

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
16 DOJ 07831

<p>SHERMAN LEVON PRIDE PETITIONER,</p> <p>v.</p> <p>NC SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION RESPONDENT.</p>	<p>PROPOSAL FOR DECISION</p>
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This case came on for hearing on November 7, 2016 before Administrative Law Judge J. Randall May, in Gastonia, North Carolina. This case was heard after Respondent requested, pursuant to N.C.G.S. § 150B-40(e), 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: Sherman Levon Pride
19041 Oakhurst Blvd
Cornelius, North Carolina 28031

Respondent: Lauren Tally Earnhardt
Attorney for Respondent
Department of Justice
Law Enforcement Liaison Section
9001 Mail Service Center
Raleigh, North Carolina 27699-9001

ISSUES

Does substantial evidence exist for Respondent to deny Petitioner's application for justice officer certification for committing or being convicted of four or more Class A or B misdemeanor offenses?

APPLICABLE RULE

12 NCAC 10B .0204(d)(5)
12 NCAC 10B .0205(3)(d)
12 NCAC 10B .0103(2)
12 NCAC 10B .0103(10)(b)

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 Petitioner received by mail the proposed denial of Justice Officer Certification letter, mailed by Respondent North Carolina Sheriffs' Education and Training Standards Commission on July 11, 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, and suspend such certification.

3. Petitioner is an applicant for justice officer certification through the Mecklenburg County Sheriff's Office.

4. 12 NCAC 10B .0204(d)(5) provides 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. The evidence presented at the administrative hearing established that Petitioner has been convicted of the following misdemeanors:

- a. Simple Worthless Check, 1995 CR 010297, Moore County;
- b. Simple Worthless Check, 1996 CR 001304, Moore County;
- c. Simple Worthless Check, 1994 CR 017393, Robeson County; and
- d. Simple Worthless Check, 1995 CR 00035, Hoke County.

(Respondent's Exhibit 2).

6. Each of the above-referenced misdemeanors are classified as Class A misdemeanors pursuant to the Commission's Rules and the Class B Misdemeanor Manual adopted by Respondent Commission.

7. Petitioner does not contest that he was convicted of these offenses and that they remain on Petitioner's record. Petitioner testified that he has taken no action to change these convictions and that he has not been in any legal trouble since these convictions almost 20 years ago.

8. Captain Michael Smith testified at the hearing. Capt. Smith is Petitioner's training commander. Capt. Smith stated that Petitioner is a good employee, is punctual, and has had no warnings or investigations since he has been working for the Sheriff's Office.

CONCLUSIONS OF LAW

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

2. 12 NCAC 10B .0204(d)(5) provides 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.

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 civil or military; or (c) a plea or 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, by continuing as long as the stated deficiency, infraction, or impairment continues to exist where the cause of sanction is commission or conviction offenses as specified in 12 NCAC 10B .0204(d)(5).

5. Pursuant to 12 NCAC 10B .0103(10)(a), Petitioner's four (4) convictions in the following cases constitute Class A misdemeanor convictions pursuant to the Commission's Rules:

- a. Simple Worthless Check, 1995 CR 010297, Moore County;
- b. Simple Worthless Check, 1996 CR 001304, Moore County;
- c. Simple Worthless Check, 1994 CR 017393, Robeson County; and
- d. Simple Worthless Check, 1995 CR 00035, Hoke County.

6. A preponderance of the evidence presented at the administrative hearing establishes that Petitioner has been convicted of a combination of four (4) or more Class A misdemeanor offenses. Therefore, Petitioner's application for certification is subject to denial pursuant to 12 NCAC 10B .0204(d)(5).

7. Petitioner has the burden of proof in this contested case. Petitioner has failed to show by a preponderance of the evidence that Respondent Sheriffs' Commission improperly proposed to deny Petitioner's application for certification.

PROPOSAL FOR DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, it is proposed that Respondent deny Petitioner's application for certification based on the conviction of four (4) or more Class A misdemeanors.

NOTICE

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 is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6700.

IT IS SO ORDERED.

This the 29th day of December, 2016.

J Randall May
Administrative Law Judge

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For the purpose of correcting a clerical error, IT IS HEREBY ORDERED that the above-captioned Proposal for Decision, issued from this Office on December 29, 2016, is amended as follows:

AMENDED PROPOSAL FOR DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, it is proposed that Petitioner's application for certification be GRANTED based on the age of the violation and Petitioner's record since his conviction of these misdemeanor offenses.

This the 23rd day of January, 2017.

J Randall May
Administrative Law Judge