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STATE OF FLORIDA
CRIMINAL JUSTICE STANDARDS AND TRAINING
COMMISSION

CRIMINAL JUSTICE STANDARDS
AND TRAINING COMMISSION

Petitioner,

-vs-

CASE NUMBER: 14935

DOAH NUMBER: 00-3478BL PMR

ERLENE R. STEWART,
Certificate No.: 143764
Respondent.

RECEIVED
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CRIMINAL JUSTICE STANDARDS AND TRAINING COMMISSION

FINAL ORDER

This matter came before the Criminal Justice Standards and Training Commission (the Commission) at a public meeting on May 3, 2001, in Daytona Beach, Florida. It was alleged by Administrative Complaint that the Respondent had violated specified sections of Chapter 943, Florida Statutes, and Chapter 11B-27, Florida Administrative Code. In accordance with §§120.569 and 120.57(1), Florida Statutes, a formal hearing was held on this matter, and a Recommended Order was submitted by an administrative law judge from the Division of Administrative Hearings to the Commission for consideration. The Petitioner filed exceptions to the Recommended Order, a copy of which is attached and incorporated herein by reference.

The Commission has reviewed the entire record of the formal hearing, has heard the arguments of the parties and is otherwise fully advised in the matter. The Commission's findings are set forth below.

I. Standards for Review

Under §120.57(1)(L), Florida Statutes, the Commission may reject or modify the administrative law judge's conclusions of law and interpretations of the Commission's

administrative rules in the Recommended Order. The Commission, however, may not reject or modify the administrative law judge's findings of fact unless the Commission determines from a review of the entire record, and states with particularity in this Final Order, that 1) those findings of fact were not based on competent substantial evidence or 2) the proceedings on which the findings of fact were based did not comply with essential requirements of the law.

The Florida Supreme Court, in DeGroot v. Sheffield, 95 So.2d 912, 916 (Fla. 1957), defined "competent substantial evidence" to be evidence that is "sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached."

Additionally, the Commission may not reweigh the evidence, resolve conflicts in the evidence, judge the credibility of witnesses or otherwise interpret the evidence anew simply to fit its desired conclusion. Heifetz v. Department of Business Regulation, 475 So.2d 1277 (Fla. 1st DCA 1985).

Nor may the Commission reduce or increase the recommended penalty in the Recommended Order without first reviewing the complete record and without stating with particularity its reasons therefor in the Final Order. §120.57(1)(j), Florida Statutes.

II. Rulings on Exceptions

Petitioner filed exceptions to the administrative law judge's conclusions of law in paragraph 26 of the Recommended Order. Petitioner also objected to the administrative law judge's recommended penalty of a two year suspension of Respondent's certification. Specifically, the Petitioner argues that the administrative law judge's conclusion of law in paragraph 26 is improper in that the finding addresses a mitigating factor that is not recognized by statute or rule. With regard to the conclusions of law in paragraph 26, Petitioner argues that

the record establishes aggravating circumstances that were disregarded by the administrative law judge. Since the judge considered a factor that is not authorized by statute or rule, and failed to consider other aggravating circumstances, the conclusion reached in paragraph 26 is erroneous as it was not based on competent substantial evidence and it departs from the essential requirements of law. Petitioner takes exception to the recommendation of a reduced penalty since the administrative law judge considered a non mitigating factor and failed to consider aggravating factors. The Commission finds that the exceptions filed by the Petitioner are well taken.

III. Findings of Fact

The administrative law judge's findings of fact in paragraphs 1 through 11 of the Recommended Order are approved, adopted and incorporated herein by reference.

That portion of paragraph 26 that finds the following mitigating factor is rejected by the Commission because this factor is not authorized by statute or rule, is not based on substantial competent evidence, is irrelevant, and has no bearing on the certification of the Respondent.

Respondent's misconduct is rendered less serious in that she did not actually attempt to introduce controlled substances into the prison itself for profit or for other motives, but merely, had the substances inside her locked vehicle. The possibility that she had at least inadvertently introduced the substances in her possession in her car onto UCI property warrants imposition of lesser penalty.

This factor is not delineated by statute or rule as a mitigating factor to be considered either by the administrative law judge or the Commission with regard to certification. This finding is irrelevant and has no bearing on the certification of the Respondent.

IV. Conclusions of Law

The administrative law judge's conclusions of law in paragraphs 12 through 25 of the Recommended Order are approved, adopted and incorporated herein by reference.

The Commission rejects the administrative law judge's conclusion of law contained in paragraph 26 of the Recommended Order and finds the Commission's conclusion of law is more reasonable than that of the administrative law judge for the following reasons:

Aggravating factors been established by competent substantial evidence to wit:

- (a) The misconduct was committed while the Respondent was performing her duties as a correctional officer.
- (b) The number of violations the Respondent committed. The Respondent committed three moral character violations (Introduction of Contraband, Possession of Cocaine, Possession of Cannabis).
- (c) The severity of the misconduct. The Respondent committed three criminal violations; one of which is a felony of the second degree.

V. Recommended Penalty

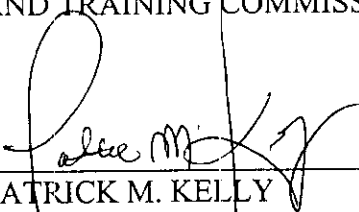
The Commission rejects the administrative law judge's recommendation that the Commission issue a final order suspending the Respondent's certification a period of two years. Based upon the facts as established in this proceeding:

It is therefore ORDERED AND ADJUDGED that the Respondent's above referenced correctional officer certifications are is REVOKED.

This Final Order will become effective upon the filing with the Clerk of the Department of Law Enforcement.

SO ORDERED this 8 day of May, 2001.

CRIMINAL JUSTICE STANDARDS
AND TRAINING COMMISSION



PATRICK M. KELLY
CHAIRMAN

NOTICE

THIS ORDER CONSTITUTES FINAL AGENCY ACTION. ANY PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER HAS THE RIGHT TO SEEK JUDICIAL REVIEW UNDER SECTION 120.68, FLORIDA STATUTES, BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE CLERK OF THE DEPARTMENT OF LAW ENFORCEMENT, P.O. BOX 1489, TALLAHASSEE, FLORIDA 32302-1489, AND BY FILING A SECOND COPY OF THE NOTICE OF APPEAL WITH THE APPROPRIATE DISTRICT COURT OF APPEAL IN ACCORDANCE WITH RULE 9.110, FLORIDA RULES OF APPELLATE PROCEDURE. SUCH NOTICE OF APPEAL MUST BE FILED WITHIN **30** DAYS OF THE DATE THIS ORDER IS RENDERED.