

STATE OF NORTH CAROLINA
COUNTY OF GASTON

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
16 DOJ 04757

William Douglas Hyleman Jr Petitioner, v. NC Sheriffs' Education And Training Standards Commission Respondent.	PROPOSAL FOR DECISION
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On October 4, 2016, Administrative Law Judge Selina M. Brooks heard this case in Charlotte, North Carolina. This case was heard after Respondent requested, pursuant to N.C.G.S. § 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

Petitioner: Thomas B. Kakassy
Attorney at Law
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Gastonia, North Carolina 28053

Respondent: Matthew L. Boyatt, Assistant Attorney General
N.C. Department of Justice
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ISSUE

Is the proposed revocation of Petitioner's detention officer certification supported by substantial evidence?

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 the Petitioner received by mail the proposed Revocation of Justice Officer's Certification letter, mailed by Respondent Sheriffs' Commission on April 7, 2016. (Respondent's Exhibit 1.)

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 two (2) witnesses that testified at the administrative hearing were Petitioner and Captain Charles McGee of the Mecklenburg County Sheriff's Office. Captain McGee conducted the internal affairs investigation which led to Petitioner's termination from the Mecklenburg County Sheriff's Office on November 25, 2015. The testimony of Captain McGee was credible.

4. Petitioner obtained employment as a detention officer with the Mecklenburg County Sheriff's Office on July 12, 2000. (Respondent's Exhibit 2.) Petitioner received his certification from the Respondent Commission on July 17, 2001, and, therefore, is subject to the rules and regulations established by Respondent governing justice officers. (Respondent's Exhibit 3.)

5. 12 NCAC 10B .0204(d)(1) provides the Sheriffs' Commission may revoke the certification of a justice officer when the Commission finds that the officer has committed or been convicted of a crime defined as a Class B misdemeanor, which occurred after the officer's date of appointment through the Respondent Commission. Willful failure to discharge duties in violation of N.C.G.S. § 14-230 is classified as a Class B misdemeanor pursuant to the rules established by the Respondent Commission and the Class B Misdemeanor Manual.

6. Further, 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. 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.

7. Petitioner testified at the administrative hearing and does not dispute that he intentionally falsified records while on duty as a detention officer at the Mecklenburg County Jail.

8. On August 3, 2015, Petitioner was assigned to Pod NHI-8 at the Mecklenburg County North Jail. By this time, Petitioner had been a detention officer for over 10 years. Petitioner admitted under oath that he received training to become a detention officer and that he was instructed on the importance of truthfulness and that he understood that sworn justice officers were required to be completely honest in their paperwork and reports. Petitioner admitted under oath that prior to his termination, Petitioner understood that falsification of agency records was strictly forbidden. Indeed, as an employee of the Mecklenburg County Sheriff's Office, Petitioner received a general memorandum that was issued to all employees. (Respondent's Exhibit 13.) This memorandum outlined the requirement of complete truthfulness in carrying out the duties of a Sheriff's employee. The memorandum further cautioned that untruthfulness could "totally obliterate" the effectiveness of the employee.

9. Petitioner also received regulations relating to the management of Pods at the Mecklenburg County jail as part of his training. (Respondent's Exhibit 5 and 6.) These regulations were available to Petitioner at all times in the event he had a question regarding his duties as a detention officer. Most notably, the rules provided to Petitioner mandated that all records must be accurate and "never falsified." (Respondent's Exhibit 5, section IX.) Furthermore, Petitioner was required to conduct security checks twice an hour on an irregular basis. The rules further require that these security checks shall be documented in the OMS log book. (Respondent's Exhibit 5, section VII.)

10. Petitioner worked the night shift on August 3, 2015, and was assigned to Pod NHI-8. (Respondent's Exhibit 7.) Petitioner's shift ran from approximately 1840 to 0700. During Petitioner's shift, Sergeant Joey Street of the Mecklenburg County Sheriff's Office heard disturbances coming from Petitioner's POD. Sergeant Street had been working in an adjacent POD at the time and was required to leave his post in order to determine the cause of the disturbance. Sergeant Street entered Pod NHI-8 at approximately 2100 and observed several youthful offenders out of their cells. These offenders should have been in lock down pursuant to policy.

11. Sergeant Street was required to report the disturbance as it was apparent that Petitioner was not conducting his duties pursuant to the above-referenced rules. Captain McGee was ultimately assigned to investigate the matter which resulted in a review of video surveillance in Pod NHI-8 during Petitioner's shift, in addition to, a review of Petitioner's paperwork and OMS logbook entries.

12. A review of the video and documentation completed by Petitioner revealed that Petitioner falsified jail records in numerous entries. For example, Petitioner entered into the OMS log book that he conducted Pod tours and completed the same at the following times: 1918; 1934; 1952; 2009; 2032; 2039; 2047; and 2054. However, a review of the video surveillance by Captain McGee revealed that Petitioner had not conducted any of the Pod tours indicated. Petitioner remained seated at his station during his shift. Thus, Petitioner entered at least 8 false entries into the OMS log book on August 3, 2015, in order to falsely indicate that these safety tasks were completed.

13. Furthermore, Petitioner falsified the OMS log book on August 3, 2015, by recording that he had completed shakedowns at 1918 and 1952. A review of the video surveillance by Captain McGee revealed that Petitioner had not conducted these shakedowns.

14. Petitioner also completed a Cell Search/Shakedown Log during his shift on August 3, 2015. (Respondent's Exhibit 10.) This form is to be completed when an inmate's body is physically searched, in addition to his cell. Both tasks must be completed and recorded on the form pursuant to Petitioner's training and the rules governing the Mecklenburg County Jail. Petitioner testified under oath and admitted that he falsified Respondent's Exhibit 10. Petitioner searched the cells of various inmates, but failed to conduct the body searches required by the rules. Petitioner's falsification gave the false impression that the inmates listed on the shakedown log had been physically searched when in fact they had not.

15. Captain McGee interviewed Petitioner on September 15, 2015, following his review of the evidence. During this interview Petitioner admitted to falsifying the OMS log book during his shift on August 3, 2015, and also admitted to falsifying the shakedown log. Given these actions in a sworn capacity, Petitioner was terminated from the Mecklenburg County Sheriff's Office on November 25, 2015.

16. Captain McGee opined that the Sheriff's records relating to Petitioner's shifts are tainted because of Petitioner's intentional falsification. Records of Petitioner's prior shifts are no longer deemed reliable given Petitioner's unethical conduct.

17. Petitioner admitted under oath that he falsified agency records on August 3, 2015. Petitioner admitted under oath that he understood the duty to remain honest at all times while conducting his duties as a sworn detention officer, to include the duty to submit accurate paperwork. Petitioner testified that he knew falsification of agency records was strictly forbidden.

18. Petitioner admitted under oath that he had falsified OMS log book entries prior to August 3, 2015, but Petitioner does not recall exactly how many times he engaged in similar conduct.

19. Petitioner is not currently working for a Sheriff's Office.

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)(1), 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:

(1) a crime or unlawful act defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor which occurred after the date of appointment.

3. Willful failure to discharge duties in violation of N.C.G.S. § 14-230 is classified as a Class B misdemeanor pursuant to 12 NCAC 10B .0103(10)(b) and the Class B Misdemeanor Manual adopted by Respondent.

4. The elements of a violation of N.C.G.S. § 14-230 are: "(1) that the defendant be an official of a state institution and (2) that he willfully fail[ed] to discharge the duties of his office." *State v. Birdsong*, 325 N.C. 418, 422 384 (1989). Harm to the public is a judicially recognized element of this offense. *Id.* A sworn justice officer is considered an "official" under N.C.G.S. § 14-230. *State v. Fesperman*, 264 N.C. 160, 161 (1965).

5. The evidence presented at the administrative hearing establishes that Petitioner willfully failed to discharge his duties on August 3, 2015, within the meaning of N.C.G.S. § 14-230. Petitioner was fully aware of his duty to document all Pod tours accurately and was aware

that falsification of agency records was strictly forbidden. During his Pod tour on August 3, 2015, Petitioner intentionally made numerous false entries into the OMS log book and the Shakedown log in order to give the false impression that Petitioner had conducted safety checks when in fact he had not. Petitioner admitted under oath that his falsification of agency records in this manner was not limited to August 3, 2015. Petitioner's intentional falsification resulted in the tainting of all agency records relating to Petitioner's prior shifts, which constitutes harm to the public within the meaning of N.C.G.S. § 14-230. Petitioner committed these unlawful acts after having received justice officer certification from the Respondent Commission. Petitioner is not in compliance with 12 NCAC 10B .0204(d)(1), and his certification, therefore, is subject to revocation for willful failure to discharge duties.

6. Finally, pursuant to 12 NCAC 10B .0301(a)(8), every justice officer employed or certified in North Carolina shall be of good moral character. 12 NCAC 10B .0204(b)(2) further provides the Sheriff's 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.

7. Good moral character has been defined as "honesty, fairness, 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).

8. Given the totality of the evidence presented at the administrative hearing, Petitioner no longer possess the good moral character that is required of a sworn justice officer in this state. Petitioner's actions exhibited a tremendous lack of honesty and integrity, and his falsification of agency records was not limited to August 3, 2015. Petitioner also exhibited a lack of respect for the rights of others insofar as Petitioner intentionally omitted safety checks that were designed to ensure the safety of inmates under Petitioner's care and supervision.

9. Petitioner has the burden of proof in this contested case. *Overcash v. N.C. Dep't of Env't and Natural Res.*, 179 N.C. App. 697 (2006); *Raeford Farms v. D.E.N.R.*, 774 S.E. 2d 911 (2015). Petitioner has failed to show that the proposed revocation of his certification is not supported by substantial evidence.

10. Substantial evidence exists to support the revocation of Petitioner's detention officer certification based upon Petitioner no longer possessing the good moral character required of a sworn justice officer, and for willfully failing to discharge his duties. Petitioner has failed to demonstrate that the revocation of his certification is not justified pursuant to the Commission's Rules.

PROPOSAL FOR DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned recommends Respondent revoke the Petitioner's Justice Officer Certification indefinitely. Petitioner no longer possesses the good moral character required of a sworn justice officer in this State. Petitioner's certification is also subject to revocation for willful failure to discharge duties in violation of N.C.G.S. § 14-230.

NOTICE AND ORDER

The North Carolina Sheriffs' Education and Training Standards Commission is the agency that will make the Final Decision in this contested case. As the final decision-maker, 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 pursuant to N.C. Gen. Stat. § 150B-40(e).

It hereby is ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714.

This the 4th day of November, 2016.

Selina Malherbe Brooks
Administrative Law Judge