

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

JAMES L. FOY,	)	
	)	
Petitioner,	)	
	)	
vs.	)	CASE NO. 89-1320
	)	
CRIMINAL JUSTICE STANDARDS AND	)	
TRAINING COMMISSION,	)	
	)	
Respondent.	)	
_____	)	

RECOMMENDED ORDER

A hearing was held in this case in Clearwater, Florida on November 2, 1989 before Arnold H. Pollock, a Hearing Officer with the Division of Administrative Hearings.

APPEARANCES

For the Petitioner: Gene "Hal" Johnson, Esquire  
Florida Police Benevolent  
Association, Inc.  
300 East Brevard Street  
Tallahassee, Florida 32301

For the Respondent: Joseph S. White, Esquire  
Florida Department of Law  
Enforcement  
P. O. Box 1489  
Tallahassee, Florida 32302

STATEMENT OF THE ISSUES

The issue for consideration herein is whether Petitioner should be granted certification as a law enforcement officer in Florida.

PRELIMINARY STATEMENT

On February 8, 1989, the Respondent, Criminal Justice Standards and Training Commission, (CJSTC), denied Petitioner, James L. Foy's, application for certification as a law enforcement officer in Florida on the basis that he had engaged in sexual intercourse with a minor female while an adult and employed and certified as a law enforcement officer. Thereafter, on February 10, 1989, Petitioner requested a formal hearing under Section 120.57(1), Florida Statutes, and by letter dated March 9, 1989, the matter was forwarded to the Division of Administrative Hearings for appointment of a Hearing Officer.

By Notice of Hearing dated March 21, 1989, H. O. James E. Bradwell set the matter for hearing in Palmetto, Florida on April 21, 1989, but after several continuances, it was ultimately set for hearing on November 2, 1989 in

Clearwater, at which time it was held as scheduled by the undersigned to whom the matter had been transferred in the interim.

At the hearing, Petitioner testified in his own behalf and presented the testimony of Herbert H. Van Fleet, Chief, Palmetto Police Department; Treva J. Napier, Personnel Officer with the Hardee County Sheriff's Office; Danny D. Motter, part time law enforcement officer and long time friend of Petitioner and his family; Jeffry D. Huttman, Major with the Bradenton Police Department; Father Frank M. Kirlangitis, Pastor of the Bradenton Greek Orthodox Church and Chaplain of the Manatee County Sheriff's Department; and Ronald W. Grubbs, former highway patrol officer and presently a banker and insurance agent. Petitioner also introduced Petitioner's Exhibits 1 through 4.

Respondent presented the testimony of Michael B. Mayer, Captain with the Manatee County Sheriff's Department and formerly with the Bradenton Police Department. No Documents were presented by the Respondent, but at Respondent's request, the undersigned agreed to take official recognition of Sections 943.13 and 943.133, Florida Statutes, and Rule 11B-27, F.A.C.

A transcript of the hearing was provided and both parties submitted Proposed Findings of Fact which are all accepted and incorporated herein. There is no dispute as to the facts but only whether these facts show poor moral character.

#### FINDINGS OF FACT

1. In early November, 1988, the Palmetto, Florida Police Department submitted an application for certification as a police officer for Petitioner herein, James L. Foy, to the Criminal Justice Standards and Training Commission. The CJSTC is the agency in Florida charged with the certification of law enforcement personnel in this state.

2. The Affidavit of Compliance submitted with the application reflected that "all criminal history records have been expunged under the provisions of Section 943.058(6)(a)", Florida Statutes.

3. By letter dated February 8, 1989, the CJSTC notified Petitioner that it was denying his application for certification because:

You knowingly engaged in sexual intercourse with a minor female person, after you had attained majority and while employed and certified as a law enforcement officer, though off duty.

4. The parties stipulated, and it is so found, that the CJSTC has not conducted an independent background investigation of the Petitioner and relied solely on the single incident as set forth above as establishing that the Petitioner is not of good moral character.

5. Petitioner served as a police officer with the Bradenton Police Department from April, 1982 to June, 1985 when he resigned. In the fall of 1984, when he was twenty-four years old, Petitioner was performing security services, in an off duty capacity, at a high school football game in Bradenton. After the game, Petitioner's supervisor in the police department, Corporal Simpson, invited him to come home with him after the game for some refreshments.

Petitioner agreed, and subsequently met Simpson, Simpson's fourteen year old daughter, and another girl at the Simpson home.

6. Shortly after going inside, Simpson excused himself and left the room with the other girl, leaving Petitioner along with Ms. Simpson on the couch in the living room. Almost immediately, Ms. Simpson began making sexual advances toward Petitioner to which he was initially receptive, believing her to be somewhat older than she was. He knew she was not 18, but did not know that sex with someone over 15 was against the law.

7. Shortly after Ms. Simpson began sexual advances toward him, loosening his trousers and rubbing his penis, leading to her committing fellatio on him, Petitioner became uncomfortable with the situation, terminated the encounter, and left the Simpson house. During the course of an investigation into an allegation of sexual involvement of one or more Bradenton police officers with minor females in April, 1985, Captain Mayer, of the Manatee County Sheriff's Department interviewed Ms. Simpson and Petitioner's name came up. At that time, Mayer felt she looked older than she actually was. She wore "overdone" makeup and her speech and demeanor were promiscuous. She was obviously trying to make herself look older through the clothes she wore and admitted frankly she had initiated the contact with Petitioner. She also indicated she had sex with others, including other police officers, and could see nothing wrong with it.

8. Mayer later interviewed Petitioner about this at the Bradenton Police Department. Petitioner was not under arrest at the time and frankly admitted the one involvement with Ms. Simpson at her house, as described above. After completing the investigation, Mayer made his report to the Assistant State Attorney who charged Petitioner with having sex with a child under age 16. No evidence was presented as to the outcome of that charge.

9. While serving as a police officer with the Bradenton Police Department, Petitioner received several written and verbal commendations and was named police officer of the year in 1984. He had no disciplinary record with the department. He was well liked and respected by his fellow officers and superiors on the force and was rated as having excellent law enforcement officer abilities and characteristics. His reputation for truthfulness and integrity within the department was outstanding.

10. Petitioner is also highly thought of within the remainder of the law enforcement community in Manatee County even though the incident with Ms. Simpson is well known throughout that community. He still has an excellent reputation for truthfulness and integrity within the community and those who know his character feel he can function effectively as a law enforcement officer notwithstanding this incident.

11. In 1988 the Palmetto Police Department conducted a background investigation of petitioner relevant to his prospective employment with the department. This thorough investigation included a polygraph examination and interviews with his previous employers, friends, neighbors, and others who know and have known him for years. The ultimate conclusion of this investigation was that Petitioner is of good moral character. A similar investigation by the Hardee County Sheriff's Department in 1989 established the same.

12. Other individuals on the periphery of the law enforcement community, who have: know Petitioner and his family for many years are satisfied his character and his reputation for honesty and integrity in the law enforcement and business communities are superb.

## CONCLUSIONS OF LAW

13. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter in this case. Section 120.57(1), Florida Statutes.

14. Petitioner has the burden of proving his entitlement to the certification issued by the CJSTC by a preponderance of the evidence.

15. Under the provisions of Section 943.13(7), Florida Statutes, one of the minimum qualifications for certification as a law enforcement officer in Florida is that the applicant:

Have a good moral character as determined  
by a background investigation under  
procedures established by the Commission.

16. Rule 11B-27.007, F.A.C., authorizes the denial of an application for certification as a law enforcement officer for failure to meet the minimum qualifications for certified officers, of which good moral character is one. The Commission's authority to deny applications on the ground of poor moral character is within its broad discretion. *Sandlin v. Criminal Justice Standards and Training Commission*, 531 So.2d 1344 (Fla. 1988).

17. Since "good moral character" is paramount to the resolution of this issue, it must be defined as possible. Most cases on the subject utilize such terms as "the ability to distinguish right from wrong and observe the right"; "possession of those qualities generally acceptable to the public for positions of trust and confidence"; and "an absence of facts which would cause a reasonable man to have substantial doubts about an individual's honesty, fairness and respect for the rights of others and the law." *Zemour, Inc. v. Division of Beverage*, 347 So.2d 1102 (Fla. 1st DCA 1977); *Florida Board of Bar Examiners Re: G.W.L.*, 364 So.2d 454 (Fla.1978).

18. Petitioner does not deny that he started to engage in a physical relationship with Ms. Simpson, thinking she was older than she was, even though she might have been under age. However, the evidence of record, developed by the various agencies looking into the situation, clearly demonstrates that Ms. Simpson was, at the time, the aggressor in the relationship and obviously trying to make herself look older than she was. Her morality was made clear by the testimony of Captain Mayer and it is without reasonable question that she was on the prowl, abetted by her father, and Petitioner was to be her prey for the evening.

19. As the basis for its denial of Petitioner's application for certification on the basis of poor moral character, the Commission relies solely on the report of the incident, incorrectly described in its own letter of denial. On the other hand, Petitioner has, through the testimony of the individuals present at the hearing and the documentation submitted as backup support therefor, that in any community considered, business, law enforcement, or other, his reputation for honesty, integrity, and truthfulness is of the highest. Nothing besmirches his record save this one incident. It demonstrates he succumbed to temptation and a momentary lack of judgement rather than an absence of good character. Here, Petitioner has satisfied his burden to establish his entitlement to certification on the question of his good moral character.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of law, it is, therefore:

RECOMMENDED that the Criminal Justice Standards and Training Commission find that Petitioner, James L. Foy meets the good moral character requirement of the certification statute and, all other qualifications being met, grant him certification as a law enforcement officer in Florida.

RECOMMENDED this 3rd day of January, 1990, in Tallahassee, Florida.

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ARNOLD H. POLLOCK, Hearing Officer  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-1550  
(904) 488-9675

Filed with the Clerk of the  
Division of Administrative Hearings  
this 3rd day of January, 1990.

COPIES FURNISHED:

Gene Johnson, Esquire  
Florida Police Benevolent Association, Inc.  
General Counsel  
300 East Brevard Street  
Tallahassee, Florida 32301

Joseph S. White, Esquire  
Florida Department of Law Enforcement  
P. O. Box 1489  
Tallahassee, Florida 32302

Jeffrey Long, Director  
Criminal Justice Standards and Training Commission  
P. O. Box 1489  
Tallahassee, Florida 32302

Rodney Gaddy  
General Counsel  
FDLE  
P. O. Box 1489  
Tallahassee, Florida 32302

James T. Moore  
Commissioner  
Post Office Box 1489  
Tallahassee, FL 32302

FDLE  
P. O. Box 1489  
Tallahassee, Florida 32302