

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

FLORIDA DEPARTMENT OF LAW )  
ENFORCEMENT, CRIMINAL JUSTICE )  
STANDARDS AND TRAINING )  
COMMISSION, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 00-0298  
 )  
ERIC T. JENKINS, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on June 13, 2000, in Lake Butler, Florida, before Donald R. Alexander, the assigned Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioners: Karen D. Simmons, Esquire  
Florida Department of Law Enforcement  
Post Office Box 1489  
Tallahassee, Florida 32302-1489

For Respondent: No appearance

STATEMENT OF THE ISSUE

The issue is whether Respondent's Correctional Certificate No. 164605 should be disciplined for the reasons set forth in the Administrative Complaint.

PRELIMINARY STATEMENT

This matter began on August 13, 1999, when Petitioner, Florida Department of Law Enforcement, Criminal Justice Standards and Training Commission, issued an Administrative Complaint charging that on December 20, 1998, Respondent, Eric T. Jenkins, a certified correctional officer, had more than 20 grams of cannabis in his possession, and that he unlawfully introduced cannabis onto the grounds of Florida State Prison in violation of state law. In a request filed on September 9, 1999, Respondent has asked for a formal hearing under Section 120.569, Florida Statutes, to contest the charges.

The matter was referred by Petitioner to the Division of Administrative Hearings on January 19, 2000, with a request that an Administrative Law Judge be assigned to conduct a formal hearing. By Notice of Hearing dated April 14, 2000, a final hearing was scheduled on June 13, 2000, in Lake Butler, Florida. On June 12, 2000, the case was transferred from Administrative Law Judge P. Michael Ruff to the undersigned.

At the final hearing, Petitioner's ore tenus Motion to Correct Scrivener's Errors in the Administrative Complaint was granted to change Respondent's middle initial to a "T" and change the word "that" to "than" in paragraph (2)(a) of the complaint. Petitioner presented the testimony of Niels Bernstein, a chemist with the Florida Department of Law Enforcement and accepted as an expert in the area of analysis of controlled substances; Michael

Bailey, Kevin Box, Steven R. Pitt, J. Kevin Duggar, Charles Futch, and Carol A. Starling, all Department of Corrections employees; and Kenneth F. Brookins, a Florida Highway Patrol trooper. Also, it offered Petitioner's Exhibits 1-10, which were received in evidence. Although served with a timely Notice of Hearing, Respondent did not appear at the final hearing.

There is no transcript of the hearing. Proposed Findings of Fact and Conclusions of Law were filed by Petitioner on June 22, 2000, and they have been considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

Based upon all of the evidence, the following findings of fact are determined:

1. In this disciplinary proceeding, Petitioner, Florida Department of Law Enforcement, Criminal Justice Standards and Training Commission (Commission), seeks to discipline Correctional Certificate No. 164605 held by Respondent, Eric T. Jenkins, on the grounds that in December 1998 he was in possession of more than 20 grams of cannabis, a controlled substance, and he illegally carried contraband (cannabis) onto the grounds of Florida State Prison (FSP) while employed at FSP as a correctional officer. In his request for a hearing, Respondent denied the allegations.

2. Periodically, and without notice, the Department of Corrections (DOC) sends a small contraband interdiction team

(team) to various state correctional institutions for the purpose of intercepting contraband that may be covertly brought into the facility by DOC employees or inmate visitors. The team consists of a small number of specially trained DOC employees, including K9 units, and a volunteer Florida Highway Patrol trooper, who assists the team in making arrests.

3. On Sunday, December 20, 1998, a team targeted FSP and arrived on the premises around 5:00 a.m. The inspection lasted until shortly after the last shift of employees reported to work around 4:00 p.m. Besides patting down employees and visitors, the team also searched the vehicles of employees that were parked in the employees' parking lot inside the prison. Respondent worked the last shift that day and arrived shortly before 4:00 p.m. He was driving an Isuzu Amigo with Florida vehicle tag "WSM 82B."

4. To assist the team in its search, the team used several specially trained dogs (Blue, Smokey, and Thor) who were assigned the task of sniffing parked vehicles for narcotic odors. When a dog recognizes a narcotic odor, it "alerts" or responds to the odor and remains passively in front of the vehicle.

5. After Blue "alerted" at the rear of Respondent's vehicle, a second dog, Thor, was brought to the vehicle and he also responded in the same manner. Respondent was then notified that the team wished to search his vehicle, and he executed a written Consent to Search form agreeing to a search.

6. A search conducted by a DOC officer discovered a latex glove hidden under the front passenger seat of Respondent's vehicle. Inside the glove were two compressed baggies containing approximately 55 grams of a substance that appeared to be cannabis. Laboratory testing by a state chemist confirmed that the substance was indeed cannabis, and that it weighed 51.5 grams. Although the street value of the drugs was only around \$275.00, in a prison environment, the drugs had a far greater value.

7. Respondent initially agreed to be interviewed by a Florida Highway Patrol trooper at the prison regarding the contraband. He subsequently had a change of heart and declined to answer any questions. Respondent was then arrested for "drug offenses," booked into the Bradford County Jail, and charged with violating Sections 893.13 and 944.47(1)(a)4., Florida Statutes (1997). However, the disposition of the criminal matter is unknown. In any event, after being arrested, Respondent was immediately terminated from his position at FSP.

8. In mitigation, Respondent has been certified as a correctional officer since June 26, 1996, and there is no evidence that prior disciplinary action has been taken against him. In aggravation, Respondent used his official authority to facilitate his misconduct; he was employed as a correctional guard when the misconduct occurred; Respondent has made no efforts of rehabilitation; Respondent stood to receive pecuniary

gain by selling the contraband in the prison; and there are two established counts of violations of the statute requiring that correctional officers maintain good moral character.

#### CONCLUSIONS OF LAW

9. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties hereto pursuant to Sections 120.569 and 120.57(1), Florida Statutes (1999).

10. As the party seeking to take disciplinary action against Respondent's professional license, Petitioner has the burden of proving by clear and convincing evidence that the charges in the Administrative Complaint are true. Newberry v. Fla. Dep't of Law Enforcement, 585 So. 2d 500, 501 (Fla. 3d DCA 1991).

11. According to the complaint, the actions of Respondent, if true, "violated Section 943.1395(6) and/or (7), Florida Statutes, and/or Rule 11B-27.0011(4)(a), Florida Administrative Code, in that Respondent has failed to maintain the qualifications in Section 943.13(7), Florida Statutes, which require that a correctional officer in the State of Florida have good moral character." At the same time, Rule 11B-27.0011(4)(a), Florida Administrative Code, defines a certified officer's failure to maintain good moral character as "[t]he perpetration by the officer of an act which would constitute any felony offense, whether criminally prosecuted or not."

12. By clear and convincing evidence, Petitioner has established that the charges in the complaint are true. More specifically, on the date in question, Respondent "did unlawfully have . . . more than 20 grams of cannabis" in his possession, and he "unlawfully introduced [cannabis] into or upon the grounds of Florida State Prison," as alleged in the complaint. By engaging in this conduct, which equates to the commission of two felony offenses, Respondent has failed to maintain the necessary good moral conduct required of a correctional officer.

13. Rule 11B-27.005(5)(a), Florida Administrative Code, provides that in the absence of any mitigating circumstances, the penalty for introduction of contraband shall be revocation of the certificate. Except for the two mitigating circumstances identified in Finding of Fact 8, there are no others present. In contrast, a number of aggravating factors are also present, which outweigh any mitigating factors. This being so, revocation of the correctional certificate is appropriate.

#### RECOMMENDATION

Based on the foregoing findings of fact and conclusions of law, it is

RECOMMENDED that the Criminal Justice Standards and Training Commission enter a final order determining that Respondent has failed to maintain good moral character, as charged in the Administrative Complaint, and that his Correctional Certificate No. 164605 be revoked.

DONE AND ENTERED this 29th of June, 2000, in Tallahassee,  
Leon County, Florida.

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DONALD R. ALEXANDER  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 29th day of June, 2000.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within  
15 days from the date of this Recommended Order. Any exceptions  
to this Recommended Order should be filed with the agency that  
will issue the final order in this case.