

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF LAW ENFORCEMENT,)
CRIMINAL JUSTICE STANDARDS AND)
TRAINING COMMISSION,)
)
Petitioner,)
)
vs.) Case No. 03-3240PL
)
JACQUELINE L. SCRIVEN,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly-designated Administrative Law Judge, Jeff B. Clark, held a formal administrative hearing in this matter on November 10, 2003, in Orlando, Florida.

For Petitioner: Linton B. Eason, Esquire
Department of Law Enforcement
Post Office Box 1489
Tallahassee, Florida 32302

For Respondent: Jacqueline L. Scriven, pro se
508 Koala Drive
Kissimmee, Florida 34759

STATEMENT OF THE ISSUE

Whether Respondent may be disciplined for failure to maintain the qualifications established by Subsection 943.13(7), Florida Statutes (2002), which requires that a correctional officer have good moral character.

PRELIMINARY STATEMENT

On August 8, 2003, Petitioner, Department of Law Enforcement, Criminal Justice Standards and Training Commission, mailed Respondent, Jacqueline L. Scriven, an Administrative Complaint wherein it was alleged:

2(a) On or about March 18, 2003,^[1] the Respondent, Jacqueline L. Scriven, did unlawfully and intentionally commit an assault upon Marissa Jefferson, by threatening by word or act to do violence to said person, coupled with the apparent ability to do so, and by doing an act which created a well-founded fear in said Marissa Jefferson that said violence was imminent, by pointing and threatening with a deadly weapon, to wit: .38 caliber revolver.

(b) On or about March 18, 2003, the Respondent, Jacqueline L. Scriven, did unlawfully commit a battery upon Marissa Jefferson, by actually and intentionally touching or striking said person against said person's will, or by intentionally causing bodily harm to said person, and in committing said battery did use a hammer, a deadly weapon.

3. The actions of the Respondent did violate the provisions of Section 784.021(1)(a) and/or 784.045(1)(a)2 or any lesser included offenses, Section 943.1395(6) and/or (7), Florida Statutes, and/or Rule 11B-27.0011(4)(b), Florida Administrative Code, in that the Respondent failed to maintain the qualifications established in Section 943.13(7), Florida Statutes, which require that a Correctional Officer in the State of Florida have good moral character.

On August 19, 2003, Respondent executed an Election of Rights advising Petitioner that she disputed the allegations of fact contained in the Administrative Complaint.

On September 12, 2003, Petitioner forwarded a Request for Assignment of Administrative Law Judge to the Division of Administrative Hearings. An Initial Order was sent to both parties on the same date. On September 29, 2003, the case was scheduled for final hearing in Orlando, Florida, on November 10, 2003.

The case was heard as scheduled. Petitioner presented two witnesses: Ivan Garcia, a former Polk County, Florida, deputy sheriff, and David Kelly, a Polk County, Florida, deputy sheriff. Petitioner offered seven exhibits that were received into evidence and marked Petitioner's Exhibits 1 through 7. Respondent presented three witnesses: Daniel Deramus, an Orange County, Florida, corrections officer; Charles Seaborn; and Respondent, herself. Respondent did not offer any exhibits. A Transcript of the proceedings was filed with the Clerk of the Division of Administrative Hearings on November 26, 2003. Petitioner timely submitted a Proposed Recommended Order.

FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing, the following findings of fact are made:

1. Respondent, Jacqueline L. Scriven, is a state-certified correctional officer holding certificate No. 45230. She was certified by Petitioner on August 28, 1985.

2. On March 18, 2002, Respondent and her 21-year-old daughter, Marissa Jefferson, were involved in a physical altercation. The daughter reported to the arresting officer that Respondent struck her with her fists and a claw hammer. The arresting officer reported physical evidence on Marissa Jefferson's back and shoulders consistent with an attack with a claw hammer.

3. Marissa Jefferson also reported to the arresting officer that Respondent threatened to shoot her with a revolver that Respondent was holding, although Respondent did not point the weapon at her.

4. Marissa Jefferson was not available to testify; she is presently incarcerated for writing bad checks in Orange County jail. She has charges pending in four other Florida counties. She has a history of police involvement for various criminal and drug-related offenses. She stole from her mother while living with her. Interestingly, while Marisa Jefferson is in jail, Respondent is the primary caretaker for Marissa Jefferson's son.

5. Respondent was arrested and charged with aggravated battery (Section 784.045, Florida Statutes (2002)) and

aggravated assault with a firearm (Section 784.021, Florida Statutes (2002)).

6. On December 17, 2002, Respondent entered a plea of nolo contendere to a violation of Section 784.03, Florida Statutes (2002), felony battery. Adjudication was withheld, and she was placed on probation for a period of one year. In addition, she paid \$183.50 in costs and was directed to undergo anger management evaluation and training.

7. Respondent, who is 43 years old, had been employed by Department of Corrections since 1985 and had risen to the rank of captain. She was terminated on January 9, 2003.

8. Respondent acknowledges hitting her daughter with a hammer, but denies having ever had the pistol in her possession during the altercation. Respondent contends that she used the hammer in self-defense. The position of the blunt trauma visible on Marissa Jefferson's back and shoulders indicates that she had her back to Respondent when she was struck. Based on the hearsay nature of the evidence supporting the allegations of assault with a firearm and Respondent's candid admission of hitting her daughter with a hammer, but denying having ever had possession of the firearm during the altercation, her testimony is credible regarding both allegations. It does not appear that Respondent's striking her daughter with the claw hammer was in self-defense.

CONCLUSIONS OF LAW

9. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this cause, pursuant to Subsection 120.57(1), Florida Statutes (2003).

10. The Administrative Complaint alleges:

The actions of the Respondent did violate the provisions of Section 784.021(1)(a) and/or 784.045(1)(a)2 or any lesser included offenses, Section 943.1395(6) and/or (7), Florida Statutes, and/or Rule 11B-27.0011(4)(a), Florida Administrative Code, in that the Respondent has failed to maintain the qualifications established in Section 943.13(7), Florida Statutes, which require that a Correctional Officer in the State of Florida have good moral character.

11. Petitioner has the burden of proving by clear and convincing evidence the allegations against Respondent. Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987); Evans Packing Co. v. Department of Agriculture and Consumer Services, 550 So. 2d 112 (Fla. 1st DCA 1989).

12. The following statement has been repeatedly cited in discussions of the "clear and convincing" evidence standard:

[C]lear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the

truth of the allegations sought to be established.

Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

13. It is alleged that Respondent violated Subsection 784.021(1)(a), Florida Statutes (2002), which provides:

(1) An "aggravated assault" is an assault:

(a) With a deadly weapon without intent to kill;

14. Respondent is also alleged to have violated Subsection 784.045(1)(a)2., Florida Statutes (2002), which provides:

(1)(a) A person commits aggravated battery who, in committing battery:

* * *

2. Uses a deadly weapon.

15. Subsections 943.1395(6) and (7), Florida Statutes (2002), provide that:

(6) The commission shall revoke the certification of any officer who is not in compliance with the provisions of s. 943.13(4) or who intentionally executes a false affidavit established in s. 943.13(8), s. 943.133(2), or s. 943.139(2).

(a) The commission shall cause to be investigated any ground for revocation from the employing agency pursuant to s. 943.139 or from the Governor, and the commission may investigate verifiable complaints. Any investigation initiated by the commission pursuant to this section must be completed within 6 months after receipt of the completed report of the disciplinary or internal affairs investigation from the

employing agency or Governor's office. A verifiable complaint shall be completed within 1 year after receipt of the complaint. An investigation shall be considered completed upon a finding by a probable cause panel of the commission. These time periods shall be tolled during the period of any criminal prosecution of the officer.

(b) The report of misconduct and all records or information provided to or developed by the commission during the course of an investigation conducted by the commission are exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and, except as otherwise provided by law, such information shall be subject to public disclosure only after a determination as to probable cause has been made or until the investigation becomes inactive.

(c) When an officer's certification is revoked in any discipline, his or her certification in any other discipline shall simultaneously be revoked.

(7) Upon a finding by the commission that a certified officer has not maintained good moral character, the definition of which has been adopted by rule and is established as a statewide standard, as required by s. 943.13(7), the commission may enter an order imposing one or more of the following penalties:

(a) Revocation of certification.

(b) Suspension of certification for a period not to exceed 2 years.

(c) Placement on a probationary status for a period not to exceed 2 years, subject to terms and conditions imposed by the commission. Upon the violation of such terms and conditions, the commission may revoke

certification or impose additional penalties as enumerated in this subsection.

(d) Successful completion by the officer of any basic recruit, advanced, or career development training or such retraining deemed appropriate by the commission.

(e) Issuance of a reprimand.

16. Subsection 943.13(7), Florida Statutes (2002), establishes the minimum qualifications for law enforcement officers in Florida, including:

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

17. Florida Administrative Code Rule 11B-27.0011(4)(a) provides in pertinent part:

(4) For the purposes of the Criminal Justice Standards and Training Commission's implementation of any of the penalties specified in Section 943.1395(6) or (7), F.S., a certified officer's failure to maintain good moral character required by Section 943.13(7), F.S., is defined as:

(a) The perpetration by an officer of an act that would constitute any felony offense, whether criminally prosecuted or not.

18. The evidence presented demonstrates clearly and convincingly that Respondent committed the offense of assault with a deadly weapon; she pled nolo contendere to a lesser included offense, battery.

19. Given the definition of failure to maintain good moral character as established in Florida Administrative Code Rule 11B-27.0011(4)(b), Petitioner has proved that Respondent has failed to demonstrate the minimum qualification of good moral character as required in Subsection 943.13(7), Florida Statutes (2002).

20. Florida Administrative Code Rule 11B-27.005(4) and (5) provides, in part:

(4) The Commission sets forth in paragraphs (5)(a)-(d), of this rule section, a range of disciplinary guidelines from which disciplinary penalties shall be imposed upon certified officers who have been found by the Commission to have violated Section 943.13(7), F.S. The purpose of the disciplinary guidelines is to give notice to certified officers of the range of penalties, or prescribed penalties, that shall be imposed for particular violations of Section 943.13(7), F.S., absent aggravating or mitigating circumstances, as provided in paragraph (6) of this rule section. The disciplinary guidelines are based upon a "single count violation" of each provision listed. All penalties at the upper range of the sanctions in the guidelines (i.e., suspension or revocation), include lesser penalties (i.e., reprimand, remedial training, or probation), that may be included in the final penalty at the Commission's discretion.

(5) When the Commission finds that a certified officer has committed an act that violates Section 943.13(7), F.S., the Commission shall issue a final order imposing penalties within the ranges

recommended in the following disciplinary guidelines:

(a) For the perpetration by the officer of an act that would constitute any felony offense, pursuant to Rule 11B-27.0011(4)(a), F.A.C., but where there was not a violation of Section 943.13(4), F.S., the action of the Commission shall be to impose a penalty ranging from suspension of certification to revocation.

21. Respondent has perpetrated a felony offense, however, there has been no violation of Subsection 943.13(4), Florida Statutes.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that Petitioner, Department of Law Enforcement, Criminal Justice Standards and Training Commission, enter a final order finding that Respondent, Jacqueline L. Scriven, violated Subsection 784.045(1)(a)2., Florida Statutes, and, as a result, failed to demonstrate good moral character as required by Subsection 943.13(7), Florida Statutes, and that her certification be suspended for two years from January 10, 2003, and that she be given such other associated penalties as Petitioner deems appropriate.

DONE AND ENTERED this 22nd day of December, 2003, in
Tallahassee, Leon County, Florida.



JEFF B. CLARK
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 22nd day of December, 2003.

ENDNOTE

1/ It is noted that the Administrative Complaint incorrectly indicates that the altercation between Respondent and her daughter occurred in 2003, when, in fact, it occurred in 2002. Respondent is well-aware of the incident that gave rise to her problems; the actual date is inconsequential and this scrivener's error is innocuous.

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.