocation of his certification. 12 NCAC 10B .0205.

Based upon the foregoing Conclusions of Law, the undersigned offers the following:

PROPOSAL FOR DECISION

It is respectfully recommended that Petitioner be given a period of probation in the discretion of the Commission, in lieu of revocation of his General Detention Officer Certification.

NOTICE

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 hereby is ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714.

IT IS SO ORDERED.

This the 15th day of July, 2016.

J Randolph Ward
Administrative Law Judge