

STATE OF NORTH CAROLINA
COUNTY OF VANCE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
16 DOJ 02140

BARBARA ANN BROWN,)
)
 Petitioner,)
)
 v.)
)
 N.C. SHERIFFS' EDUCATION)
 AND TRAINING STANDARDS)
 COMMISSION,)
)
 Respondent.)
 _____)

PROPOSAL FOR DECISION

On February 24, 2016, pursuant to N.C.G.S. § 150B-40(e), Respondent requested 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 to hear Petitioner's appeal of Respondent's decision to deny Petitioner's application for justice officer certification. By letter dated January 7, 2016, Respondent's Probable Cause Committee denied Petitioner's application for justice officer certification, because Petitioner "failed to notify the Sheriffs' Standard Division, within five work days of your August 16, 2013 criminal charge of "Aid and Abet Larceny." On June 28, 2016, Administrative Law Judge Melissa Owens Lassiter heard this case in Raleigh, North Carolina. At the conclusion of the hearing, the undersigned ruled that the preponderance of the evidence presented at hearing supported issuance of a justice officer certification to Petitioner.

APPEARANCES

Petitioner: Barbara Ann Brown, Pro se, 41 Robin Lane, Henderson, NC 27537

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

ISSUE

Whether Petitioner failed to notify Respondent, within five working days, that she had been charged with the criminal charge of "Aid and Abet Larceny" on August 16, 2013?

FINDINGS OF FACT

1. Both parties are properly before the Administrative Law Judge, in that jurisdiction and venue are proper, and both parties received Notice of Hearing.

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 N.C.A.C. 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. Petitioner received her General Detention Officer Certification from the Respondent Commission on May 14, 2001. (Respondent's Exhibit 2) Thereafter, Petitioner was employed by the Vance County Sheriff, and worked as a detention officer through the Sheriff's Office.

6. On August 16, 2013, Petitioner was charged with "Aid and Abet [misdemeanor] Larceny" in violation of North Carolina General Statute § 14-72(a), in Vance County, North Carolina, case number 13 CR 052286. (Respondent's Exhibit 3)

7. On August 16, 2013, Petitioner drove she and her daughter to Walmart. They entered Walmart together, but then walked to different departments. Petitioner paid for her own items. She did not meet her daughter until Petitioner was leaving the store. Petitioner and her daughter walked out of Walmart together. Petitioner was unaware that her daughter had concealed merchandise in her purse.

8. Petitioner and her daughter were taken to the magistrate's office and charged. Petitioner was charged with "Aid and Abet Larceny" based only upon Petitioner being at the store with her daughter, and being the driver of the car. After being in the magistrate's office, Petitioner attempted to call Sheriff Peter White, but could not reach him. At home later that day, Petitioner called Major Ruby Williams of the Vance County Sheriff's Office, and informed her of the criminal charge. Major Williams notified Petitioner that her services would no longer be needed, as the Sheriff had decided to let her go. The decision to terminate Petitioner was within Sheriff's White sole discretion. Every Vance County Sheriff's employee that has been charged criminally has been dismissed under Sheriff White. (Williams' testimony)

9. Petitioner did not report to the Respondent Commission that she had been charged with the above-referenced criminal offense in 13 CR 052286 within five (5) working days of August 16, 2013, because she had been released from the Sheriff's Office, and thought she didn't need to notify Respondent given her dismissal from employment.

10. Petitioner regrets having failed to report to the Commission that Petitioner had been charged with the above-referenced offense within the required time set out in 12 N.C.A.C. 10B .0301(a)(7). Petitioner accepts responsibility, and has not attempted to make excuses for her failure to ensure the Respondent Commission received proper notification.

11. Petitioner acknowledges that ultimately she is responsible for reporting criminal charges to the Respondent Commission under 12 NCAC 10B 0301(a)(7), and that she failed to do so pursuant to 12 N.C.A.C. 10B .0301(a)(7). Petitioner has indicated that, based on this experience, she will always follow up in the future to ensure all information is being updated in a timely manner, pursuant to the Commission's rules. Hence, it is exceedingly unlikely that Petitioner will violate a reporting requirement of the Sheriffs' Commission in the future.

12. On January 14, 2014, the criminal charge against Petitioner was dismissed in District Court based on Petitioner's daughter being the responsible party, and Petitioner's lack of involvement in her daughter's actions at Walmart on August 16, 2013.

13. Petitioner has re-applied for certification through Respondent Commission, and has been re-hired by the Vance County Sheriff's Office. Petitioner is a valued detention officer with many years' experience. Petitioner received good evaluations or reviews during her prior employment with the Sheriff's office.

14. Major Ruby Williams, Vance County Jail Administrator, testified at the administrative hearing on Petitioner's behalf. Major Williams opined that Petitioner is honest and reliable, and is a good detention officer who is committed to the profession.

15. The Vance County Sheriff Peter White, the same Sheriff who terminated Petitioner's previous employment with the Vance County Sheriff's Office, supports Petitioner's application for certification, and would like to see Petitioner continue with her career as a detention officer in Vance County. Sheriff White plans to submit a letter in support of Petitioner's continued employment with his office.

CONCLUSIONS OF LAW

1. The parties are properly before the undersigned 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 N.C.A.C. 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. A preponderance of the evidence at hearing showed that Petitioner failed to make timely notification of her criminal charge in 13 CR 052286, which constitutes a violation of 12 NCAC 10B .0204(b)(2) and 12 NCAC 10B .0301(a)(7). Therefore, Respondent's proposed denial of Petitioner's justice officer certification is supported by substantial evidence.

6. However, pursuant to 12 NCAC 10B .0205(2), Respondent has the discretion to impose a lesser sanction, to include a verbal and/or written warning in lieu of denial, suspension, or revocation.

7. The undersigned recommends Respondent impose a lesser sanction, such as a verbal warning to Petitioner, given the evidence presented at the hearing and the mitigating circumstances existing in this case.

PROPOSAL FOR DECISION

NOW, THEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned recommends Respondent issue a justice officer certification to Petitioner, and issue a verbal warning to Petitioner for violating 12 NCAC 10B .0301(a)(7), based on the totality of the evidence presented at the administrative hearing. Mitigating circumstances exist in this case to warrant a lesser sanction than outright denial of certification, including but not limited to, Petitioner's acceptance of responsibility, the low likelihood that Petitioner would be charged with a crime in the future, Petitioner's re-hire at the Vance County Sheriff's Office, including the Sheriff's Office support of Petitioner, and Petitioner's commitment to continue to serve as a detention officer within the law enforcement community.

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 19th day of July, 2016.

Melissa Owens Lassiter
Administrative Law Judge