

STATE OF NORTH CAROLINA  
COUNTY OF VANCE

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
22 DOJ 00666

Jackie Davis Petitioner,  v.  North Carolina Sheriffs Education and Training Standards Commission Respondent.	<b>PROPOSAL FOR DECISION</b>
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This contested case was heard by Michael C. Byrne, Administrative Law Judge, on October 5, 2022, at the Office of Administrative Hearings in Raleigh, North Carolina following the request of Respondent NC Sheriffs' Education and Training Standards Commission ("Respondent") for appointment of an Administrative Law Judge to hear the case of Petitioner Jackie Davis ("Petitioner") pursuant to N.C.G.S. 150B-140(e).

**APPEARANCES**

Mr. Daniel Meier  
Meier Law Group, PLLC  
100 E. Parrish St., Suite 300  
Durham, North Carolina 27701  
Attorney for Petitioner

Mr. Robert Pickett  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602  
Attorney for Respondent

**EXHIBITS**

Petitioner's Exhibit 1 was admitted

Respondent's Exhibits 1-7 were admitted

**WITNESSES**

**For Respondent:**

None

**For Petitioner:**

Petitioner

**ISSUE**

Whether Respondent correctly found probable cause to revoke Petitioner's justice officer certification.

Based on stipulations and all evidence in the record, the Tribunal makes the following:

**FINDINGS OF FACT**

1. Petitioner has held probationary justice officer certification from September 1, 2007 to September 15, 2008 and general justice office certification from September 15, 2007 through the Vance County Sheriff's Office, where she is employed as a Processing Sergeant. Petitioner has worked for the Vance County Sheriff's Office for 15 years.

2. Petitioner was served with a Misdemeanor Larceny charge on April 18, 2013, and was convicted of that charge on May 28, 2013 (Res. Ex. 4). Misdemeanor Larceny is a Class B misdemeanor.

3. Petitioner was served with thirteen worthless check charges in 2012, after her certification as a justice officer (Res. Ex. 4). All of these charges were voluntarily dismissed. The worthless checks were the result of Petitioner having her checkbook stolen; she did not write the worthless checks in question.

4. Petitioner did not notify Respondent of any of these charges or convictions within the time required by law. Petitioner admitted at hearing that she received initial training at the time of her certification but did not know of the reporting requirements for criminal charges until some years later when informed by a colleague. Petitioner admitted that she took annual training, including online annual training, but "could not say either way" whether the reporting requirements were discussed in that training.

5. Under questioning by the Tribunal, Petitioner acknowledged that she was responsible for knowing and adhering to Respondent's rules related to certification, including the requirements for reporting criminal charges and/or convictions.

6. Petitioner was charged and convicted of Misdemeanor Worthless Check in 2007, prior to her date of appointment (Res. Ex. 4). Petitioner disclosed this conviction on her Personal History at the time of her certification process, and it does not form a basis for adverse action on Petitioner's certification.

7. By stipulation, Petitioner's Exhibit 1, the affidavit of Captain Jessica Alston ("Alston"), was admitted into evidence. Alston is an Assistant Administrator for the Vance County Detention Center and is Petitioner's supervisor. Alston's affidavit is highly complimentary of Petitioner's performance as a detention officer and has no concerns about Petitioner's work or her moral character. Alston believes Petitioner's failure to report the charges and convictions at issue were an "inadvertent oversight" on Petitioner's part.

8. By letter dated January 21, 2022, Respondent notified Petitioner, via certified mail, that Respondent's Probable Cause Committee had found probable cause to revoke Petitioner's application for justice officer certification pursuant to 12 N.C.A.C. 10B .0204(d)(1) and (2), Chapter 10B, Title 12, on the alleged grounds that Petitioner had been convicted of a Class B misdemeanor (Misdemeanor Larceny) as well as the worthless check charges (Res. Ex. 2). Further, probable cause existed because Petitioner failed to report the criminal offenses within five business days as required by Respondent's Rule .0301(a)(7).

9. On February 2, 2022, Petitioner requested an administrative hearing (Res. Ex. 1).

10. Petitioner stipulated and admitted at the contested case hearing that she had been charged and convicted of Misdemeanor Larceny in 2013 and that she failed to report that conviction to Respondent as required by rule.

11. Petitioner stipulated and admitted at the contested case hearing that she failed to report the subsequent worthless check charges to Respondent as required by rule.

12. Since the probable cause letter issuance, Petitioner has remained employed with the Vance County Sheriff's Office and, per Captain Alston's affidavit, the Vance County Sheriff's Office wishes to retain Petitioner's services. The persons in the best position to determine Petitioner's fitness to serve as a deputy sheriff in Vance County, North Carolina are the elected sheriff of Vance County, North Carolina and his officers.

13. Counsel for both parties, upon inquiry from the Tribunal, expressed agreement that due to the age of the issues in question and Petitioner's otherwise credible conduct, no period of active suspension or revocation was appropriate in this case, and that a one-year probationary sanction was appropriate.

Based on these Findings of Fact, the Tribunal makes these:

### **CONCLUSIONS OF LAW**

1. The parties stipulated that they are properly before the Tribunal, in that jurisdiction and venue are proper, and both parties received Notice of Hearing.

2. It is not necessary for the Tribunal to make findings on every fact presented at the hearing, but rather those which are material for resolution of the present dispute. Flanders v. Gabriel, 110 N.C. App. 438, 440, 429 S.E.2d 611, 612, (1993), aff'd, 335 N.C. 234, 436 S.E.2d 588 (1993).

3. To the extent the Findings of Fact contain Conclusions of Law, or vice versa, they should be so considered without regard to the given labels. Matter of V.M., 848 S.E.2d 530, 534 (N.C. Ct. App. 2020).

4. While Petitioner did commit the violations for which Respondent found probable cause, due to mitigating circumstances, including the age of the violations at issue, Petitioner's admission of them by stipulation and testimony, and Petitioner's otherwise creditable professional history and lack of criminal activity or rule violations, a probationary sanction is an appropriate resolution.

5. Petitioner was cautioned by the Tribunal at the hearing, and is cautioned here, that responsibility for knowing and complying with Respondent's rules is Petitioner's alone. "It is a truism that ignorance of the law is no excuse." Helen A. Robinson, Administrator For New Life Early Childhood Development Center v. N.C. Department of Health and Human Services, Division of Child Development, 2006 WL 4258293.

6. Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B, authorize Respondent to certify justice officers, and to revoke, suspend, or deny such certification.

### **PROPOSAL FOR DECISION**

The Tribunal recommends that Respondent, in lieu of any active suspension or revocation, places Petitioner's certification in a probationary status for one (1) year from this date, on the condition that Petitioner violate no laws of the State of North Carolina and complies with all rules applicable to certification, including reporting requirements.

### **NOTICE**

The **North Carolina Sheriffs' Education and Training Standards Commission** 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.G.S. 150B-40(e).

The undersigned hereby orders that agency to serve a copy of its Final Decision in this case on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6700.

**SO ORDERED.**

This the 5th day of October, 2022.



Michael C. Byrne  
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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Attorney For Petitioner

Robert J Pickett  
NC Department of Justice  
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Attorney For Respondent

This the 5th day of October, 2022.



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