

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF LAW ENFORCEMENT,)
CRIMINAL JUSTICE STANDARDS)
AND TRAINING COMMISSION,)
)
Petitioner,)
)
vs.) Case No. 09-3530PL
)
BEN C. CRAMER,)
)
Respondent.)
_____)

RECOMMENDED ORDER

A hearing was held pursuant to notice on August 28, 2009, by Barbara J. Staros, assigned Administrative Law Judge of the Division of Administrative Hearings, in Blountstown, Florida.

APPEARANCES

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

For Respondent: Ben C. Cramer, pro se

STATEMENT OF THE ISSUE

Whether the Respondent committed the offenses alleged in the Administrative Complaint and, if so, what is the appropriate penalty?

PRELIMINARY STATEMENT

On or about March 17, 2009, the Criminal Justice Standards and Training Commission (Commission) filed an Administrative Complaint against Respondent. The Administrative Complaint alleged that 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.

Specifically, the Administrative Complaint alleged that Respondent violated Sections 893.13(6)(b), and 893.147(1), Florida Statutes, or any lesser included offense; Section 943.1395(7), Florida Statutes; and Florida Administrative Code Rule 11B-27.0011(4)(b), in that Respondent has failed to maintain the qualifications established in Section 943.13(7), Florida Statutes, which requires that a correctional officer in the State of Florida be of good moral character.

Respondent disputed the allegations in the Administrative Complaint and timely filed a request for a formal administrative hearing to be conducted pursuant to Sections 120.569 and 120.57(1), Florida Statutes. The case was referred to the Division of Administrative Hearings on or about July 2, 2009. A formal hearing was set for August 28, 2009.

At the commencement of the hearing, Petitioner made an ore tenus motion to relinquish jurisdiction, which was denied.

At hearing, Petitioner presented the testimony of two witnesses: Philip Spaziante and William E. Dalton. Petitioner's Exhibit numbered 1 was admitted into evidence. Respondent testified on his own behalf but did not offer any exhibits.

A Transcript, consisting of one volume, was filed on October 1, 2009. Petitioner timely filed a Proposed Recommended Order which was considered in the preparation of this Recommended Order. Respondent did not file any post-hearing submission. All references are to the 2008 codification of Florida Statutes, unless otherwise indicated.

FINDINGS OF FACT

1. At all times material to this proceeding, Respondent was certified as a correctional officer, having been issued Correctional Certificate Number 276769.

2. On or about July 3, 2008, Respondent was driving his vehicle on State Road 20 in Calhoun County.

3. Trooper Philip Spaziante of the Florida Highway Patrol observed Respondent speeding and conducted a traffic stop of Respondent's vehicle.

4. After Respondent pulled to the side of the road and stopped, Trooper Spaziante explained to Respondent why he had stopped him. As he spoke to Respondent, he noticed that Respondent appeared to be exceptionally nervous.

5. Respondent told Trooper Spaziante that he was on his way to Port St. Joe to spend the weekend at the beach.

6. Trooper Spaziante then asked Respondent if he would consent to a search of his vehicle. Respondent consented to the search.

7. Trooper Spaziante found a purple cloth "Crown Royal" bag in the driver's side door of Respondent's vehicle. Trooper Spaziante found a small quantity, less than 20 grams, of cannabis (marijuana) inside a Skoal (chewing tobacco) container which was inside the Crown Royal bag.

8. Trooper Spaziante is trained in the recognition of the smell of burnt cannabis. During his nine years as a State Trooper, he has encountered cannabis many times, during traffic stops in particular. Based upon his experience, Trooper Spaziante was able to identify the substance in the Skoal can as cannabis.

9. Trooper Spaziante then placed Respondent under arrest for possession of a controlled substance.

10. After finding the marijuana, Trooper Spaziante contacted Deputy William Dalton of the Calhoun County Sheriff's Office and requested that he come to the scene and assist.

11. After Deputy Dalton arrived, the two officers continued the search of Respondent's vehicle.

12. Deputy Dalton is a police canine handler. Deputy Dalton is also trained in recognition of cannabis and cannabis paraphernalia. He is the handler for Gina, a K-9 dog certified in narcotics investigation by the American Canine Police

Association. Deputy Dalton deployed Gina to conduct an exterior "sniff" of Respondent's vehicle.

13. Gina "alerted" as a result of her sniff of Respondent's vehicle, indicating that narcotics were in the vehicle.

14. Deputy Dalton then continued to search Respondent's vehicle.

15. The officers found a marijuana "blunt," which is a cigar with some of the tobacco removed and replaced with marijuana.

16. Trooper Spaziente observed some loose tobacco that appeared to have been removed from the cigar.

17. The officers found a duffle bag in the back seat of the vehicle. The Respondent told the officers that the bag was his and that it contained clothing and personal items for his trip to Port St. Joe.

18. Deputy Dalton took the duffle bag out of the vehicle where Gina "alerted" as a result of her sniff of Respondent's duffle bag.

19. Deputy Dalton then searched the duffle bag. Inside the duffle bag was a small smoking pipe commonly used to smoke marijuana. Deputy Dalton also observed marijuana residue in the bowl of the pipe.

20. Respondent stated that he had forgotten that the pipe was in the duffle, and that it had been in there a long time.

21. Respondent was arrested and charged with possession of less than 20 grams of marijuana and possession of drug paraphernalia.

CONCLUSIONS OF LAW

22. The Division of Administrative Hearings has jurisdiction over the parties and subject matter in this case pursuant to Sections 120.569 and 120.57(1), Florida Statutes (2009).

23. The Criminal Justice Standards and Training Commission has jurisdiction over the certification of correctional officers pursuant to Chapter 943, Florida Statutes.

24. The Department has the burden of proving by clear and convincing evidence the allegations in the Administrative Complaint. See Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

25. The Administrative Complaint charged Respondent with violating Section 943.1395(7), Florida Statutes, and Florida Administrative Code Rule 11B-27.004(4). Section 943.1395, Florida Statutes, reads, in pertinent part:

(6) The Commission shall revoke the certification of any officer who is not in compliance with the provisions of Section 943.13(4). . .

* * *

(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 of 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. . . .
 - (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.
- (8) The commission shall, by rule, adopt disciplinary guidelines and procedures to administer the penalties provided in subsections (6) and (7). The commission may, by rule, prescribe penalties for certain offenses. The commission shall, by rule, set forth aggravating and mitigating circumstances to be considered when imposing the penalties provided in subsection (7).

26. Section 943.13, Florida Statutes, establishes the minimum qualifications for certification of correctional officers in Florida, and reads in pertinent part:

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

27. Florida Administrative Code Rule 11B-27.0011(4) defines good moral character as follows:

11B-27.0011 Moral Character.

* * *

(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:

* * *

(b) Except as otherwise provided in Section 943.13(4), F.S., a guilty plea or a verdict of guilty after a criminal trial for any of the following misdemeanor or criminal offenses, notwithstanding any suspension of sentence or withholding of adjudication, or the perpetration by an officer of an act that would constitute any of the following misdemeanor or criminal offenses whether criminally prosecuted or not:

1. Sections . . . 893.13 . . . , F.S.
(emphasis supplied)

28. Florida Administrative Code Rule 11B-27.005 reads in pertinent part:

11B-27.005 Revocation or Disciplinary Actions; Disciplinary Guidelines; Range of Penalties; Aggravating and Mitigating Circumstances.

* * *

(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:

* * *

(b) For the perpetration by the officer of an act that would constitute any of the misdemeanor offenses, pursuant to paragraph 11B-27.0011(4)(b), 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 probation of certification to suspension of certification. Specific violations and penalties that shall be imposed, absent aggravating or mitigating circumstances, include the following:

* * *

<u>Violation</u>	<u>Recommended Penalty Range</u>
11. Possess or delivery without consideration, and not more than 20 grams of Cannabis (893.13, F.S.)	Revocation

29. Petitioner has met its burden to support the charge in the Administrative Complaint that Respondent violated Section 943.1395(7), Florida Statutes, in that he failed to maintain good moral character as contemplated by Florida Administrative Code Rule 11B-27.0011(4)(b).

30. Petitioner recommends revocation of Respondent's certificate. Pursuant to Section 943.1395(7)(d), Florida Statutes, the undersigned must adhere to the disciplinary guidelines set forth in Section 943.1395(7) and the rules adopted by the Commission. Pursuant to Florida Administrative Code Rule 11B-27.005(5)(b)11., revocation is the appropriate penalty.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law set forth herein, it is

RECOMMENDED:

That the Criminal Justice Standards Commission enter a final order revoking the corrections certificate of Respondent, Ben C. Cramer.

DONE AND ENTERED this 22nd day of October, 2009, in Tallahassee, Leon County, Florida.




BARBARA J. STAROS
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 22nd day of October, 2009.

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.