

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CRIMINAL JUSTICE STANDARDS AND)
TRAINING COMMISSION,)
)
Petitioner,)
)
vs.) Case No. 08-1210PL
)
MICHELLE A. LIGUORI,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on May 1, 2008, in Viera, Florida, before Administrative Law Judge Carolyn S. Holifield of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: James D. Martin, Esquire
Florida Department of Law Enforcement
Post Office Box 1489
Tallahassee, Florida 32302

For Respondent: No Appearance

STATEMENT OF THE ISSUE

The issue is whether Respondent committed the offense alleged in the Administrative Complaint, and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

On November 9, 2007, Petitioner, Criminal Justice Standards and Training Commission ("Commission"), filed an Administrative Complaint against Respondent, Michelle A. Liguori, which alleged that she failed to maintain the qualifications established in Subsection 943.13(7), Florida Statutes (2004),^{1/} which require that correctional officers in the State of Florida have good moral character.

Specifically, the Administrative Complaint alleged that Respondent violated the following: (1) Subsection 893.13(6)(b), Florida Statutes, or any lesser included offenses; (2) Subsection 943.1395(7), Florida Statutes; and (3) Florida Administrative Code Rule 11B-27.0011(4)(b).

Respondent timely filed an Election of Rights disputing the allegations and requested a formal hearing. The case was referred to the Division of Administrative Hearings on March 11, 2008.

At hearing, Petitioner presented the testimony of one witness, Officer Thomas Cooper. Petitioner's Exhibits 1 through 3 were admitted into evidence. Respondent failed to appear at the hearing, and no evidence was presented on her behalf.

The Transcript of the proceeding was filed on June 3, 2008. Petitioner timely filed a Proposed Recommended Order, which has

been considered in the preparation of this Recommended Order. Respondent did not file any post-hearing submissions.

FINDINGS OF FACT

Based upon the exhibits received into evidence and the testimony of the witness at the hearing, the following findings are made:

1. Respondent was certified by Petitioner as a correctional officer on June 8, 2004, and issued Certificate No. 241081.

2. At all times relevant to this proceeding, Officer Cooper was a traffic homicide patrol officer with the Cocoa Beach Police Department, Cocoa Beach, Florida.

3. On the evening of June 24, 2005, while on duty, Officer Cooper observed a vehicle that was speeding and driving without headlights. Officer Cooper then had the driver of the vehicle to pull over to the side of the road.

4. Once the vehicle pulled over and stopped, Officer Cooper approached and made contact with the driver of the vehicle and Respondent. Respondent was in the right front passenger seat of the vehicle.

5. Officer Cooper smelled a strong, very distinct odor of burnt cannabis (marijuana) coming from inside the vehicle when he made contact with the driver.

6. The driver of the vehicle admitted to smoking marijuana inside the vehicle.

7. Officer Cooper approached the passenger side of the vehicle and asked Respondent to step out of the vehicle. When Respondent stepped out of the vehicle, Officer Cooper observed a clear plastic bag containing marijuana on the ground next to the passenger side of the vehicle. The outside of the plastic bag was dry, even though it had just rained.

8. Officer Cooper arrested Respondent and charged her with constructive possession of a controlled substance, a violation of Subsection 893.13(6)(b), Florida Statutes.

9. Respondent never denied possession of the marijuana. In fact, she told Officer Cooper that she "made a big mistake, a very big mistake."

10. Subsequent to Respondent's arrest, Officer Cooper asked Respondent if that was the last bit of "weed" that she had, and Respondent replied, "Yes sir, it was."

11. Officer Cooper videotaped the traffic stop.

CONCLUSIONS OF LAW

12. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. § 120.57(1), Fla. Stat. (2007).

13. Section 943.13, Florida Statutes, establishes the minimum qualifications for certification as a law enforcement

officer in Florida. Subsection (7) of that provision requires that all such officers "have good moral character as determined by a background investigation under procedures established by the commission."

14. Section 943.1395, Florida Statutes, authorizes the Commission to take disciplinary action against the certificate of a correctional officer for the offenses enumerated therein. Pursuant to Subsection 943.1395(7), Florida Statutes, the Commission is authorized to revoke, suspend, or otherwise discipline the certification of any officer who has not maintained good moral character.

15. In the Administrative Complaint, the Commission alleged that Respondent unlawfully possessed no more than 20 grams of marijuana. By committing this act, the Commission contends that Respondent had failed to maintain the qualifications established in Subsection 943.13(7), Florida Statutes. Specifically, the Commission maintains that by possessing marijuana, Respondent has failed to maintain good moral character.

16. Florida Administrative Code Rule 11B-27.0011(4), which implements relevant portions of Section 943.1395, Florida Statutes, provides in relevant part:

(4) For the purposes of the Commission's implementation of any of the penalties enumerated in Section 943.1395(6) or (7),

Florida Statutes, a certified officer's failure to maintain good moral character, as required in Section 943.13(7), Florida Statutes, is defined as:

* * *

(b) The perpetration by the Officer of an act which would constitute any of the following misdemeanor or criminal offenses, whether criminally prosecuted or not: . . . 893.13, F.S. . . .

17. Section 893.13, Florida Statutes, prohibits the actual or constructive possession of marijuana and designates that the possession of "not more than 20 grams of cannabis" is a first-degree misdemeanor. See § 893.13(6)(a) and (b), Fla. Stat.

18. The Commission has the burden of proof in this proceeding. To meet this burden, the Commission must show by clear and convincing evidence that Respondent committed the acts alleged in the Administrative Complaint. Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

19. The Commission established by clear and convincing evidence that Respondent was in constructive possession of no more than 20 grams of marijuana on the evening of June 24, 2005, and, thereby, violated Section 893.13, Florida Statutes. This violation by Respondent constitutes a first-degree misdemeanor.

20. Pursuant to Florida Administrative Code Rule 11B-27.0011(4), the act committed by Respondent evidences her failure to maintain good moral character as required by

Subsection 943.13(7), Florida Statutes. Having failed to maintain "good moral character" as prescribed by Subsection 943.13(7), Florida Statutes, Respondent no longer meets the criteria for retaining a law enforcement or correctional officer certificate.

RECOMMENDATION

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

RECOMMENDED that Petitioner, Criminal Justice Standards and Training Commission, enter a final order revoking the law enforcement certificate of Respondent, Michelle A. Liquori.

DONE AND ENTERED this 15th day of July, 2008, in Tallahassee, Leon County, Florida.

Carolyn S. Holifield

CAROLYN S. HOLIFIELD
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 15th day of July, 2008.

ENDNOTE

^{1/} All references are to 2004 Florida Statutes, unless otherwise indicated.

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.