

NORTH CAROLINA DEPARTMENT OF INSURANCE
RALEIGH, NORTH CAROLINA

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE COMMISSIONER
OF INSURANCE

IN THE MATTER OF
THE LICENSURE OF
REGINA WILLIAMS



FINAL AGENCY DECISION
AND ORDER
Docket Number 1676

This matter was heard on 8 December 2011 and on 9 February 2012 by the undersigned Hearing Officer, who was duly designated by the Commissioner of Insurance pursuant to N.C. General Statute § 58-2-55 to hear this matter. The hearing was held in accordance with N.C. General Statute §§ 58-2-50, 58-71-1 *et seq.*, and 150B-38; 11 NCAC 1.0400; and other applicable statutes and administrative rules.

The hearing was held in the Dobbs Building, located at 430 North Salisbury Street, Raleigh, Wake County, North Carolina. At the hearing, Assistant Attorney General LaShawn S. Piquant, Esq., represented ASD. Wendelyn Harris, Esq., represented the Respondent.

The Notice of Hearing in the matter was duly and properly issued. It specifically sets out the issue to be determined at the hearing: whether Respondent's surety bail bondsman license should be suspended or revoked pursuant to N.C. General Statute § 58-71-80. Petitioner has the burden of proof in demonstrating sufficient evidence exists to support the revocation or suspension of Respondent's surety bail bond license. Petitioner presented thirteen exhibits and called five witnesses, including Respondent. Respondent did not call any witnesses or provide any exhibits. Specifically, the documentary evidence presented was:

Evidence presented by Petitioner

Exhibits:

1. Notice of Hearing
2. Affidavit of Service
3. Motion to Continue
4. Continuation Order

- 5a. 2nd Notice of Hearing
- 5b. Affidavit of Service
6. Certified Agency Record of Regina Williams
7. Certified Criminal Records for Sherrod Warren
8. Certified Criminal Records for Bryant Williams
9. Certified Criminal Records for Regina Williams
10. Wake County Sherriff's Department Incident Report: Interview of Regina Williams and Bryant Williams on January 19, 2011
- 11a. Email from ASD to Regina Williams dated August 16, 2010
- 11b. Response to ASD from Regina Williams dated August 25, 2010

Additional Evidence:

CD of Interview of Regina Williams by Investigator Blomgren on January 19, 2010

Witnesses:

- 1) Twyla Covington—Investigator, Criminal Investigations Division, NCDOI
- 2) Steve Bryant—Complaint Analyst, Agent Services Division, NCDOI
- 3) Angela Hatchell—Complaint Supervision, Agent Services Division, NCDOI
- 4) Edward Blomgren—Investigator, Wake County Sherriff's Department
- 5) Regina Williams—Respondent

Any finding of fact contained in this Order that also constitutes a conclusion of law is hereby adopted as a conclusion of law. Likewise, any conclusion of law contained in this Order that constitutes a finding of fact is hereby adopted as a finding of fact.

The Undersigned has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including the demeanor of the witnesses; any interest, bias, or prejudice the witnesses may have; the opportunity of the witnesses to see, hear, know, or remember the facts or occurrences about which the witnesses testified; whether the testimony of the witnesses is reasonable; and whether the testimony is consistent with all other credible evidence in the matter. From the sworn testimony of witnesses and all other evidence, the Undersigned makes the following:

FINDINGS OF FACT

1. The North Carolina General Assembly has delegated to the Commissioner of Insurance (and thus ASD) the authority and responsibility for licensing and regulating bail

bondsmen, including surety bondsmen.¹

2. The Respondent currently holds a surety bondsman license. ASD issued the license on 16 August 2006.
3. On or about 29 January 2010 the Respondent was charged in Wake County with two counts of aiding and abetting an unlicensed bail bondsman.
4. As to the first count, the Warrant for Arrest (10CR202311) that was issued for the Respondent stated:

[T]here is probable cause to believe that on or about the date of the offense shown . . . the defendant . . . unlawfully, willfully and feloniously did aid and abet another who acted in the capacity of a licensed surety bail bondsman . . . : Bryant Williams attempted to execute a bail bond forfeiture notice for defendant Douglas Bellue on 12/30/2009 . . . without being duly licensed by the North Carolina Department of Insurance to do so.

5. As to the second count, the Warrant for Arrest (10CR202503) that was issued for the Respondent stated:

[T]here is probable cause to believe that on or about the date of the offense shown . . . the defendant . . . unlawfully, willfully and feloniously did aid and abet another who acted in the capacity of a licensed surety bail bondsman . . . : Sherrod Warren attempted to execute a bail bond forfeiture notice for defendant Douglas Bellue on 12/30/2009 . . . without being duly licensed by the North Carolina Department of Insurance to do so.

6. On 7 July 2010, the Respondent signed a document titled "Criminal Deferral Agreement," in which the Respondent acknowledged guilt as required in the document. This is referred to as deferred prosecution under N.C. General Statute § 15A-1341(a1).²

¹ See generally N.C. General Statute § 58-71-1 *et seq.*

² N.C. General Statute § 15A-1341(a1) Deferred Prosecution. – A person who has been charged with a Class H or I felony or a misdemeanor may be placed on probation as provided in this Article on motion of the defendant and the prosecutor if the court finds each of the following facts:

- (1) Prosecution has been deferred by the prosecutor pursuant to written agreement with the defendant, with the approval of the court, for the purpose of allowing the defendant to demonstrate his good conduct.

7. On 7 July 2011, because the Respondent satisfactorily complied with the criminal deferral agreement, the criminal charges against the Respondent were dismissed by the Wake County District Attorney.
8. ASD alleged that the Respondent should have informed ASD, as required by N.C. General Statute § 58-2-69, of what ASD considered her convictions of aiding and abetting Sherrod Warren and Bryant Williams for acting in the capacity of licensed surety bondsman without their being licensed by ASD. ASD understandably deemed the Respondent's admission of guilt in the agreement to be a plea of guilty.
9. ASD alleged that the Respondent's actions provide sufficient grounds for suspension or revocation of her bail bondsman license. Under N.C. General Statute § 58-71-80(a)(8), ASD alleged that the Respondent “. . . has in the conduct of [her] affairs under the license, demonstrated incompetency, financial irresponsibility, or untrustworthiness; or that [she] is no longer in good faith carrying on the bail bond business. . . .”
10. ASD alleged that the Respondent's actions provided sufficient grounds for revocation of her license. Under N.C. General Statute § 58-71-80(a)(14), ASD alleged that the Respondent's acts amount to “knowingly aiding or abetting others to evade or violate the provisions of this Article.”
11. ASD alleged that the Respondent's acts violate N. C. General Statute § 58-2-69.³
12. Based on N.C. General Statute §§ 58-2-69(c) and 58-71-80, ASD alleged that the Respondent's surety bondsman license should be suspended or revoked under N.C. General Statute § 58-71-80.

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- (2) Each known victim of the crime has been notified of the motion for probation by subpoena or certified mail and has been given an opportunity to be heard.
 - (3) The defendant has not been convicted of any felony or of any misdemeanor involving moral turpitude.
 - (4) The defendant has not previously been placed on probation and so states under oath.
 - (5) The defendant is unlikely to commit another offense other than a Class 3 misdemeanor.

³ N.C. General Statute § 58-2-69(c) provides that “[i]f a licensee is convicted in any court of competent jurisdiction for any crime or offense other than a motor vehicle infraction, the licensee shall notify the Commissioner in writing of the conviction within 10 days after the date of the conviction. As used in this subsection, ‘conviction’ includes an adjudication of guilt, a plea of guilty, or a plea of nolo contendere.”

LEGAL ANALYSIS

Whether an acknowledgement of guilt in connection with a deferred prosecution agreement is, as a matter of law, a plea of guilty has been decided by our appellate courts. In *State v. Ross*⁴ the defendant was charged in Forsyth County with five misdemeanors involving failure to withhold or pay income tax owed by his corporation. The defendant entered into a deferred prosecution agreement under which he would repay the debt in exchange for the State's agreement to stay sentencing for the period of the deferred prosecution; if the defendant successfully completed the program requirements, the charges would be dismissed. The defendant failed to comply, and the Forsyth County district attorney voluntarily dismissed the misdemeanor charges. However, the defendant was later indicted in Wake County for felony embezzlement of State property. The misdemeanor and felony charges were based on the same set of facts.

On 31 December 2003, the defendant made a pretrial motion in Wake County to dismiss the felony charge "upon the ground that jeopardy has previously attached in this case" In his motion, he argued that the deferred prosecution agreement "necessarily indicates that the Court by accepting the deferred prosecution was also accepting the defendant's guilty plea since noncompliance would result in immediate sentencing."

In an order dated 2 February 2004, Judge W. Osmond Smith concluded that the defendant's double jeopardy rights were not violated. Among the findings of fact recited in the order was that "[w]hile the defendant acknowledged his guilt in fact in the Deferred Prosecution Agreement, a plea of guilty was neither tendered by the defendant nor accepted by the court." Defendant was tried before a Wake County jury, which on 5 February 2004, found him guilty of embezzlement of state property valued over \$100,000 by aiding and abetting OLI. Judge Evelyn W. Hill sentenced defendant in the mitigated range to a term of fifty-eight to seventy-nine months in prison.

The defendant appealed to the Court of Appeals, assigning as error: (1) Judge Smith's denial of his motion to dismiss or to enforce the State's deferred prosecution contract, and (2) Judge Hill's denial of his motion to dismiss at the close of the State's evidence on grounds "that the evidence presented was insufficient to support a finding of guilt on the felony charge."

⁴ 173 N.C. App. 569; 620 S.E.2d 33 (2005); *aff'd per curiam* 360 N.C. 355; 625 S.E.2d 779 (2006).

In a divided opinion filed on 4 October 2005, the Court of Appeals found no error in the defendant's trial. The majority stated that the Double Jeopardy Clause protects individuals against (1) a second prosecution for the same offense after acquittal, (2) a second prosecution for the same offense after conviction, and (3) multiple punishments for the same offense. They noted that in North Carolina, jeopardy attaches when a defendant in a criminal prosecution is placed on trial and may also attach upon the court's acceptance of a plea of guilty. However, the Court said that "[a] defendant's bare admission of guilt contained in the transcript of a plea does not provide the factual basis for that plea."⁵ The majority rejected the defendant's contention that under the terms of his deferred prosecution agreement, a plea of guilty was contemplated and accepted by the trial court. They noted that in his February 2004 order, Judge Smith found as fact that "[w]hile the defendant acknowledged his guilt in fact in the Deferred Prosecution Agreement, a plea of guilty was neither tendered by the defendant nor accepted by the court." The majority concluded that under the agreement, if the State pursued the original misdemeanor charges against the defendant after he failed to complete the program, he would have had the opportunity to obtain a jury trial by pleading not guilty. Thus, this evidence indicating that defendant could have pleaded not guilty upon failing to meet the conditions of the agreement supports the conclusion that the agreement did not comprehend a plea of guilty. Accordingly, jeopardy never attached.

CONCLUSIONS OF LAW

1. This matter is properly before the Commissioner, who has jurisdiction over the parties and the subject matter pursuant to N.C. General Statute §§ 58-2-50, 58-71-1 *et seq.*, and 150B-38; 11 NCAC 1.0400; and other applicable statutes and administrative rules.
2. The respondent was properly served with the Notice of Hearing.
3. Inasmuch as the Respondent did not, as a matter of law, plead guilty to the charges brought against her, the Respondent did not violate N.C. General Statute §§ 58-2-69(c) or 58-71-80. The criminal charges against the Respondent were dismissed when the Respondent satisfactorily complied with the criminal deferral agreement.


⁵ See *State v. Sinclair*, 301 N.C. 193, 198, 270 S.E.2d 418, 421 (1980).

4. ASD mistakenly believed that the Respondent pleaded guilty to a criminal offense for which she was charged by entering into and signing a criminal deferral agreement with the District Attorney of Wake County.
5. As for the allegations by ASD under N.C. General Statute § 58-71-80 as to the Respondent's conduct, such conduct did not rise to the level that requires suspension or revocation of the Respondent's license.
6. However, such conduct was slipshod at best. The Respondent should complete three additional hours of continuing education during the next license year to brush up on her professional skills.
7. The Respondent's surety bondman license should not be suspended or revoked.

ORDER

1. The Respondent's surety bondman license shall not be suspended or revoked.
2. The Respondent shall complete three additional hours of continuing education during the next license year, which continuing education shall comprise procedures for setting bail and forfeiture of bail as set forth in Article 71 of Chapter 58 and Articles 26 and 37 of Chapter 15A of the North Carolina General Statutes.

This 27th day of March 2012



William K. Hale
Hearing Officer and Special Counsel

CERTIFICATE OF SERVICE

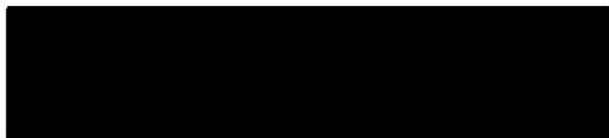
Docket Number: 1676

I hereby certify that on this day I have served a copy of the attached **Final Agency Decision and Order** by mailing a copy of the same via certified U.S. mail, return receipt requested, in a postage prepaid envelope addressed as follows:

Wendelyn Harris
Attorney for Regina Williams
2505 Ann Carol Ct
Raleigh NC 27603

Regina Williams
2801 Fenham Court
Raleigh, NC 27604

This the 30th day of March, 2012.



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