

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF LAW ENFORCEMENT,)
CRIMINAL JUSTICE STANDARDS)
AND TRAINING COMMISSION,)
)
Petitioner,)
)
vs.) Case No. 07-3410PL
)
ERNEST P. HASKINS, III,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Notice was provided and on September 25, 2007, a formal hearing was held in this case. Authority for conducting the hearing is set forth in Sections 120.569 and 120.57(1), Florida Statutes (2007). The hearing proceeded by video-teleconferencing between sites in Tallahassee, Florida, and Jacksonville, Florida. The hearing was held before Charles C. Adams, Administrative Law Judge.

APPEARANCES

For Petitioner: Sharon S. Traxler, Esquire
Department of Law Enforcement
Post Office Box 1489
Tallahassee, Florida 32302

For Respondent: Ernest P. Haskins, III, pro se
Post Office Box 604
Hilliard, Florida 32046

STATEMENT OF THE ISSUE

Should the Criminal Justice Standards and Training Commission (the Commission) impose discipline on Respondent in association with his Law Enforcement Certificate?

PRELIMINARY STATEMENT

On May 9, 2007, by an Administrative Complaint in Case No. 22747, the Commission accused Respondent of unlawfully engaging in sexual activity with K.W., who at relevant times was allegedly 16 and 17 years old. Such activities allegedly took place between January 2002 and May 2003. By these actions, Respondent was alleged to have violated the provisions of Section 794.05, Florida Statutes, or any lesser included offense, as well as Section 943.1395(7), Florida Statutes, and Florida Administrative Code Rule 11B-27.0011(4)(a), by the failure to maintain the qualifications established in Section 943.13(7), Florida Statutes, required of a law enforcement officer in Florida, that he or she maintain good moral character.

The Commission allowed Respondent an opportunity to elect a response to the charges by executing a form provided him. Respondent chose the option to dispute the allegations of fact in the Administrative Complaint. That choice was made by executing the form and was considered a petition for a formal hearing pursuant to Section 120.57(1), Florida Statutes. The election of

rights was executed on May 30, 2007, before a Florida Notary Public.

By this election, Respondent wrote that he disputed, "all" material facts set forth in the Administrative Complaint. This is understood to refer to the underlying factual allegations concerning alleged unlawful conduct directed to K.W.

On July 24, 2007, the Division of Administrative Hearings (DOAH) received the case from Petitioner requesting the assignment of an administrative law judge to conduct a formal hearing to resolve the material facts in dispute. The case was assigned as DOAH Case No. 07-3410PL to be considered by the undersigned.

On July 31, 2007, a Notice of Hearing by Video Teleconference was provided the parties setting forth September 25, 2007, as the hearing date.

At hearing Petitioner presented K.W. as its witness. Petitioner's Exhibit numbered one was admitted.

Respondent offered Respondent's Exhibit numbered one, a therapy summary purportedly authored by Tina M. Larson, L.M.H.C. concerning the witness K.W. and Respondent's Exhibit numbered two, a composite constituted of a Florida Department of Law Enforcement investigative report that included the summary of remarks made by persons interviewed by the report writer.

When offered, the Respondent's Exhibits numbered one and two were available to Respondent in his location in Jacksonville, Florida, but not to the other participants in the hearing, located in Tallahassee, Florida. Petitioner through counsel objected to the admission of the exhibits. They were not admitted. Respondent was allowed to forward his exhibits to be maintained with the record as rejected exhibits. This he did. They are marked as Respondent's Exhibits numbered one and two, unadmitted.

Petitioner's counsel had no interest in receiving copies of Respondent's Exhibits to be maintained with the record.

Respondent's Exhibits were forwarded with a three-page cover letter authored by Respondent. Respondent failed to provide a copy of the three-page cover letter to Petitioner's counsel. As a consequence, on September 28, 2007, a Notice of Ex Parte Communication in association with the three-page cover letter was entered allowing Petitioner to rebut the ex parte communication. No rebuttal has been submitted. § 120.66, Fla. Stat. (2007).

Part of the three-page cover letter described constituted an attempt at further argument concerning the admission of Respondent's Exhibits numbered one and two. That portion of the letter has not been considered in preparing the Recommended Order. The balance of the three-page cover letter is constituted of further argument concerning the case history involving allegations pertaining to Respondent and his relationship with

K.W. and efforts to resolve the dispute. That portion of the three-page cover letter has been reviewed and considered in preparing the Recommended Order. Those matters will be discussed in the conclusions of law.

On October 9, 2007, the hearing transcript was filed with DOAH. Petitioner filed a Proposed Recommended Order which has been considered in preparing the Recommended Order.

FINDINGS OF FACT

1. Respondent was born January 21, 1963. He holds Law Enforcement Certificate number 140861 issued by the Commission on October 1, 1993.

2. At all times relevant to the inquiry, Respondent worked as a law enforcement officer with the Fernandina Beach Police Department, Fernandina Beach, Florida.

3. K.W. is a female born on January 3, 1986. Between January 2002 and May 2003 she lived in Fernandina Beach, Florida. At the times relevant to the case she was 16 or 17 years old. During this period she attended high school in Fernandina Beach, Florida. While in high school she was a member of a club known as the Explorers. This was an organization unaffiliated with the school district. Its affiliation was with the Fernandina Beach Police Department.

4. As a member of the Explorers, K.W. would ride along with police officers in their patrol cars to learn about the officers' job duties and participate in community service.

5. K.W. did ride-a-longs with Respondent in his capacity as a police officer for the Fernandina Beach Police Department. K.W. rode with Respondent on two or three occasions.

6. While participating in the ride-a-long program, Respondent and K.W. were intimate on two different occasions. The intimacy included kissing, touching and oral sex. This involved Respondent's penis that came in contact with K.W.'s mouth.

7. The circumstances that have been described occurred while Respondent was on duty, wearing the uniform of a law enforcement officer. The contacts described took place in Respondent's patrol vehicle. On each occasion when Respondent and K.W. were intimate, these encounters took place in Nassau County, Florida, once in an area adjacent to Amelia Parkway, and the second time in the area of a construction site.

CONCLUSIONS OF LAW

8. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter in this case pursuant to Sections 120.569 and 120.57, Florida Statutes (2007).

9. By this action, the Commission seeks to discipline Respondent concerning the law enforcement certificate it issued him. Petitioner bears the burden of proving the allegations in the Administrative Complaint before discipline can be imposed against Respondent's law enforcement certificate. The nature of that proof must be by clear and convincing evidence. Department of Banking and Finance Division of Securities and Investor Protection v. Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

10. The meaning of clear and convincing evidence is explained in the case In Re: Davey, 645 So. 2d 398 (Fla. 1994), quoting with approval from Slomowitz v. Walker, 429 So. 2d 797 (Fla. 4th DCA 1983).

11. The factual allegations in the case set forth in the Administrative Complaint state:

On or between January 2002 and May 2003, the Respondent, Ernest P. Haskins III, did unlawfully, while being 24 years of age or older, engage in sexual activity with K.W., who at the time of such intercourse was 16 and 17 years old.

On or between January 2002 and May 2003, the Respondent, Ernest P. Haskins III, did then while employed as a Law Enforcement officer with the Fernandina Beach Police Department, engage in sexual contact with another, while on duty.

12. Based upon the facts alleged, the Commission asserts that:

The actions of the Respondent did violate the provisions of Section 794.05 or any lesser included offenses, Section 943.1395(7), Florida Statutes and Rule 11B-27.0011(4)(a), Florida Administrative Code, in that Respondent has failed to maintain the qualifications established in Section 943.13(7), Florida Statutes, which require that a Law Enforcement officer in the State of Florida have good moral character.

13. Section 943.1395(7), Florida Statutes, in effect at times relevant to the case stated:

(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.

14. The rule referred to in the Administrative Complaint that deals with the maintenance of good moral character is Florida Administrative Code Rule 11B-27.0011(4)(a), in effect at

times relevant to the case. It states:

For the purposes of the Criminal Justice Standards and Training Commission's implementation of any of the penalties specified in Section 943.1395 . . . (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.

15. Section 943.13(7), Florida Statutes, mentioned in the Administrative Complaint and the aforementioned rule, refers to the need for an officer to:

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

16. The felony violation alleged in the Administrative Complaint is associated with the provisions of Sections 794.05, Florida Statutes in effect at times relevant to the case, which state:

(1) A person 24 years of age or older who engages in sexual activity with a person 16 or 17 years of age commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. As used in this section, "sexual activity" means oral, anal, or vaginal penetration by, or union with, the sexual organ of another; however, sexual activity does not include an act done for a bona fide medical purpose.

(2) The provisions of this section do not apply to a person 16 or 17 years of age who has had the disabilities of nonage removed under chapter 743.

(3) The victim's prior sexual conduct is not a relevant issue in a prosecution under this section.

(4) If an offense under this section directly results in the victim giving birth to a child, paternity of that child shall be established as described in chapter 742. If it is determined that the offender is the father of the child, the offender must pay child support pursuant to the child support guidelines described in chapter 61.

17. Based upon the hearing record and the explanations by Respondent, criminal charges were pursued against Respondent pertaining to his relationship with K.W. There is no indication of any court disposition of the criminal charges. Therefore, prosecution of the Administrative Complaint in the present case is dependant upon Petitioner's separately proving by clear and convincing evidence that Respondent violated Section 794.05, Florida Statutes. That proof has been made. Respondent engaged in "sexual activity" with K.W. in the form of oral sex when he was 24 years of age or older and K.W. was a person 16 or 17 years of age. This constituted the commission of a felony of the second degree as defined in the statute. Based upon this violation, Respondent has failed to maintain good moral character as referred to in Section 943.1395(7), Florida Statutes, and defined in Florida Administrative Code Rule 11B-27.0011(4)(a).

18. In his defense, Respondent has argued that Petitioner is unable to pursue the Administrative Complaint given the history of the case. To support his argument Respondent refers to an Affidavit of Agreement to Allow Criminal Justice Certification to Expire, in which Respondent by executing the affidavit agreed

that:

1. This agreement is voluntary, non-revocable after submission, and permanent with no opportunity for modification.
2. I hereby acknowledge that my certificate is set to expire on June 30, 2006. I agree that I will not use that certification for any employment between now and its expiration date and that I will not ever seek any renewal thereof.
3. I understand, and hereby waive all rights under Chapters 120 and 943, Florida Statutes.
4. I understand by waiving my rights under Chapters 120 and 943, I am waiving my right to any hearing in regards to my certification(s), as well as my right to appeal any final action taken by the Commission.
5. I waive my right to notice any further proceedings concerning my certificate(s).
6. I will be notified when this agreement is accepted by the Commission.

The affidavit was executed on February 28, 2006.

19. In response the Commission entered a Final Order on April 4, 2006, which stated:

FINAL ORDER

This matter came before the Criminal Justice Standards and Training Commission (the Commission). In a document submitted to the Commission, the Respondent chose to voluntarily relinquish his criminal justice certification to the Commission.

FINDINGS OF FACT

The Respondent chose to voluntarily relinquish his certification as part of the resolution of a collateral criminal matter. He did so freely and voluntarily. The Respondent's voluntary relinquishment is approved, accepted, adopted and incorporated herein by reference.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this case,
2. The Respondent, by the terms of his voluntary relinquishment, has waived his rights to a hearing pursuant to Chapters 120 and 943, Florida Statutes.

It is therefore ORDERED AND ADJUDGED that:

1. The Respondent's voluntary relinquishment of his above-referenced criminal justice certification is ACCEPTED.
2. The Respondent shall immediately surrender to the Commission his criminal justice certification(s).
3. This Final Order will become effective upon filing with the Clerk of the Department of Law Enforcement.

20. As can be seen, in his affidavit Respondent characterized the disposition of the case as being one in which his law enforcement certificate would be allowed to expire. The Final Order characterized the disposition as a "voluntary relinquishment."

21. Given the lack of accord between the parties, as to the nature of the disposition of the matters that underlie the present

Administrative Complaint, an Order Setting Aside the Final Order dated April 4, 2006, was entered by the Commission. The later order was dated August 7, 2006. It states:

This matter came before the Criminal Justice Standards and Training Commission (the Commission) at the public meeting on August 3, 2006, in Ponte Vedra Beach, Florida. By Final Order dated April 4, 2006, the Commission accepted the voluntary relinquishment of Respondent's law enforcement certificate. However, upon review of the document submitted by Respondent titled Affidavit of Agreement to Allow Criminal Justice Certificate to Expire, Respondent clearly does not agree to relinquish his certificate but agrees to allow it to "expire" which, under current statutory and rule working cannot happen.

The Commission continues to have jurisdiction over this matter. Having reviewed this matter in regards to the Respondent's certification, it is hereby

ORDERED AND ADJUDGED that:

1. The Final Order issued by the Commission dated April 4, 2006, is hereby VACATED.
2. That this matter be remanded back to staff for further action.

22. Following entry of the August 7, 2006 order, the May 9, 2007, Administrative Complaint that forms the basis of the proceeding to be resolved by formal hearing was issued and contested by Respondent on September 25, 2007.

23. It is concluded that the parties never arrived at an informal disposition of their differences by stipulation or agreement. § 120.57(4), Fla. Stat. For that reason, the case

properly proceeded to formal hearing.

24. Disciplinary guidelines are established in Florida Administrative Code Rule 11B-27.005 pertaining to the violation described. With those guidelines in mind, a recommendation for punishment is offered based upon the facts found and conclusions of law reached, absent a prior disciplinary history.

RECOMMENDATION

Based upon the consideration of the facts found and the conclusions of law reached, it is

RECOMMENDED:

That a final order be entered finding a violation of the statutes and rule referred to and revoking Respondent's law enforcement certificate.

DONE AND ENTERED this 1st day of November, 2007, in Tallahassee, Leon County, Florida.

S

CHARLES C. ADAMS
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
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this 1st day of November, 2007.

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.