

Commissioner Audrey Hanson McIntosh, having read the full record including all the evidence, renders the decision. Section 536.080.2, RSMo 2000;¹ *Angelos v. State Bd. of Regis'n for the Healing Arts*, 90 S.W.3d 189 (Mo. App., S.D. 2002).

Findings of Fact

1. Wheelles holds a valid peace officer license in Missouri. The license was current and active at all relevant times.
2. Between May 1, 2009 and December 31, 2009 in Butler County, Wheelles endangered the welfare of a child in the second degree by exposing his genitalia to M.T.W., a child less than seventeen years old.
3. On December 17, 2012, Wheelles pled guilty in the Circuit Court of Butler County, Missouri, to endangering the welfare of a child in the second degree, received a suspended imposition of sentence, and was placed on two years' probation.

Conclusions of Law

We have jurisdiction to decide this case. Sections 621.045 and 590.080.2. The Director has the burden to prove, by a preponderance of the evidence, that Wheelles committed an act for which the law allows discipline. See *Kerwin v. Mo. Dental Bd.*, 375 S.W.3d 219, 229-230 (Mo. App. W.D. 2012). In this case, the standard of proof is a preponderance of the credible evidence. *State Bd. of Nursing v. Berry*, 32 S.W.3d 638,642 (Mo App. W.D. 2000). This means “more probable than not.” We may, on our own motion, order that Wheelles is in default for failing to answer the Director’s complaint within thirty days and is deemed to have admitted the contents of the complaint. Regulation 1 CSR 15-3.380(1) and (7). We conclude Wheelles to be in default and the allegations of the complaint to be admitted.

Wheelles’ deemed admissions provide undisputed facts that are supported and explained by other evidence offered by the Director which we “separately and independently” determine

¹ Statutory citations are to the RSMo Supp. 2013 unless otherwise indicated.

under § 621.045. We decide whether the undisputed facts are proven by a preponderance of the evidence and constitute cause for discipline.

Section 590.080.1 provides:

1. The director shall have cause to discipline any peace officer licensee who:

* * *

(2) Has committed any criminal offense, whether or not a criminal charge has been filed[.]

The certified court records submitted by the Director establish that Wheelles pled guilty and received a suspended imposition of sentence for a criminal offense. A guilty plea resulting in a suspended imposition of sentence does not collaterally estop the issue of whether Wheelles committed a criminal offense. *Director of the Department of Public Safety v. Bishop*, 297 S.W.3d 96 (Mo. App., W.D. 2009). A guilty plea is evidence of the conduct charged. The plea constitutes a declaration against interest, which the defendant may explain away. *Nichols v. Blake*, 418 S.W.2d 188, 190 (Mo. 1967). Wheelles did not do so. We therefore conclude that Wheelles committed the criminal offense of endangering the welfare of a child in the second degree. The Director has met his burden of proof. Accordingly, we find Wheelles is subject to discipline under § 590.080.1(2).

We conclude that there is cause to discipline Wheelles under § 590.080.1(2) because he committed the crime defined in § 568.050, RSMo 2000.

Summary

There is cause to discipline Wheelles under § 590.080.1(2).

SO ORDERED on January 23, 2015.

/s/ Audrey Hanson McIntosh
AUDREY HANSON MCINTOSH
Commissioner