

MINUTES
OF
THE NORTH CAROLINA SHERIFFS'
EDUCATION AND TRAINING STANDARDS COMMISSION

DATE: September 14, 2017

TIME: 2:00 P.M.

SUBMITTED BY: Diane Konopka, Director Sheriffs' Standards Division

I. CALL TO ORDER

- Chairman Brad Riley

The North Carolina Sheriffs' Education and Training Standards Commission's Final Agency Decision meeting was called to order by Chairman Brad Riley on Thursday, September 14th at 2:00 P.M. The Final Agency Decision meeting was held at the Senior Resource Center, 1513 N. Howe St., Ballroom #1A, Southport, NC.

Chairman Riley requested a roll call of Commission members. Director Diane Konopka recorded the following:

MEMBERS PRESENT

Sheriff Dwayne Goodwin
Sheriff Steve Bizzell
Sheriff Ricky Oliver
Sheriff John Ingram
Sheriff David Mahoney
Sheriff Jerry Monette
Sheriff B. J. Barnes
Sheriff Alan Jones
Sheriff Brad Riley
Sheriff Ed McMahan
Sheriff Alan Cloninger
Sheriff Jack Smith
Maj Briscoe (Sheriff Norman proxy)
Mr. Zack Koonce
Mr. Marc Nichols

MEMBERS ABSENT

Ms. Tracy McPherson
Mr. Jamie Markham

STAFF

Chris Brooks - Legal Counsel - NC Department of Justice
Marie Evitt - Legal Counsel - NC Department of Justice
Diane Konopka - Director - Sheriffs' Standards Division

Chairman Riley introduced Sheriff John Ingram of Brunswick County and thanked him for hosting the September Sheriffs' Commission Meeting. Sheriff Ingram welcomed everyone to Southport and offered any help that may be needed during their stay.

In the first order of business, Legal Counsel Chris Brooks read the Ethics Reminder which states:

All members have a duty to avoid conflicts of interest and appearances of conflict. Commission members have an affirmative duty to fully disclose any conflict of interest or potential conflict of interest between the member's service on the Commission and his or her private interests. One of the most basic rules is that members cannot knowingly use their position on the Commission in a manner that will result in a financial benefit to the person, a member of the person's family, or a business with which he or she is associated. [N.C.G.S. 138A-31]. Commission members are also prohibited from accepting gifts from persons doing or seeking to do business with the Commission, persons engaging in activities that are regulated or controlled by the Commission, or persons having a financial interest that may be substantially affected by the member's official duties.

Legal Counsel Chris Brooks then asked whether any member had a known conflict or appearance of conflict with respect to any matters coming before the Commission at this time.

Negative response from all Commission members.

***Administration of Oath of Office**

District Court Judge Fred Gore, administered the oath of office to:

Sheriff Steve Bizzell, Johnston County – District #4
Sheriff Dwayne Goodwin, Chowan County – District #1
Sheriff Jack Smith, Northampton County – District #2
Sheriff John Ingram, Brunswick County – District #7
Mr. William Marcus Nichols – Senate Pro-Tem

Chairman Riley welcomed the visitors and asked that they stand up and introduce themselves.

VISITORS

Kevin Byrum – Northampton County Sheriff’s Office
Emily Flax - Brunswick County Sheriff’s Office
Mose Highsmith – Brunswick County Sheriff’s Office
Michelle Ingram – Brunswick County Sheriff’s Office
Judge Fred Gore – District Court Judge
Roger Harrington – Brunswick County Sheriff’s Office
Todd Coring – Brunswick County Sheriff’s Office
Tammy Branson – Brunswick County Sheriff’s Office
Felicia Woodard – Brunswick County Sheriff’s Office
Charles Miller – Brunswick County Sheriff’s Office Chief Deputy
Dana Crews – Franklin County Sheriff’s Office
Harfel Davis – Bladen County Sheriff’s Office
James Burnette – Montgomery County Sheriff’s Office
Donavan Hylarides – Attorney

Sheriff Riley again welcomed the visitors and called on Marie Evitt for the Final Agency Decisions.

II. FINAL AGENCY DECISION

***James Lee Burnette**

Marie Evitt

Mr. James Lee Burnette is a Deputy Sheriff separated from the Montgomery County Sheriff’s Office. There are five (5) issues before the Sheriffs’ Commission for this case. Ms. Evitt summarized the Proposal for Decision for James Lee Burnette as submitted by the Administrative Law Judge [**Attachment #1**], and the Proposal for Decision as submitted by Legal Counsel [**Attachment #2**].

The Administrative Law Judge recommends that Petitioner’s application for certification be suspended for five (5) years but that the suspension be suspended on the condition that Petitioner not violate any law (other than infractions) of this state or any state, any federal laws, any rules of this Commission, or the North Carolina Criminal Justice Education and Training Standards Commission.

Attorney Donovan Hylarides spoke on behalf of Mr. Burnette and stated that he represented Mr. Burnette at the Administrative Hearing. Mr. Hylarides agrees with the statements made by Legal Counsel so he will not go back through the facts. Attorney Hylarides stated that he believes the Judge did an excellent job in preparing this order.

Mr. Hylarides did refer to paragraphs 17, 18, 19 and 20 of the Judge's Proposal for Decision [**Attachment #1**] which speaks to the Petitioner's Good Moral Character. Judge Sutton found that Mr. Burnette does possess the good moral character to be a justice officer.

Attorney Hylarides stated that he and his client support the Judge's order as written.

Chairman Riley asked the Commission if there were any questions.

Sheriff Bizzell asked if the altercation happened in a public place. Mr. Burnette stated that it happened at home and his mother could not break up the fight so she called 911.

Sheriff Bizzell asked if the Sheriff of Montgomery County was willing to rehire him. Mr. Burnette stated that he did speak with the Sheriff and was told that if he was cleared through this process that he would consider it but the Sheriff also said he felt it might be too soon for the people of Montgomery County.

Chairman Riley asked the Commission if there were any more questions. Negative response.

A **MOTION** was made by Sheriff Alan Cloninger to enter into a closed session; seconded by Mr. Zack Koonce. **MOTION CARRIED.**

A **MOTION** was made by Sheriff Alan Cloninger to enter into open session; seconded by Sheriff Ricky Oliver. **MOTION CARRIED.**

A **MOTION** was made by Sheriff Steve Bizzell in the matter of Mr. James Lee Burnette to accept Legal Counsel's recommendation to adopt the Administrative Law Judge's Proposal For Decision to suspend Petitioner's Certificate for five (5) years, but that the suspension be suspended on the condition that Petitioner not violate any law (other than infractions) of this state or any state, any federal laws, any rules of this Commission, or the North Carolina Criminal Justice Education and Training Standards Commission with the exception of the wording: "and the company and campus police program". The Sheriffs' Commission Members would like that wording deleted from the order; seconded by Mr. Zack Koonce. **[Attachment #3 for Roll Call Vote] [Attachment #4 for Final Agency Decision] MOTION CARRIED.**

II. FINAL AGENCY DECISION

***Kevin Windell Byrum**

Marie Evitt

Mr. Kevin Windell Byrum is a Deputy Sheriff applicant from Northampton County Sheriff's Office. Sheriff Jack Smith of Northampton County has recused himself from the vote on this case. The issue before the Sheriffs' Commission is whether or not Mr. Byrum has been convicted of for four (4) or more Class A or Class B misdemeanors. Ms. Evitt summarized the Proposal for Decision as submitted by the Administrative Law Judge **[Attachment #6]**, and the Proposal for Decision as submitted by Legal Counsel **[Attachment #7]**.

Legal Counsel stated that the Mr. Byrum has admitted to the convictions but also said that he is a changed man over the past 20 years. He has been married 16 years and raised a family. He is an active leader in his church and he has not committed any other violations of law. Mr. Byrum graduated at the top of his BLET class and tries to do his best every day. Mr. Byrum also has the support of his Sheriff.

The Administrative Law Judge found that the evidence shows Mr. Byrum violated the rule but recommends based upon the demonstrated extenuating circumstances that the Sheriffs' Commission suspend any period of denial and grant Petitioner a law enforcement certification on the condition that he not violate any laws.

Ms. Evitt informed the Sheriffs' Commission that Mr. Kevin Byrum is present and will address the Commission Members.

Chairman Riley asked the Commission if there were any questions. Negative response.

Mr. Kevin Windell Byrum addressed the Sheriffs' Commission members and stated that if the Commission Members read over the Findings of Fact in his case that they will come to the same conclusion as the Administrative Law Judge. Mr. Byrum stated that he never tried to deny what happened 20 years ago. Mr. Byrum also stated that he is nowhere near that person of 20 years ago. Mr. Byrum informed the Commission Members that he has no other criminal record other than the DWI convictions from when he was young and stupid.

Mr. Byrum stated that he has been working at the Northampton County Sheriffs' Office for about two (2) years now and has not had one complaint against him. Mr. Byrum tries to make a difference every day and create a positive image of the Sheriffs' Office. He stated that he is 50 years old and graduated at the top of his BLET class even though the other participants were half his age. He put the effort into this career because he knew this is what he wanted to do. Mr. Byrum tries to do his best every day he goes to work and he has saved some lives. Mr. Byrum enjoys what he does. He's been married 16 years, has a son and daughter and is the sole provider.

Mr. Byrum hopes the Sheriffs' Commission can look past his past and see that he is a good man.

Chairman Riley asked the Commission if there were any questions.

Mr. Byrum was asked if he still drinks. Mr. Byrum responded that he does not drink. Mr. Byrum was asked if he has a license. Mr. Byrum responded "yes, for years now." He obtained his North Carolina driver's license in 2004. Mr. Byrum was asked if he was on supervised probation. Mr. Byrum responded that he was on supervised probation for seven (7) days.

Chairman Riley asked the Commission if there were any other questions. Negative response.

Sheriff Jack Smith addressed the Sheriffs' Commission members to speak on the behalf of Mr. Byrum. Sheriff Smith stated that he has known Mr. Byrum for about 35 years. Mr. Byrum had a rocky start in the beginning but for the last 20 – 25 years he has gotten himself together. He has not had any type of infractions, is a family man, and is also one of the hardest workers that he has. Sheriff Smith stated that he has not had any trouble with Mr. Byrum since he's been hired. Sheriff Smith would stake his reputation on Mr. Byrum not ever being back in front of the Sheriffs' Commission for anything. Sheriff Smith does hope and pray that the Sheriffs' Commission will be able to provide Mr. Byrum with the opportunity to fulfill his hopes and dreams of serving as a law enforcement officer. Sheriff Smith knows that he will do a good job.

Chairman Riley asked the Commission if there were any questions.

Mr. Byrum was asked if he has filed the papers to have one DWI expunged. Mr. Byrum responded that he has filed and paid the fees. The paperwork is currently in the process.

Chairman Riley asked the Commission if there were any other questions. Negative response.

A **MOTION** was made by Sheriff Ed McMahon to enter into a closed session; seconded by Mr. Marc Nichols. **MOTION CARRIED.**

A **MOTION** was made by Mr. Marc Nichols to enter into open session; seconded by Sheriff Ricky Oliver. **MOTION CARRIED.**

A **MOTION** was made by Sheriff Steve Bizzell in the matter of Mr. Kevin Windell Byrum to adopt the Administrative Law Judge's Proposal For Decision to deny Petitioner's application for certification and that denial be suspended and Petitioner's certification be granted on the condition that Petitioner not violate any law (other than infractions) of this state or any other state, any federal laws, any rules of this Commission, or the North Carolina Criminal Justice Education and Training Standards Commission with the exception of the wording: "and the company and campus police program". The Sheriffs' Commission Members would like that wording deleted from the order; seconded by Mr. Zack Koonce. Sheriff Jack Smith recused himself from the vote. [**Attachment #8 for Roll Call Vote**] [**Attachment #9 for Final Agency Decision**] **MOTION CARRIED.**

II. FINAL AGENCY DECISION

***Harfel Clementa Davis**

Marie Evitt

Mr. Harfel Clementa Davis is a Deputy Sheriff separated from Bladen County Sheriff's Office. Mr. Davis is present for the Sheriffs' Commission Meeting. The issue before the Sheriffs' Commission is one of "double dipping" on three (3) different occasions; and whether or not Mr. Davis has the good moral character required of a justice officer.

Ms. Evitt summarized the Proposal for Decision as submitted by the Administrative Law Judge [**Attachment #11**], and the Proposal for Decision as submitted by Legal Counsel [**Attachment #13**].

Mr. Harfel Davis addressed the Sheriffs' Commission members and thanked them for their time. Mr. Davis is 46 years old and retired from the United States Army. Mr. Davis served as a military police officer and when he exited from the Army he was hired by Rowland Police Department in 2004. Mr. Davis graduated at the top of his BLET class and has been in law enforcement ever since.

Mr. Davis stated that he has never been written up for anything in any of the agencies that he has worked with. Mr. Davis stated that the allegations brought forth today are not exactly correct. There is no policy at Bladen County Sheriff's Office for School Resource Officers (SRO) that says one specific person is 1st caller. Mr. Davis believes this whole situation is a play on words.

The only violation that was actually looked at was the last allegation on the 26th. As a School Resource Officer, you are responsible to find a person to cover for your school. Mr. Davis makes out his schedule early in the week. Mr. Davis had discussed working at another school with an SRO that was having a problem for coverage. This was testified to by that School Resource Officer at the Administrative Hearing. Mr. Davis stated that he was not trying to do anything wrong. He was just trying to help out another officer.

The issue of "double dipping" came about because they were trying to say that he was working two locations at the same time. That didn't take place because he had contacted another SRO for coverage at his school. He agreed to cover and also testified to that at the Administrative Hearing. Prior to this School Resource Officer arriving at the school to cover the game, he received a call and arrived about ½ hour late to the game. A Lieutenant had arrived to the game before Mr. Davis's replacement. The Lieutenant had the School Resource Officer replacement leave even though the SRO informed the Lieutenant that he was asked by Mr. Davis to cover. Once the SRO that Mr. Davis asked to cover for him left, the Lieutenant left the game knowing that the School Resource Officer was supposed to be there.

Mr. Davis stated that he had called Officer Brown, SRO, to check and make sure everything was alright but Officer Brown had left his phone in the bathroom and couldn't respond to Mr. Davis. Once he did retrieve his phone, he did return the call and informed Mr. Davis of the situation.

The next day Mr. Davis was informed of the allegations. The check that was made was never signed, endorsed, or cashed. The check was turned back to the school bookkeeper. Mr. Davis stated that he went by her office that morning to have it corrected but she wasn't in her office. Mr. Davis went back to his office when they came in and presented the allegations. Mr. Davis stated that before he could straighten things out with the bookkeeper they had him removed from the office and asked for his badge.

Mr. Davis stated again that he never tried to "double dip" and that the allegation is completely false.

Chairman Riley asked the Commission if there were any questions.

Mr. Davis was asked if he received compensation for working at the Middle School while working at the High School at the same time. Mr. Davis responded no he did not.

To clarify, Mr. Davis stated again that he did work at the Middle School and cashed that check; but, he did not cash the check that was already made out from the High School. That check had been returned to the bookkeeper, the seal on the envelope was never broke.

Mr. Davis was asked how the schools write the checks. Mr. Davis responded that they turn in a schedule of who is going to work at the schools.

Mr. Davis was asked if he worked and got paid for the 15th. Mr. Davis responded “yes”, he was where he was supposed to be. Mr. Davis was asked if he worked on the 21st. Mr. Davis responded “yes”, he’s always where he’s supposed to be.

Mr. Davis was asked if he was ever disciplined while in the Army. Mr. Davis responded “yes”. His only infraction during his 10 years of service was once failing to observe the double-check protocol for turning over an unloaded weapon to another soldier for which he performed 12 hours of extra duty. The incident happened while he was stationed in the Baltics. It was a long night and they came back in at the break of dawn and he was switching out equipment.

Mr. Davis once again thanked the Commission for their time and stated that he hopes to have the opportunity to continue his career in law enforcement.

Chairman Riley asked the Commission if there were any other questions. Negative response.

A **MOTION** was made by Mr. Marc Nichols to enter into a closed session; seconded by Sheriff Dwayne Goodwin. **MOTION CARRIED.**

A **MOTION** was made by Sheriff Alan Cloninger to enter into open session; seconded by Sheriff Jack Smith. **MOTION CARRIED.**

A **MOTION** was made by Mr. Marc Nichols in the matter of Mr. Harfel Clementa Davis to adopt the Administrative Law Judge’s Proposal For Decision that Petitioner retain his General Certification as a Deputy Sheriff; seconded by Mr. Zack Koonce. **[Attachment #14 for Roll Call Vote] [Attachment #15 for Final Agency Decision] MOTION CARRIED.**

II. FINAL AGENCY DECISION

***James Oscar Williams**

Marie Evitt

Mr. James Oscar Williams is a Detention Officer applicant from the Edgecombe County Sheriff's Office. Mr. Williams is not present but was notified that his case was being presented before the Commission today. The issue before the Sheriffs' Commission is whether Mr. Williams committed the offense of material misrepresentation with regard to his past drug use.

Ms. Evitt summarized the Proposal for Decision as submitted by the Administrative Law Judge [**Attachment #16**], and the Proposal for Decision as submitted by Legal Counsel [**Attachment #17**].

The Administrative Law Judge recommended that the Petitioner's application be denied but suspend that denial on the condition that Mr. James Williams not violate any law of this state or any other state, any federal laws, any rules of this Commission, or the North Carolina Criminal Justice Education and Training Standards Commission. Legal Counsel stated that she felt Mr. Williams was very honest during his interview with her and that she agrees with the Administrative Law Judge's recommendation.

Chairman Riley asked if anyone was present to speak on the behalf of Mr. James Oscar Williams. Negative response.

Chairman Riley asked the Commission if there were any questions. Negative response.

A **MOTION** was made by Mr. Marc Nichols to enter into a closed session; seconded by Sheriff Dwayne Goodwin. **MOTION CARRIED.**

A **MOTION** was made by Sheriff Alan Cloninger to enter into open session; seconded by Sheriff Jack Smith. **MOTION CARRIED.**

A **MOTION** was made by Mr. Marc Nichols in the matter of Mr. James Oscar Williams to adopt Legal Counsel’s Proposal For Decision that Respondent deny Petitioner justice officer certification and that denial be suspended on the condition that Petitioner not violate any law (other than infractions) of this state or any other state, any federal laws, or any rules of this Commission, the North Carolina Criminal Justice Education and Training Standards Commission with the exception of the wording: “and the company and campus police program”. The Sheriffs’ Commission Members would like that wording deleted from the order; seconded by Mr. Zack Koonce. [**Attachment #14 for Roll Call Vote**] [**Attachment #15 for Final Agency Decision**] **MOTION CARRIED.**

III. CONSENT AGREEMENTS

The Probable Cause Committee recommended Consent Agreements for the cases listed below:

Clarence Donald Richards, Jr. – Deputy Sheriff – Pasquotank County
(Failure to notify the Division of criminal charge)

Danielle Marie Hickman – Deputy Sheriff Applicant – Currituck County
(Class B misdemeanor within five years)

Justin Ray Mullis – Detention Officer Applicant – Stanly County
(Combination of offenses)

Legal Counsel informed the Commission Members that they do not have to accept the Consent Agreements, but if they do accept them, the Consent Agreements become a permanent part of their file. Legal Counsel recommended the Sheriffs’ Commission accept the Consent Agreements offered.

A **MOTION** was made by Sheriff Alan Cloninger to accept all the Consent Agreements reviewed by Director Diane Konopka; seconded by Sheriff Steve Bizzell. **MOTION CARRIED.**

IV. LEGAL COUNSEL’S REPORT

Ms. Marie Evitt summarized the Legal Counsel’s Report. This report is available for review and includes administrative case files that were in the Office of Administrative Hearings. Ms. Evitt went over the various stages of litigation for the administrative cases as follows: [**See Attachment #20**].

- Ten (10) cases involving Class B misdemeanors after the deputy/detention officer has been certified.
- One (1) case involving felony commissions.
- Four (4) cases involving four (4) or more Class A and B misdemeanors.
- Six (6) cases involving material misrepresentations.
- Six (6) cases involving a lack of good moral character.
- One (1) case involving a certified officer who has been charged and did not report that charge within the five day reporting period.
- One (1) denial by CJ Commission.

* Note: Some of the case files involve more than one issue.

A **MOTION** was made by Sheriff Steve Bizzell to permanently exclude the wording: “and the company and campus police program” from Proposed Final Agency Decisions; seconded by Sheriff Alan Cloninger. **MOTION CARRIED.**

VI. ADJOURNMENT

Sheriff John Ingram is hosting a dinner at the Frying Pan Restaurant located here in Southport at 6:30 pm.

The Sheriffs’ Commission Members plan to present Hal Askins with a plaque of appreciation at the December Sheriffs’ Commission Meeting being held in Raleigh, NC.

A recommendation was made by the Sheriffs’ Commission Members to incorporate security into the process of hosting a Sheriffs’ Commission Meeting.

A **MOTION** was made by Sheriff Cloninger to adjourn the September 14, 2017, Sheriffs' Final Agency Decision meeting; Seconded by Sheriff Ricky Oliver. **MOTION CARRIED.**