

STATE OF NORTH CAROLINA  
COUNTY OF BURKE

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
15 DOJ 09661

Carson Dean Berry Petitioner,  v.  NC Sheriffs' Education and Training Standards Commission Respondent.	<b>PROPOSAL FOR DECISION</b>
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On May 3, 2016, the undersigned Administrative Law Judge David F. Sutton, heard this case in Morganton, North Carolina. This case was heard after Respondent requested, pursuant to N.C. Gen. Stat. § 150B-40(e), the 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**

For Petitioner: Carson Dean Berry, Pro Se  
2501 Raintree Street  
Connelly Springs, North Carolina 28612

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

**WITNESSES**

For Respondent: Petitioner

For Petitioner: Petitioner

**RULES AT ISSUE**

12 NCAC 10B .0204  
12 NCAC 10B .0205  
12 NCAC 10B .0301

## **EXHIBITS ADMITTED INTO EVIDENCE**

Respondent's Exhibits 1 – 3.

### **ISSUE**

Whether Respondent's summary denial of Petitioner's application for justice officer certification is supported by a preponderance of the evidence

BASED UPON careful consideration of the sworn testimony of the witnesses presented 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 and CONCLUSIONS of LAW. 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 interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case.

BASED UPON the foregoing and upon the preponderance or greater weight of the evidence in the whole record, the Undersigned makes the following:

### **FINDINGS OF FACT**

1. Petitioner was previously employed by the North Carolina State Highway Patrol (hereinafter "Highway Patrol"). Petitioner was terminated from the Highway Patrol in 2008 for an inappropriate relationship with a co-worker and for using his State issued telephone to send photographs of a sexual nature to this individual. Petitioner was also previously certified as a justice officer through the North Carolina Criminal Justice Education and Training Standards Commission. Petitioner allowed that certification to expire when he left the Highway Patrol in 2008.

2. Petitioner previously sought certification from the North Carolina Sheriffs' Education and Training Standards Commission (hereinafter "Sheriffs' Commission" or "Respondent") in 2010. On April 5, 2010, the Sheriffs' Commission notified Petitioner that probable cause had been found to deny his application for certification based on a finding that Petitioner no longer possessed the good moral character required of a sworn justice officer. (Respondent's Exhibit 3) The basis of this finding was Petitioner's inappropriate sexual conduct while employed as an employee of the Highway Patrol and while holding justice officer certification.

3. Petitioner was notified in the Notification of Probable Cause to Deny Justice Officer Certification letter dated April 5, 2010, that he had the right to contest the denial of his certification and to request an administrative hearing. Petitioner was further advised that if he

failed to request a hearing within 30 days of the notification, his application for certification would be denied indefinitely pursuant to 12 NCAC 10B .0205. (Respondent's Exhibit 3)

4. The April 5, 2010, Notification was sent via certified mail and was signed for by Petitioner on April 12, 2010. Petitioner does not dispute that he was aware of his right to contest the Respondent's action by requesting a hearing in April/May of 2010. Petitioner chose not to contest the denial of his application for certification because it was an election year and Petitioner did not want to bring embarrassment to the Sheriff of Burke County.

5. Petitioner's failure to contest the indefinite denial of his certification in 2010 was knowing and intelligent.

6. Petitioner is not currently employed by a Sheriff's office in this State. Petitioner was previously employed by the Burke County Sheriff's Office, but was separated from that agency in October 2015.

7. Petitioner is currently employed with the Valdese, NC Police Department and has, once again, been certified as a justice officer through the North Carolina Criminal Justice Education and Training Standards Commission.

8. Petitioner has not provided the requisite substantial evidence at the hearing of this contested case to prove that the reason for the Respondent's indefinite denial of his certification in 2010 no longer exists, or that the Respondent's indefinite denial of Petitioner's application for certification is unjustified.

### **CONCLUSIONS OF LAW**

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 Summary Denial of Justice Officer Certification letter, mailed by Respondent on October 22, 2015. (Respondent's Exhibit 1)

2. The North Carolina Sheriffs' Education and Training Standards 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. 12 NCAC 10B .0301(a)(8) provides that all justice officers employed or certified in the State of North Carolina shall be of good moral character.

4. 12 NCAC 10B .0204(b)(2) further provides the Sheriffs' Commission shall revoke, deny, or suspend a justice officer's certification when the Commission finds that the justice officer no longer possesses the good moral character that is required of all sworn justice officers.

5. Good moral character has been defined as honesty, integrity, and respect for the rights of others and for the laws of the state and nation. In Re Willis, 288 N.C. 1, 10 (1975).

6. Petitioner previously applied for certification through the Sheriffs' Commission in 2010. By way of certified mail dated April 5, 2010, the Sheriffs' Commission notified Petitioner that probable cause had been found to deny his application for certification based upon a finding of lack of good moral character. (Respondent's Exhibit 3) Petitioner was advised in the Notification of Probable Cause to Deny Justice Officer Certification dated April 5, 2010, that he had the right to contest the finding by filing a request for an administrative hearing within 30 days of receipt of the Notification. The April 5, 2010 Notification was sent via certified mail and was signed for by Petitioner on April 12, 2010. Petitioner did not contest the denial of his certification and did not request an administrative hearing. Petitioner did not request an administrative hearing because he did not want to bring embarrassment to the Sheriff during an election year. At that time, Petitioner had been terminated from the North Carolina State Highway Patrol for an inappropriate sexual relationship with a colleague and for using his state issued telephone for sending inappropriate photographs of himself.

7. Pursuant to 12 NCAC 10B .0205, Petitioner's certification was denied indefinitely based on a finding that Petitioner no longer possessed the good moral character required of a sworn justice officer in this State, as set out in the April 5, 2010 Notification. (Respondent's Exhibit 3)

8. Pursuant to 12 NCAC 10B .0205 (b), Petitioner's indefinite suspension will continue until such time as Petitioner proves, within the context of 12 NCAC 10B, he possesses the good moral character required of a sworn justice officer in this State.

9. Given the totality of the evidence presented at the administrative hearing, the Undersigned concludes the Summary Denial of Petitioner's application for certification was justified. Petitioner has failed to show the Commission acted improperly in denying his 2015 application for certification.

### **PROPOSAL FOR DECISION**

Based upon the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, the Undersigned recommends the Respondent deny Petitioner's application for certification.

### **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 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).

This the 16th day of May, 2016.

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David F Sutton  
Administrative Law Judge