

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
22 DOJ 00288

<p>Roderick Lamond Anderson Petitioner,</p> <p>v.</p> <p>North Carolina Criminal Justice Education and Training Standards Commission Respondent.</p>	<p>PROPOSAL FOR DECISION</p>
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On May 26, 2022, Administrative Law Judge Melissa Owens Lassiter heard this contested case at the N.C. Office of Administrative Hearings in Raleigh, North Carolina, pursuant to N.C. Gen. Stat. § 150B-40(e) and Respondent's request for designation of an Administrative Law Judge to preside at an Article 3A contested case hearing in this matter.

APPEARANCES

For Petitioner: Nicholas J. Dowgul, North State Law, Raleigh, North Carolina
For Respondent: Erika N. Jones, Assistant Attorney General
N.C. Department of Justice, Raleigh, North Carolina

ISSUE

Whether sufficient evidence exists to support Respondent's proposed denial of Petitioner's law enforcement certification, pursuant to 12 NCAC 09A .0204(b)(2) and 0205(b)(1) and 12 NCAC 09B .0111(1)(c), for the commission of the Class B misdemeanor offense of "Harassing Phone Calls" in violation of N.C.G.S. § 14-196(a)(3)?

APPLICABLE STATUTES AND RULES

N.C. Gen. Stat. § 17C-1 *et seq.*
N.C. Gen. Stat. § 14-196(a)(3)

12 NCAC 09A .0103(24)(b)
12 NCAC 09A .0204(b)(2)
12 NCAC 09A .0205(b)(1)
12 NCAC 09B .0111(1)(c)

EXHIBITS ADMITTED INTO EVIDENCE
(By Stipulation of Petitioner May 9, 2022)

For Petitioner: None

For Respondent: 1 - 8

WITNESSES

For Petitioner: Roger Anderson, Petitioner

For Respondent: Judy Kelley, Investigator for Respondent

FINDINGS OF FACT

BASED UPON careful consideration of the sworn testimony of witnesses presented at the hearing, stipulations, documents admitted into evidence, and the entire record in this proceeding having weighed all evidence and assessed the credibility of the witnesses, including but not limited to the demeanor of the witness; any interest, bias or prejudice the witness may have; the opportunity of the witness to see, hear, know and remember the facts or occurrences about which the witness testified; whether the testimony of the witness is reasonable; whether such testimony is consistent with all other believable evidence in the case, and upon assessing the evidence from the record as a whole, the undersigned finds as follows:

Procedural Background

1. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, and both parties received notice of hearing.
2. Respondent, the North Carolina Criminal Justice Education and Training Standards Commission (hereinafter "the Commission"), is authorized under Chapter 17C of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 9 to certify correctional officers, juvenile justice officers, criminal justice instructors, and criminal justice officers and to revoke, suspend, or deny such certification.
3. On September 10, 2021, Petitioner applied for law enforcement certification with Respondent to serve with the N.C. Central University Police Department (NCCU Police). Petitioner had previously worked as a detention officer with the N.C. Division of Adult Corrections from July 2, 2018 until July 2, 2019. (Resp. Ex. 1).
4. On November 29, 2021, Respondent's Probable Cause Committee (PCC) notified Petitioner that it had found probable cause to believe that Petitioner's application for law enforcement certification should be denied for committing the Class B misdemeanor offense of "Harassing Phone Calls" in violation of N.C.G.S. § 14-196(a)(3) from February 17, 2019 through March 20, 2019. The PCC found that Petitioner

committed such offense when he “lawfully and willfully did telephone Christopher Williams repeatedly for the purpose of annoying and harassing Christopher Williams.” The PCC’s decision was based on the following information:

- a. Petitioner tried numerous times to reach out to Mr. Williams by email, text, calls and voicemail but were not successful.
- b. Petitioner’s admissions in his written and typed statements to Respondent that he “kept trying for a month to reach out to Mr. Williams and see why he stopped responding to” Petitioner and
- c. When Petitioner appeared before the PCC on November 17, 2022, he admitted to his actions and “admitted that even after a law enforcement officer advised you not to contact Mr. Williams that you continued to do so.”

(Resp. Ex. 8).

5. On January 24, 2022, the N.C. Office of Administrative Hearings opened a contested case after receiving Respondent’s Request for Designation of an Administrative Law Judge to preside over a contested case in this matter, pursuant to N.C.G. S. § 150B-40(e) and pursuant to Petitioner’s request on December 22, 2021 appealing the PCC’s November 29, 2021 Proposed Denial of Petitioner’s Law Enforcement Certification application.

6. On May 9, 2022, Petitioner filed the following Stipulations with the Office of Administrative Hearings:

- 1.) The entry of exhibits by Respondent which Respondent has previously disclosed to Petitioner. This includes, but is not limited to, documents related to statements Petitioner made to Respondent’s investigators and law enforcement officials as well as all electronic or written communications sent by Petitioner to Complainant, Christopher Williams.
- 2.) Petitioner further stipulates that Respondent can legally deny Petitioner a certification of a criminal justice officer under 12 NCAC 09B .0111(1)(c) and 12NCAC 9A .0204(b)(3)(A).
- 3.) In lieu of denial of certification, Respondent can substitute a period of probation for the certification under 12 NCAC 09A .0205(b).

(Petitioner’s Stipulations filed May 9, 2022). At the beginning of the contested case hearing, Petitioner’s counsel confirmed that Petitioner was stipulating that the facts in this matter were not in dispute, and that the appropriate sanction was the only matter at issue at hearing.

7. On June 14, 2022, the Undersigned issued an Order for Petitioner to File a Proposed Proposal for Decision as the evidence admitted at the contested case hearing and Petitioner's filed Stipulations showed:

1. Probable cause existed, through Petitioner's admission and stipulation, for Respondent's Probable Cause Committee to deny Petitioner's request for certification as a law enforcement officer for committing the Class B misdemeanor offense of "Harassing Phone Calls" in violation of N.C.G.S. § 14-196(a)(3).

2. The undersigned will recommend that Respondent DENY Petitioner's certification for a period of not less than five years; however, based on extenuating circumstances presented at hearing, the denial of Petitioner's detention [sic] officer certification should be SUSPENDED, and Petitioner should be placed on PROBATION for a period of THREE YEARS on the conditions that Petitioner shall not violate any federal law, any law of the State of North Carolina, or any rules of Respondent Commission during that period. 12 NCAC 09A .0205(b).

8. On June 20, 2022, Petitioner filed a proposed Proposal for Decision pursuant to the Undersigned's June 14, 2022 Order. In its proposal, Petitioner recommended the Undersigned propose the denial of Petitioner's certification be suspended and Petitioner be issued a certification for a probationary period of one year.

Evidence at Contested Case Hearing

9. Petitioner dated Christopher Williams briefly from approximately November 2018 until February 16, 2019 when he and Mr. Williams had a disagreement. After that disagreement, Mr. Williams stopped having any contact with Petitioner. Petitioner admitted at hearing that he repeatedly tried to contact Mr. Williams by electronic mail, text, telephone calls and by leaving voicemail messages for Williams. Petitioner wanted to know what happened to Mr. Williams and that he was okay. Williams did not answer or return Petitioner's phone calls, texts, or voicemail messages. Petitioner had a difficult time after this and thought Mr. Williams would come around.

10. On or about March 27, 2019, Petitioner was served with a criminal summons for "unlawfully and willfully did telephone Christopher Williams repeatedly for the purpose of annoying and harassing Christopher Williams at the called number" on or about February 17, 2019 through March 20, 2019 in violation of N.C.G.S. § 14-96(a)(3). (Resp. Ex. 2)

11. On June 14, 2019, Petitioner pled guilty to the subject criminal charge and was placed on supervised probation for one year. After Petitioner completed his one-year probationary period, the "Harassing Phone Calls" charge against Petitioner was dismissed on July 13, 2020. (Resp. Exs. 3-5)

12. Petitioner attended therapy to help with his emotional difficulty after his break-up with Mr. Williams. Petitioner attested that he was cleared from therapy and no longer attends therapy. He apologized for his harassing actions towards Mr. Williams and admitted he should not have done that.

13. Respondent's Investigator Judy Kelley investigated Petitioner's application for certification and received copies of Respondent's Exhibits 1-5, including a written statement from Petitioner (Resp. Ex. 6). Petitioner was very cooperative and polite with Ms. Kelley during the investigation, and "owned up to what he did." (Kelley testimony) Ms. Kelley confirmed that Petitioner attended the PCC November 17, 2021 meeting.

14. Since October 1, 2021, Petitioner has been employed with the NCCU Police in a non-certified position. He has had no disciplinary issues during his employment there. Petitioner attested that the NCCU Chief of Police supports his certification.

CONCLUSIONS OF LAW

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

2. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. The parties received proper notice of the hearing in this matter. To the extent that the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels. *Charlotte v. Heath*, 226 N.C. 750, 755, 40 S.E.2d 600, 604 (1946); *Peters v. Pennington*, 210 N.C. App. 1, 15, 707 S.E.2d 724, 735 (2011).

3. A judge is not required to find all the facts shown by the evidence, but only sufficient material facts to support the decision. *Green v. Green*, 284 S.E.2d 171,174, 54 N.C. App. 571, 575 (1981); *In re Custody of Stancil*, 179 S.E.2d 844,847, 10 N.C. App. 545, 549 (1971).

4. Respondent North Carolina Criminal Justice Education and Training Standards Commission has authority 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 suspend, revoke or deny certification under appropriate circumstances with valid proof of a rule violation.

5. N.C. Gen. Stat. § 150B-40(e) provides that "[w]hen a majority of an agency is unable or elects not to hear a contested case," the agency applies to the OAH for designation of an ALJ. Thus, in Article 3A cases, OAH, through an ALJ, sits and presides over the 3A hearing in the place of the agency, and makes a "proposal for decision" back to the agency. N.C. Gen. Stat. § 150B-40. In such a case, "[t]he provisions of [Article 3A], rather than the provisions of Article 3, shall govern a contested case...." N.C. Gen. Stat. § 150B-40(e).

6. Respondent's 12 NCAC 09A .0207, titled "Administrative Hearing Procedures," provides:

(a) Administrative hearings in contested cases conducted by the Commission or an Administrative Law Judge as authorized in G.S. 150B-40(e) shall be governed by:

(1) procedures set out in Article 3A of G.S. 150B.

7. Furthermore, N.C. Gen. Stat. § 150B-40 provides that the "hearings shall be conducted in a fair and impartial manner" and that the presiding officer, including the ALJ, may "regulate the course of the hearings." That statutory provision allows the presiding officer to dictate who has the burden of proof. Therefore, applying the statutory law along with "considerations of policy, fairness and common sense," and the statutory authority to regulate the course of hearing, the Undersigned determines that Respondent should bear the burden of proof in an Article 3A action where Respondent proposes to take some action against a license/certificate holder or application based upon its investigation into that individual.

8. 12 NCAC 09B .0111 MINIMUM STANDARDS FOR LAW ENFORCEMENT OFFICERS provides:

In addition to the requirements for criminal justice officers contained in Rule .0101 of this Section, every law enforcement officer employed by an agency in North Carolina shall:

(1) not have committed or been convicted of:

(c) a crime or unlawful act defined as a "Class B misdemeanor" within the five-year period prior to the date of application for employment.

9. 12 NCAC 09A .0204(b)(2) SUSPENSION: REVOCATION: OR DENIAL OF CERTIFICATION provides:

(b) The Commission may suspend, revoke, or deny the certification of a criminal justice officer when the Commission finds that the applicant for certification or the certified officer:

(2) fails to meet or maintain one or more of the minimum employment standards required by 12 NCAC 09B .0100 for the category of the officer's certification or fails to meet or maintain one or more of the minimum training standards required by 12 NCAC 09B .0200 or 12 NCAC 09B .0400 for the category of the officer's certification.

10. N.C.G.S. § 14-196(a)(3) is a Class B misdemeanor as defined in 12 NCAC 09A .0103(24)(b) of Respondent's administrative rules and the Class B Misdemeanor Manual.

11. N.C.G.S. § 14-196 states:

Using profane, indecent, or threatening language to any person over telephone; annoying or harassing by repeated telephoning or making false statements over telephone.

(a) It shall be unlawful for any person:

(3) To telephone another repeatedly, whether or not conversation ensues, for the purpose of abusing, annoying, threatening, terrifying, harassing or embarrassing any person at the called number.

(Emphasis in original).

12. The Findings of Fact, Stipulations and admissions by Petitioner prove that Petitioner committed the Class B misdemeanor offense of "Harassing Phone Calls" on or about February 17, 2019 through March 20, 2019 in violation of N.C.G.S. § 14-94(a)(3) and as defined in 12 NCAC 09A .0103(24)(b).

13. There was sufficient evidence presented at hearing to support the denial of Petitioner's request for law enforcement officer certification under 12 NCAC 09A .0204(b)(2) and 09B .0111(1)(c).

14. 12 NCAC 09A .0205 PERIOD OF SUSPENSION: REVOCATION: OR DENIAL states:

(b) When the Commission suspends or denies the certification of a criminal justice officer, the period of sanction shall be not less than five years; however, **the Commission may reduce or suspend the period of sanction or substitute a period of probation in lieu of suspension of certification, or impose a combination of reduction, suspension, or probation as determined on a case-by-case basis** following a consent order or an administrative hearing, where the cause of sanction is:

(1) commission or conviction of a criminal offense other than those listed in Paragraph (a) of this Rule.

(Emphasis added).

15. Given Petitioner's consistent admission of his wrongdoing, his voluntarily attending therapy, his expressed remorse for his actions, and the lack of severity or gravity of the subject criminal offense committed, there is sufficient evidence to support

Respondent's **suspension** of the proposed denial of Petitioner's certification and issuance of a probationary certification for two years to Petitioner provided Petitioner not further violate any federal or North Carolina laws, and/or any rules of Respondent during that period.

FINAL DECISION

Based on the foregoing Findings of Fact and Conclusions of Law and Petitioner's Stipulations, the Undersigned proposes Respondent **SUSPEND** its proposed denial of Petitioner's request for a law enforcement officer certification, and place Petitioner on **PROBATION for a period of TWO YEARS** on the condition that Petitioner not further violate any federal law, any law of the State of North Carolina, or any rules of Respondent Commission during that period.

NOTICE

The North Carolina Sheriffs' Education and Training Standards Commission will make the Final Decision in this contested case. That Commission 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).

That Commission shall serve a copy of its Final Agency Decision or Order on 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).

SO ORDERED, this the 22nd day of July, 2022.



Melissa Owens Lassiter
Administrative Law Judge


CERTIFICATE OF SERVICE

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service:

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This the 22nd day of July, 2022.



Daniel Chunko
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