

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 worthless check 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 - Simple Worthless Check, 2004 CR 050420;
- ii. Class A misdemeanor – Simple Worthless Check, 2004 CR 050421;
- iii. Class A misdemeanor – Simple Worthless Check, 2004 CR 050422;
- iv. Class B misdemeanor – Simple Worthless Check, 2004 CR 050423;
- v. Class B misdemeanor – Simple Worthless Check, 2004 CR 050424; and
- vi. Class B misdemeanor – Simple Worthless Check, 2004 CR 050425.

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 December 7, 2015, Order For Prehearing Statements.

7. On December 4, 2015, the district court set aside Petitioner's worthless check convictions in the following three (3) cases: 2004 CR 050420; 2004 CR 050421; and 2004 CR 050422. (See attachment A)

8. On that same date, the Pitt County District Attorney dismissed 2004 CR 050420; 2004 CR 050421; and 2004 CR 050422. (See attachment A)

9. 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 2004 CR 050420; 2004 CR 050421; and 2004 CR 050422 were recently set aside and subsequently dismissed by the Pitt County District Attorney's Office, Petitioner no longer stands convicted of 4 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.

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) worthless check offenses:

- i. Class A misdemeanor - Simple Worthless Check, 2004 CR 050420;
- ii. Class A misdemeanor – Simple Worthless Check, 2004 CR 050421;

- iii. Class A misdemeanor – Simple Worthless Check, 2004 CR 050422;
- iv. Class B misdemeanor – Simple Worthless Check, 2004 CR 050423;
- v. Class B misdemeanor – Simple Worthless Check, 2004 CR 050424; and
- vi. Class B misdemeanor – Simple Worthless Check, 2004 CR 050425.

6. On December 4, 2015, the following three (3) of Petitioner’s worthless check convictions were set aside and subsequently dismissed by the Pitt County District Attorney: 2004 CR 050420; 2004 CR 050421; and 2004 CR 050422.

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. The undersigned is making no findings of fact or conclusions of law as to whether Petitioner committed any of the worthless check offenses that have been set aside.

PROPOSAL FOR DECISION

Based upon the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, the undersigned recommends the Respondent take no action to deny Petitioner’s application for certification based on the worthless check convictions that were set aside and dismissed after Petitioner submitted his application for certification through the 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.

This the 22nd day of April, 2016.

Donald W Overby
Administrative Law Judge