

STATE OF NORTH CAROLINA
COUNTY OF MOORE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 DOJ 08606

<p>DONALD WAYNE SHAW PETITIONER,</p> <p>v.</p> <p>N C SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION RESPONDENT.</p>	<p>ORDER GRANTING SUMMARY JUDGMENT TO PETITIONER AND PROPOSAL FOR DECISION</p>
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Petitioner is an applicant for justice officer certification through the Moore County Sheriff's Office. This law enforcement certification case arises out of action by Respondent whereby on September 24, 2015, Respondent issued a Notification of Probable Cause to Deny Justice Officer Certification letter to Petitioner via certified mail.

APPEARANCES

Petitioner: Donald Wayne Shaw, pro se
268 Seaboard Street
Vass, North Carolina 28394

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

ISSUE

Does Petitioner stand convicted of a combination of 4 or more Class A or Class B misdemeanors?

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 Sheriffs' Commission on September 24, 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. The proposed denial of Petitioner's application for justice officer certification is based on six (6) misdemeanor criminal convictions which appeared on Petitioner's criminal record at the time of Respondent's September 24, 2015, Notification of Probable Cause to Deny Justice Officer Certification.

4. 12 NCAC 10B.0204(d)(5) states 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. At the time Respondent issued its September 24, 2015, written notification, Petitioner stood convicted of the following misdemeanor offenses:

- i. Class A misdemeanor – Fishing without license, 1992 CR 001984;
- ii. Class A misdemeanor – Worthless Check, 1995CR CR 011472;
- iii. Class A misdemeanor – Worthless Check, 2000 CR 006800;
- iv. Class A misdemeanor – Worthless Check, 2000 CR 006801;
- v. Class B misdemeanor – Worthless Check, 2001 CR 050045; and
- vi. Class B Misdemeanor – Worthless Check, 2003 CR 053089.

6. Petitioner filed a request for an administrative hearing on November 16, 2015. The basis of Petitioner's request for an administrative hearing was that Petitioner was in the process of having certain criminal convictions removed from his criminal record. Each party filed its Prehearing Statement pursuant to the Court's Order for Prehearing Statements.

7. On May 11, 2016, Petitioner filed a Motion for Appropriate Relief in Moore County District Court seeking to set aside the convictions in the following cases: 1) 2000 CR 006800; 2) 2000 CR 006801; and 3) 2001 CR 050045.

8. On May 11, 2016, said Motion came to be heard in Moore County District Court. By Order of the same date, the District Court entered an Order setting aside Petitioner's convictions in case numbers 2000 CR 006800; 2000 CR 006801; and 2001 CR 050045.

9. Thereafter, on May 12, 2016, Assistant District Attorney Warren McSweeney filed voluntary dismissals in case numbers 2000 CR 006800; 2000 CR 006801; and 2001 CR 050045.

10. At the time of the proposed denial of Petitioner's application for justice officer certification on September 24, 2015, Petitioner stood convicted of 4 or more misdemeanor offenses in violation of 12 NCAC 10B .0204 (d) (5), as set out above in subparagraph 5 in greater detail.

11. However, because case numbers 2000 CR 006800; 2000 CR 006801; and 2001 CR 050045 were recently set aside and subsequently dismissed by the Moore County District Attorney's Office, Petitioner no longer stands convicted of 4 or more misdemeanor offenses pursuant to 12 NCAC 10B .0204 (d)(5). Therefore, there is no genuine issue of material fact for hearing in this dispute, and Petitioner is entitled to summary judgment as a matter of law. In entering this Order Granting Summary Judgment to Petitioner, the undersigned is making no findings of fact and conclusions of law as to whether Petitioner has "committed" the offenses which were set aside in case numbers 2000 CR 006800; 2000 CR 006801; and 2001 CR 050045.

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. At the time Respondent issued its proposed denial of Petitioner's application for justice officer certification on September 24, 2015, Petitioner stood convicted of the following six (6) misdemeanor offenses:

- i. Class A misdemeanor – Fishing without license, 1992 CR 001984;
- ii. Class A misdemeanor – Worthless Check, 1995CR CR 011472;
- iii. Class A misdemeanor – Worthless Check, 2000 CR 006800;

- iv. Class A misdemeanor – Worthless Check, 2000 CR 006801;
- v. Class B misdemeanor – Worthless Check, 2001 CR 050045; and
- vi. Class B Misdemeanor – Worthless Check, 2003 CR 053089.

6. On May11, 2016, three of Petitioner’s convictions were set aside, as set out in Finding of Fact Number 8 above. Thereafter, the District Attorney’s Office voluntarily dismissed 2000 CR 006800; 2000 CR 006801; and 2001 CR 050045.

7. Petitioner no longer stands convicted of a 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. Therefore, there is no genuine issue of material fact for hearing in this dispute, and Petitioner is entitled to summary judgment as a matter of law on the issue of whether Petitioner has been convicted of a combination of four or more Class A or Class B misdemeanor offenses. The undersigned is making no findings of fact or conclusions of law as to whether Petitioner committed the offenses in case numbers 2000 CR 006800; 2000 CR 006801; and 2001 CR 050045.

PROPOSAL FOR DECISION

Based upon the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, the undersigned recommends that Respondent take no action to deny Petitioner’s application for certification based on the former convictions in case numbers 2000 CR 006800; 2000 CR 006801; and 2001 CR 050045, which were subsequently set aside and dismissed after Petitioner submitted his application for certification through the Respondent Commission. This proposal shall in no way affect the Commission’s ability to consider the possible commission of any of the above-referenced offenses that were set aside.

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 22nd day of June, 2016.

J Randall May
Administrative Law Judge