

Before the
Administrative Hearing Commission
State of Missouri



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|------------------------------|---|----------------|
| THOMAS KENNETH CONNELL, III, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| vs. |) | No. 13-1491 PO |
| |) | |
| DIRECTOR OF DEPARTMENT OF |) | |
| PUBLIC SAFETY, |) | |
| |) | |
| Respondent. |) | |

DECISION

Cause exists to deny the application of Petitioner Thomas Kenneth Connell, III for entrance into a basic training course, because he committed three criminal offenses.

Procedure

On August 20, 2013, Mr. Connell filed a complaint appealing the decision of Respondent Director of the Department of Public Safety to deny him entrance into a basic training course. The Director answered on September 17, 2013.

We held a hearing on October 17, 2013. Mr. Connell appeared and represented himself. The Director appeared through his counsel, Assistant Attorney General Nichole Bock. The parties waived briefing. The case became ready for decision on October 21, 2013, the date the transcript was filed.

Findings of Fact

1. On February 29, 2000, Thomas Kenneth Connell, III possessed marijuana and a marijuana pipe. The Greene County prosecutor subsequently charged him with one count of possession of a controlled substance and one count of possession of drug paraphernalia.

2. On September 21, 2000, Mr. Connell pled guilty to both possession charges. The court suspended the imposition of sentence and placed Mr. Connell on unsupervised probation for one year.

3. On September 17, 2000, Mr. Connell struck Randall Lewis in the head. The Greene County prosecutor subsequently charged Mr. Connell with one count of assault in the third degree.

4. On July 18, 2001, Mr. Connell pled guilty to assault in the third degree. The court sentenced Mr. Connell to 30 days in the Greene County Jail, suspended the execution of the sentence, and placed Mr. Connell on unsupervised probation for two years.

5. On July 15, 2013, Mr. Connell applied for entrance into a basic training course offered by the Drury University Law Enforcement Academy, by submitting a Missouri Peace Officer License Application.

6. On August 5, 2013, the Director of the Department of Public Safety sent notice to Mr. Connell advising him that his application for entrance into the basic training course had been denied under §§ 590.080.1 and 590.100.1, RSMo.¹

Conclusions of Law

We have jurisdiction. § 590.080.2, RSMo.

The Director is responsible for granting and denying applications for entrance into a basic training course. § 590.100, RSMo. The Director bears the burden of proving that cause exists to

¹ References to “RSMo” are to the Revised Statutes of Missouri (Supp. 2012), unless otherwise noted.

deny such an application, § 590.100.1 and .3, and must do so by a preponderance of the evidence, *see Kerwin v. Mo. Dental Bd.*, 375 S.W.3d 219, 229-230 (Mo.App. W.D. 2012) (dental licensing board demonstrated “cause” to discipline by showing preponderance of evidence). A preponderance of the evidence is evidence showing, as a whole, that “the fact to be proved [is] more probable than not.” *Id.* at 230 (*quoting State Bd. of Nursing v. Berry*, 32 S.W.3d 638, 642 (Mo.App. W.D. 2000)).

The question before us is a limited one: whether cause for denial exists. We may “not consider the relative severity of the cause for denial or any rehabilitation of the applicant or otherwise impinge upon the discretion of the director [of the Department of Public Safety] to determine whether to grant the application subject to probation or deny the application when cause” does exist. § 590.100.3.

Section 590.100.1 provides that the Director “shall have cause to deny any application for...entrance into a basic training course when the director has knowledge that would constitute cause to discipline the applicant if the applicant were licensed.” In relevant part, § 590.080.1(2) provides the Director with cause to discipline a peace officer licensee who “has committed any criminal offense, whether or not a criminal charge has been filed[.]”

Mr. Connell committed three criminal offenses. As for the first one, he was arrested and charged under § 195.202 with the class A misdemeanor of possessing marijuana, a controlled substance. Section 195.202 provides that “it is unlawful for any person to possess or have under his control a controlled substance.” He pled guilty to the charge.

Mr. Connell was also arrested and charged under § 195.233, RSMo (2000), for possessing a pipe, knowing it was drug paraphernalia, and with the intent to use it to inhale marijuana. Section 195.233 provides that “it is unlawful for any person to use, or to possess with

intent to use, drug paraphernalia to...inhale...a controlled substance[.]” He pled guilty to the charge.

Mr. Connell’s guilty pleas are competent and substantial evidence that he committed the crimes. *Dir. Dep’t of Public Safety v. Bishop*, 297 S.W.3d 96, 99 (Mo. App. W.D. 2009). But the trial court suspended imposition of sentence on both counts, and a suspended imposition of sentence does not result in a final judgment. *Yale v. City of Independence*, 846 S.W.2d 193, 195 (Mo. 1993). Accordingly, Mr. Connell is not collaterally estopped from presenting evidence that he did not commit the crimes. *Bishop*, 297 S.W.3d at 99. But at the hearing, he presented no such evidence. Accordingly, we conclude Mr. Connell did commit the crimes.

Finally, Mr. Connell pled guilty to one count of third-degree assault, a class A misdemeanor. The court sentenced him to jail time and suspended execution of the sentence. Such conviction results in a final judgment. *State v. Plastec, Inc.*, 961 S.W.2d 906, 907 (Mo. App. E.D. 1998). And a final judgment resulting from a guilty plea collaterally estops Mr. Connell from attempting to prove that he did not commit the crime. *James v. Paul*, 49 S.W.3d 678, 682-83 (Mo. banc 2001); *Carr v. Holt*, 134 S.W.3d 647, 649 (Mo. App. E.D. 2004). We therefore conclude he committed the crime.

Because Mr. Connell committed all three offenses, the Director has established cause under § 590.080.1(2).

Mr. Connell explained at hearing that the offenses occurred when he was young, between 18 and 20 years old. He came from a “pretty bad family, and it was hard to know what road to take.”² He is now 31, and says he has changed and has had no problems since that time. He is trying to show his small children “a better life than what [he] was shown.”³ Mr. Connell struck us as sincere. But such argument or evidence is for the Director to consider at the next step in

² Tr. 14.

³ *Id.*

the proceedings under § 590.100.4, not this Commission herein. As noted above, the limited question before us is whether cause exists.

Summary

The Director has cause under § 590.080.1(2) to deny Mr. Connell's application for entrance into a basic training course.

SO ORDERED on November 13, 2013.

\s\ Alana M. Barragán-Scott
ALANA M. BARRAGÁN-SCOTT
Commissioner