

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
16 DOJ 00376

SAMUEL PORTER LAPSLEY,)
)
Petitioner,)
)
v.)
)
N.C. SHERIFFS' EDUCATION)
AND TRAINING STANDARDS)
COMMISSION,)
)
Respondent.)
_____)

PROPOSAL FOR DECISION

On June 28, 2016, Administrative Law Judge Melissa Owens Lassiter heard this case in Raleigh, North Carolina after Respondent requested, pursuant to N.C.G.S. § 150B-40(e), designation of an administrative law judge to preside at a contested case hearing under Article 3A, Chapter 150B of the North Carolina General Statutes. This contested case is an appeal from Respondent's September 24, 2015 Notification of Probable Cause to Revoke Petitioner's Justice Officer Certification for Petitioner's failure to notify Respondent within five working days that Petitioner was charged on or about November 17, 2014 with the criminal offense of "Carry Concealed Weapon."

APPEARANCES

Petitioner: Samuel Porter Lapsley, *Pro se*
416 Lenoxplace Circle
Raleigh, NC 27603

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

ISSUE

Did Petitioner fail to notify Respondent Commission within five working days that he had been charged with the criminal offense of "Carrying a Concealed Weapon" on November 17, 2014?

APPLICABLE RULES

12 NCAC 10B .0204(b)(2)
12 NCAC 10B .0205(2)
12 NCAC 10B .0301(a)(7)

FINDINGS OF FACT

1. Both parties are properly before the Administrative Law Judge, in that jurisdiction and venue are proper, both parties received Notice of Hearing, and that the Petitioner received by mail the Notification of Probable Cause to Revoke Justice Officer Certification letter, mailed by Respondent North Carolina Sheriffs' Education and Training Standards Commission on September 24, 2015. (Respondent's Exhibit 1)

2. The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter referred to as the "Respondent 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. 12 NCAC 10B .0204(b)(2) provides that the Sheriffs' Commission shall revoke, deny, or suspend the certification of a justice officer when the Commission finds that the applicant for certification or certified officer fails to meet or maintain any of the employment or certification standards required by 12 NCAC 10B .0300.

4. 12 NCAC 10B .0301(a)(7) requires that every justice officer employed or certified in North Carolina shall within five (5) working days notify the Sheriffs' Standards Division and the appointing department head in writing of all criminal offenses with which the officer is charged and shall also give notification, in writing, to the Sheriffs' Standards Division and the appointing department head following the adjudication of these criminal charges.

5. On February 17, 2011, Respondent Commission issued Petitioner a General Deputy Sheriff Certification. (Respondent's Exhibit 2)

6. Petitioner was aware of the Respondent Commission's five (5) day reporting requirement under 12 NCAC 10B .0301(a)(7). On January 2, 2012, Petitioner reported to the Sheriffs' Commission that he had received a Driving While Impaired charge on December 29, 2012. (Respondent's Exhibit 5)

7. On October 7, 2014, Petitioner was arrested for a second Driving While Impaired offense on October 7, 2014. Petitioner was charged with this offense following a domestic dispute. Petitioner admitted that he operated his vehicle after drinking, but felt like he was forced to leave the residence due to the domestic argument.

8. During the October 7, 2014 DWI stop, the arresting officer seized a firearm from Petitioner's vehicle. After the stop, the arresting officer took Petitioner's dog home, and requested

a magistrate issue a warrant against Petitioner for committing the misdemeanor offense of "Carrying Concealed Weapon." The magistrate whom the arresting officer appeared before, denied the arresting officer's request for a summons to charge Petitioner with the misdemeanor "Carrying a Concealed Weapon" offense.

9. On October 8, 2014, Petitioner resigned from the Wake County Sheriff's Office. (Respondent's Exhibit 6) On October 9, 2014, Petitioner voluntarily reported the October 7, 2014 Driving While Impaired charge to Respondent Commission. (Respondent's Exhibit 6)

10. On October 23, 2015, the arresting officer from the October 7, 2014 DWI stop obtained a warrant against Petitioner, from a different magistrate, charging Petitioner with the misdemeanor offense of "Carrying a Concealed Weapon" on October 7, 2014. However, such warrant was not served on Petitioner until November 17, 2014. (Petitioner's Exhibit 1)

11. On November 17, 2014, Petitioner went to the Garner Police Department to retrieve his firearm that had been seized during the October 7, 2014 DWI stop. At this time, Petitioner was served with a warrant for "Carrying a Concealed Weapon," ("CCW") Wake County case number 2014 CR 224901 (Respondent's Exhibit 7). Petitioner was provided a copy of the CCW criminal summons on November 17, 2014, which included a December 1, 2014 court date. Petitioner gave this information to his criminal attorney.

12. On March 30, 2015, a Wake County District Court Judge voluntarily dismissed the misdemeanor "Carrying a Concealed Weapon" charge against Petitioner.

13. Petitioner admitted that he did not report the "Carrying Concealed Weapon" charge (2014 CR 224901) to Respondent Commission within five working days of November 17, 2014, as required by 12 NCAC 10B .0301(a)(7). Petitioner indicated that had no intent to deceive Respondent by failing to notify Respondent of his "Carrying Concealed Weapon" charge.

Petitioner's certification is subject to revocation based on Petitioner's noncompliance with 12 NCAC 10B .0301(a)(7).

14. At the contested case hearing, Petitioner explained that by the time he was served with this criminal summons, he had already been released from the Wake County Sheriff's Office, and was more focused on defending his criminal charges. Petitioner further explained that he was not thinking along the lines of what he needed to do as a justice officer certified through the Sheriffs' Commission.

15. Petitioner regrets having failed to report to the Respondent Commission that Petitioner had been charged with the above-referenced CCW offense within the required time set out in 12 NCAC 10B .0301(a)(7). Petitioner accepts responsibility for his actions.

16. Petitioner currently works as a drywall installer with Advanced Drywall. Petitioner has approximately 23 years of law enforcement experience, and would like to maintain his certification with the hope of re-entering the profession in the near future.

17. Lt. J.L. Owens of the Wilson's Mills Police Department served with Petitioner in law enforcement for approximately 12 years, and asks the Commission to strongly consider Petitioner's years of law enforcement service in deciding what action to take regarding Petitioner's certification. In his letter of support for Petitioner, Lt. Owens stresses that Petitioner has a "deep rooted tradition of being a police officer" as he is a third generation police officer, and Petitioner's grandfather and father were both New York City policemen. (Petitioner's Exhibit 1) Owens opined that Petitioner embodies the best qualities of a police officer - duty, honor, courage, integrity, and professionalism. Lt. Owens notes that while Petitioner has made mistakes, he has been "nothing but upfront, honest, and accepted the responsibility of his actions from day one." (Petitioner's Exhibit 1) Owens explains that:

Far too often we are judged harshly for the mistake we have made in a moment and not considered for the person that we are.

Owens has also offered to support Petitioner for employment with the Wilson's Mills Police Department if Respondent allows Petitioner to retain his certification. (Petitioner's Exhibit 1)

18. Wake County Sheriff Donnie Harrison supports Petitioner retaining his justice officer certification. (Petitioner's Exhibit 2) In his letter of support, Sheriff Harrison described Petitioner as an "outstanding Deputy Sheriff, knowledgeable, professional, hardworking and well-thought of by his supervisors and fellow employees." (Petitioner's Exhibit 2) Harrison explained how Petitioner voluntarily resigned from his position as Wake County Deputy Sheriff on October 8, 2014, one day after being charged with a DWI while off duty. Sheriff Harrison noted that Petitioner's professionalism in performing his duties at Wake County Sheriff's Office never wavered during late 2014 when Petitioner was experiencing some personal issues that adversely affected his personal life. (Petitioner's Exhibit 2)

19. Newton Grove Police Chief Everett F Harrell has known Petitioner professionally and personally for approximately 22 years. Chief Harrell describes Petitioner as very knowledgeable, hardworking, and a professional who is well thought of by his peers as being a "straight forward, honest officer." (Petitioner's Exhibit 3) In his letter fully supporting Petitioner, Harrell states that he believes that Petitioner "has grown immensely from this whole experience, and has learned some lessons along the way." (Petitioner's Exhibit 3)

20. A preponderance of the evidence at hearing proved that Petitioner failed to timely notify Respondent of his criminal charge in 13 CR 052286 within five working days of November 17, 2014. Such failure constitutes a violation of 12 NCAC 10B .0204(b)(2) and 12 NCAC 10B .0301(a)(7).

CONCLUSIONS OF LAW

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

2. The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter referred to as the "Respondent 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. 12 NCAC 10B .0204(b)(2) provides the Sheriffs' Commission shall revoke, deny, or suspend the certification of a justice officer when the Commission finds that the applicant for certification or certified officer fails to meet or maintain any of the employment or certification standards required by 12 NCAC 10B .0300.

4. 12 NCAC 10B .0301(a)(7) requires that every justice officer employed or certified in North Carolina shall within five (5) working days notify the Sheriffs' Standards Division and the appointing department head in writing of all criminal offenses with which the officer is charged and shall also give notification, in writing, to the Sheriffs' Standards Division and the appointing department head following the adjudication of these criminal charges. Petitioner failed to make timely notification of his criminal charge in 2014 CR 224901, which constitutes a violation of 12 NCAC 10B .0204(b)(2) and 12 NCAC 10B .0301(a)(7).

5. A preponderance of the evidence at hearing showed that Petitioner failed to timely notify Respondent of his criminal charge in 13 CR 052286 within the required five working days, and such failure constitutes a violation of 12 NCAC 10B .0204(b)(2) and 12 NCAC 10B .0301(a)(7). Petitioner knew that he was required by Respondent's rule to notify Respondent of the CCW charge within five working days of being charged of the CCW offense. Respondent's proposed denial of Petitioner's justice officer certification is supported by substantial evidence.

6. However, pursuant to 12 NCAC 10B .0205 (2), the Sheriffs' Commission has the discretion to impose a lesser sanction than revocation, including a verbal and/or written warning, probationary certification, or suspension.

7. Based on the preponderance of the evidence and mitigating circumstances presented at hearing, the undersigned recommends Respondent impose a lesser sanction than revocation. The mitigating circumstances in this case include Petitioner's 23 years in law enforcement, Petitioner's acceptance of responsibility for failing to notify Respondent of his CCW charge, Petitioner's commitment to continue to serve as a justice officer, Petitioner's strong letters of support by Wake County Sheriff Donnie Harrison, and Newton Police Chief Everett F Harrell, and the support by Wilson's Mill Police Department to hire Petitioner if Petitioner retains his certification.

PROPOSAL FOR DECISION

Based upon the foregoing Findings of Fact, Conclusions of Law, and the mitigating circumstances presented at the contested case hearing, the undersigned recommends Respondent impose a lesser sanction than outright revocation of Petitioner's justice officer certification by **ISSUING** Petitioner a two year probationary certification, provided that during that two year period, Petitioner shall not violate any federal or state law, and shall remain in compliance with the rules established by the Sheriffs' Commission. Petitioner's certification shall remain in full

force and effect at the conclusion of this probationary period, provided Petitioner remains in compliance with the rules established by the Respondent Commission.

NOTICE

The North Carolina Sheriffs' Education and Training Standards Commission will make the Final Decision in this case. 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. N.C.G.S. § 150B-40(e).

This the 29th day of July, 2016.

Melissa Owens Lassiter
Administrative Law Judge