

STATE OF NORTH CAROLINA
COUNTY OF VANCE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
19 DOJ 05064

Lamar Krider

Petitioner,

v.

North Carolina Sheriffs Education and
Training Standards Commission

Respondent.

**PROPOSAL
FOR
DECISION**

THIS MATTER is before the Office of Administrative Hearings (“OAH” or “Tribunal”) on the appeal of Petitioner Lamar Krider from the denial of his justice officer certification by Respondent North Carolina Sheriffs’ Education and Training Standards Commission (“the Commission”).

Given the nature of Petitioner’s appeal, the issue before this Tribunal in this contested case is whether the Commission’s denial of Petitioner’s justice officer certification is supported by substantial evidence. Based on the evidence presented at hearing, and for the reasons set forth below, the Undersigned concludes that the Commission acted in accordance with its rules and regulations in denying Petitioner’s certification.

Lamar Krider, pro se.

North Carolina Department of Justice by Ameshia A. Cooper, Assistant Attorney General, for Respondent North Carolina Sheriffs’ Education and Training Standards Commission.

T.S. Jacobs, Administrative Law Judge.

I. PROCEDURAL HISTORY

1. On 10 July 2019, the Commission notified Petitioner that it had “found probable cause exists to believe that [his] certification as a justice officer should be denied.” The Commission cited Petitioner’s commission of a crime for which the authorized punishment could have been imprisonment for more than two years and lack of good moral character as the basis for the denial.

2. By letter dated 25 July 2019, Petitioner requested an administrative hearing “to present [his] case.”

3. By letter dated 5 September 2019, the Commission applied to the Director of the OAH for the designation of an administrative law judge to preside at the hearing for this contested case pursuant to Article 3A of Chapter 150B of the North Carolina General Statutes. Upon receipt of the Commission’s application, the Undersigned was assigned to preside in this case.

4. The Undersigned, after proper notice to the parties, called this matter for hearing on 27 January 2020 in Raleigh, North Carolina at the OAH. The parties appeared at the hearing and presented evidence, both documentary and testimonial.¹

II. FINDINGS OF FACT

BASED UPON careful consideration of the sworn testimony of the witnesses presented at hearing, the documents and exhibits received and admitted into evidence, the entire record in this proceeding, the Undersigned makes the following findings of fact that are material to the resolution of the dispute presented in this

¹ A list of witnesses and exhibits admitted into evidence at the contested case hearing appear in Appendix A to this decision.

contested case. *See, e.g., Flander 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) (recognizing “the trial court need not make a finding as to every fact which arises from the evidence; rather, the court need only find those facts which are material to the resolution of the dispute.”)

In making these findings, the Undersigned has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate facts for judging credibility, including, but not limited to, the demeanor of the witness, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences, about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case.

A. The Parties

1. Respondent, the 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 revoke, suspend, or deny such certification under appropriate circumstances, with valid proof of a rule violation.

2. Petitioner is an applicant for deputy sheriff certification through the Granville County Sheriff's Office. Petitioner was previously certified by Respondent through the Vance County Sheriff's Office, March 2000 through June 2004 and January 2007 through August 2012, and the Granville County Sheriff's Office, May 2002 through January 2005. Petitioner was also previously certified by the North

Carolina Criminal Justice Education and Training Standards Commission through Butner Public Safety from November 2012 through October 2013.

B. Material Facts

3. Petitioner married Shavone (Krider) Terry in September of 2013. Subsequently, Petitioner and Terry moved from North Carolina to Maryland to be near Terry's place of employment. Petitioner enrolled in Prince George's County Police Academy. Petitioner testified that during this time he traveled to North Carolina on most weekends to be with his daughter and this caused strain on the marriage. Petitioner and Terry separated in March of 2014. Both Petitioner and Terry testified that the period of time following the separation was being used to determine if they would continue to try to make their marriage work or part ways.

4. In May of 2014, Terry communicated to Petitioner that she did not wish to have any contact with him. Terry alleged in the Petition for Protection from Domestic Violence, dated May 7, 2014, that Petitioner was verbally abusive, calling her phone at various times of the night and day, and was sitting outside of her residence waiting for her to arrive. Terry also alleged that Petitioner came to her residence, entered through the garage, set off the security alarm and demanded to be let into the home. (Respondent's Ex. 2)

5. Terry testified at the administrative hearing that Petitioner would call her phone and when she did not answer, Petitioner would call her using a blocked number. Terry also testified that Petitioner would call her family members and place of employment in effort to contact Terry if Terry did not respond to Petitioner's calls

and/or texts. Terry testified that these calls caused her to be afraid, to experience anxiety and embarrassment due to members of her family and colleagues at work knowing about the situation. As a result, Terry saw a therapist on a weekly basis.

6. The District Court of Maryland for Prince George's County issued a Final Protective Order against Petitioner on 8 May 2014. (Respondent's Ex. 3) The court found that "[t]here is clear and convincing evidence to believe that the Respondent committed the following act(s) of abuse: Stalking." The order was effective through 8 May 2015.

7. Petitioner admits to the actions that were alleged in the Petition for Protection from Domestic Violence, dated 7 May 2014. (Respondent's Ex. 2) Petitioner also testified that he called Terry from blocked phone numbers. However, Petitioner testified that he was doing all of these things in an effort to save his marriage. Petitioner testified that he did not believe he had abused Terry as he never assaulted or put his hands on her. Terry also testified that Petitioner never physically assaulted her; rather, it was more verbal attacks, which Terry described as being "very aggressive" in nature.

8. Petitioner testified that he enjoys his work as a School Resource Officer and believes he is a good officer. Petitioner testified and offered evidence of his participation in a gospel music group that travels the country performing. (Petitioner's Ex. 5) Petitioner also presented letters of recommendation from the following individuals:

- a. S. Quon Bridges, an attorney and former District Court Judge

- b. Alonzo Z. Jaynes Sr., Director Law Enforcement/Corrections Training,
Vance-Granville Community College
- c. Calvin Timberlake, Principal, Phoenix Academy
- d. Debbie Small Bowens, Chief Magistrate, Vance County

(Petitioner's Exs. 1-4) In these letters, Petitioner is described as an "exceptional" and responsible individual who has a strong sense of community. *See, e.g.*, (Petitioner's Ex. 1 (Mr. Bridges detailing Petitioner's community involvement and noting that his "concerns for his community are evident from the many programs that [Petitioner] has support over the years")); (Petitioner's Ex. 2 (Mr. Jaynes noting that Petitioner "has a strong passion for his community" and stating that he finds Petitioner "to be a responsible, articulate, and committed individual" who has "always been a very reliable person")); (Petitioner's Ex. 3 (Mr. Timberlake noting that Petitioner "handled student incidents professionally" and is "able to collaborate with staff and treat all people with respect" and a "person [he] trust[s] around [the] students at Phoenix and any other school.)) Ms. Bowens, in her letter of recommendation, noted Petitioner's "love of law enforcement" and stated that, when he "came before [her] in the performance of his duties, he was always very professional and respectful." (Petitioner's Ex. 4)

9. Petitioner also presented two-character witnesses, Sheriff Curtis R. Brame of Vance County and Sheriff Charles R. Noblin, Jr. of Granville County via telephonic testimony. Sheriff Brame did not know that Petitioner was before the Commission due to alleged rule violations, nor did he have any knowledge of the

Protective Order for Domestic Violence that had been issued against Petitioner. Sheriff Brame and Sheriff Noblin testified that there had not been any personnel issues or complaints made against Petitioner during the time that Petitioner was in their employ, respectively.

III. CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Undersigned makes the following Conclusions of Law for purposes of this Proposal for Decision. To the extent any of the following conclusions are findings of fact, and vice versa, they should be so considered without regard to the given label.

1. Established under Chapter 17E of the North Carolina General Statutes, the Commission has the authority to certify justice officers and review suspend or deny such certification. The Commission exercises such authority pursuant to the provisions of Chapter 17E, as well as its own rules and regulations. N.C. Gen. Stat. §17E-4.

2. In this case, the Commission, through its Probable Cause Committee, found that probable cause existed to believe that Petitioner's justice officer certification should be denied based on alleged violations of 12 N.C. Admin. Code 10B. 0204(a)(2) and 12 N.C. Admin. Code 10B. 0301(a)(8). Probable cause "is defined as the existence of facts and circumstances known to the decision maker which would induce a reasonable person to commence a prosecution." *Martin v. Parker*, 150 N.C. App. 179, 182, 563 S.E.2d 216, 218 (2002). The Commission's ultimate decision to

deny Petitioner's certification, as explained below, is supported by the substantial evidence in this case.

A. *Alleged Violation of 12 N.C. Admin. Code 10B.0204(a)(2)*

3. Section .0204 of Chapter 10B of Title 12 of the North Carolina Administrative Code ("Code") sets forth the circumstances under which the Commission is required to revoke or deny the certification of a justice officer. Of particular relevance is subsection (a)(2), which provides:

- (a) The Commission *shall* revoke or deny the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer *has committed* or been convicted of:
 - (1) a felony; or
 - (2) *a crime for which the authorized punishment could have been imprisonment for more than two years.*

12 N.C. Admin. Code 10B. 0204(a)(2) (emphasis added).

4. The Commission alleges that Petitioner violated the subsection (a)(2) by committing the offense of Misuse of Telephone Facilities and Equipment in violation of Md. Code Ann., Criminal Law § 3-804 – a crime for which the authorized punishment could have been imprisonment for more than two years. The Undersigned agrees.

5. Section 3-804 of the Maryland Criminal Code prohibits the misuse of telephone facilities and equipment:

- (a) Prohibited. A person may not use telephone facilities or equipment to make:

- (1) an anonymous call that is reasonably expected to annoy, abuse, torment, harass, or embarrass another;
- (2) repeat calls with the intent to annoy, abuse, torment, harass, or embarrass another; or
- (3) a comment, request, suggestion, or proposal that is obscene, lewd, lascivious, filthy or indecent.

(b) Penalty. A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 3 years or a fine not exceeding \$500 or both.

Md. Code Ann., Crim. Law § 3-804.

6. Here, Terry testified that she received excessive calls from Petitioner day and night. Often times these calls were from blocked phone numbers. Terry stated that both her father and elderly grandmother received calls from Petitioner after Terry did not answer his calls. Terry referred to the calls as harassing and embarrassing and testified that she had to seek treatment from a therapist to treat the anxiety she felt as a result of Petitioner's calls. Petitioner, at hearing, admitted that Terry told him to stop contacting her and corroborated Terry's testimony regarding the volume of calls as well as the fact that the calls were often from blocked numbers when Terry did not answer Petitioner's calls from his phone number.

7. Petitioner has argued that he was never convicted of violating Md. Code Ann., Crim. Law § 3-804. However, subsection (a)(2) is clear – certification can be denied based on *either* the commission or conviction of crime that is punishable by imprisonment for more than two years. *See, e.g., Britt v. N. Carolina Sheriffs' Educ.*

& Training Standards Comm'n, 348 N.C. 573, 577, 501 S.E.2d 75, 78 (1998) (recognizing that the Commission could have revoked a petitioner's certification under 12 N.C. Admin. Code 10B. 0204(a)(2) "without relying upon petitioner's conviction.") Thus, the Undersigned finds Petitioner's argument on this point to be unpersuasive.

B. Alleged Violation of 12 N.C. Admin. Code 10B.0301(a)(8)

8. The Commission also alleged that Petitioner violated section .0301(a)(8) of Chapter 10B of Title 12 of the Code. This provision requires justice officers to be of good moral character:

(a) Every Justice Officer employed or certified in North Carolina shall:

...

(8) be of good moral character as defined in: *In re Willis*, 288 N.C. 1, 215 S.E.2d 771 (1975), appeal dismissed 423 U.S. 976 (1975); *State v. Harris*, 216 N.C. 746, 6 S.E.2d 854 (1940); *In re Legg*, 325 N.C. 658, 386 S.E.2d 174 (1989); *In re Applicants for License*, 143 N.C. 1, 55 S.E. 635 (1906); *In re Dillingham*, 188 N.C. 162, 124 S.E. 130 (1924); *State v. Benbow*, 309 N.C. 538, 308 S.E.2d 647 (1983); and later court decisions that cite these cases as authority;

12 N.C. Admin. Code 10B.0301(a)(8) (emphasis added).

9. The term good moral character "by itself, is unusually ambiguous;" however, it has been defined as "honesty, fairness, and respect for the rights of others and for the law of the state and nation." *In re Willis*, 288 N.C. 1, 10, 215 S.E.2d 771, 775-77 (1975). "Whether a person is of good moral character is seldom subject to proof

by reference to one or two incidents.” *In Matter of Rodgers*, 297 N.C. 48, 58, 253 S.E.2d 912, 918 (1979) (explaining that character “encompasses both a person’s past behavior and the opinion of his community arising from it.”)

10. Given its distinct purpose, the Commission has a particular interest in protecting the public from dishonest law enforcement and preserving the integrity of the criminal justice system which largely rests upon the actions of law enforcement. It is imperative that those certified by the Commission possess the ability to accept responsibly for their actions and perform basic law enforcement functions competently as this is a fundamental attribute of good moral character. *See, e.g., Matter of Legg*, 325 N.C. 658, 673, 386 S.E.2d 174, 182 (1989) (recognizing that “fundamental attributes of good moral character include the maturity and professional discipline necessary to accept responsibility and perfect the actions required” to carry out professional responsibilities properly). Indeed, as recognized in *Legg*, the “purpose of withholding certifications is not to punish the candidate but to protect the public and preserve the integrity” of the profession subject to licensure. *Id.*

11. Considering the foregoing, as well as the evidence of Petitioner’s character, the Undersigned concludes that the continued withholding of Petitioner’s certification on the basis that he lacks good moral character is not supported by the evidence.

12. The circumstances giving rise to the issuance of the Order of Protection for Domestic Violence do not support a conclusion that Petitioner currently lacks the

good moral character required of a justice officer. Petitioner's actions were unlawful and caused Terry significant anxiety, but there is no evidence that Petitioner has engaged in this type of conduct prior to the incidents in May of 2014, or since.

13. The substantial evidence presented at the administrative hearing establishes that Petitioner possesses the requisite good moral character required of a justice officer. Petitioner's character witnesses all testified about his good standing in the community and work ethic. Sheriff Brame and Sheriff Noblin testified that Petitioner is a good worker, is well liked in the Sheriff's office and the schools in which he works, and that there have been no personnel issue involving Petitioner.

C. *Period of Sanction*

14. Having concluded that the Commission's finding that Petitioner violated 12 N.C. Admin. Code 10B. 0204(a)(2) is supported by the substantial evidence presented in this contested case, the only remaining question the period of sanction for this violation.

15. The period of sanction for the Commission's denial of a justice officer's certification pursuant to section .0204 "*shall* be as set out in 12 NCAC 10B. 0205." 12 N.C. Admin. Code 10B. 0204(g) (emphasis added).

16. Subsection (1) of 12 N.C. Admin. Code 10B. 0205 provides the period of sanction where the Commission suspends, revokes, or denies the certification of a justice officer for violating 12 N.C. Admin. Code 10B. 0204(a)(2):

When the Commission suspends, revokes, or denies the certification of a justice officer, *the period of sanction shall be:*

(1) *permanent where the cause of sanction is:*

(a) commission or conviction of a felony;

(b) *commission or conviction of a crime for which authorized punishment included imprisonment for more than two years; or*

(c) the second revocation, suspension, or denial of an officer's certification for any of the causes requiring a five-year period of revocation, suspension, or denial as set out in Item (2) of this Rule.

12 N.C. Admin. Code 10B.0205(1) (emphasis added).

17. 12 N.C. Admin. Code 10B. 0205(1) is unambiguous. “When the language of regulations is clear and unambiguous, there is no room for judicial construction, and courts must give the regulations their plain meaning.” *Britt*, 348 N.C. at 576, 501 S.E.2d at 77. Applying the clear meaning of this regulation here, the Undersigned concludes that, based on the violation of 12 N.C. Admin. Code 10B. 0204(a)(2), Petitioner’s justice officer certification should be permanently denied.

IV. PROPOSAL FOR DECISION

18. Based on the foregoing Findings of Fact and Conclusions of Law, it is proposed that Petitioner’s justice officer certification be PERMANENTLY DENIED for the violating the Commission’s rule set forth in 12 N.C. Admin. Code 10B. 0204(a)(2).

APPENDIX A

List of Witnesses and Exhibits

A. *Witnesses*

For Petitioner:

1. Lamar Krider, Petitioner
2. Sherriff Curtis R. Brame (Vance County)
3. Sherriff Charles Noblin, Jr. (Granville County)

For Respondent:

1. Sirena Jones, Deputy Director, Sheriffs' Standard Division, N.C. DOJ
2. Shavone (Krider) Terry

B. Exhibits

The following exhibits were offered and admitted into evidence at the contested case hearing for this matter:

For Petitioner:

Petitioner submitted Petitioner's Exhibits 1 -5 into evidence.

For Respondent:

Petitioner submitted Respondent's Exhibits 1-3 and 5-6 into evidence. The Undersigned took official notice of Respondent's Ex. 4.

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. Gen. Stat. § 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.

This the 27th day of April, 2020.

A handwritten signature in blue ink, reading "Tenisha S. Jacobs", written over a solid blue horizontal line.

Tenisha S Jacobs
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:

Ameshia Cooper
North Carolina Department of Justice
acooper@ncdoj.gov
Attorney For Respondent

Lamar Krider
7701 Nugget Lane
Raleigh NC 27615
Petitioner

This the 27th day of April, 2020.



Daniel L. Chunko
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