



State of Louisiana

Gaming Control Board

M. J. "MIKE" FOSTER, JR.
GOVERNOR

HILLARY J. CRAIN
CHAIRMAN

DECISION OF THE LOUISIANA GAMING CONTROL BOARD

IN RE: DENISE STEWART P040004952

This is an appeal by Denise Stewart from the decision of the Hearing Officer denying the renewal of her non-key riverboat gaming employee permit.

On May 11, 1992, Ms. Stewart pled guilty in the First Judicial District Court in Caddo Parish to issuing worthless checks in excess of \$500.00 in violation of La. R.S. 14:71, an offense punishable by imprisonment of more than one year. She was sentenced to 18 months imprisonment at hard labor and committed to the Louisiana Department of Corrections, the execution of sentence was suspended and Ms. Stewart was placed on supervised probation for 18 months subject to special conditions. Service of sentence or period of probation was successfully completed on November 11, 1993. She thereafter received a first offender pardon.

On January 30, 1995, also in the First Judicial District Court of Caddo Parish, Ms. Stewart pled guilty to misdemeanor theft. She was fined \$200.00 and sentenced to four months incarceration in the parish jail, execution of sentence was suspended and she was placed on supervised probation for 18 months with special conditions.

Ms. Stewart has been permitted as a non-key employee since 1994. She apparently disclosed the guilty plea and first offender pardon on her original non-key gaming employee permit

application. There is no allegation that the 1995 misdemeanor theft conviction was not disclosed.

On June 25, 2000, Ms. Stewart submitted a renewal application. As a result of the background investigation conducted during the processing of the application, the Division found that Ms. Stewart was statutorily disqualified under the provisions of La. R.S. 27:76(A), and accordingly issued a notice of denial. The Division also discovered 3 outstanding bench warrants for Ms. Stewart which were subsequently dismissed.

In 1994, when the original permit was granted, a conviction or guilty plea to an offense punishable by imprisonment of greater than one year precluded an individual from ever being permitted under the Riverboat Act. A misdemeanor theft conviction was not a statutory disqualification. La. R.S. 27:76 was amended by Section 1 of Act No. 1384 of 1999. In addition to adding misdemeanor theft as a statutory disqualifier, it provided a 10 year cleansing period whereby the offenses no longer constituted an automatic disqualification. La. R.S. 27:76(B). However, even under the more lenient provisions of La. R.S. 27:76(B), Ms. Stewart is statutorily disqualified from permitting under the Riverboat Act because less than 10 years have elapsed since successful completion of service of sentence or period of probation or parole resulting from the 1992 guilty plea to a felony offense and the date of application.

The issuance of Ms. Stewart's original permit and any subsequent renewal resulted from a misapplication of the law. Neither the Division nor this Board has the discretion to waive a statutory disqualification. **Catanese v. Louisiana Gaming Control Board**, 97-1426 (La. App. 1st Cir. 5/15/98), 712 So.2d 666, **writ denied**, 98-1678 (La. 10/9/98), 726 So.2d 30. Accordingly, the renewal of Ms. Stewart's non-key gaming employee permit should be denied.

Having decided this case on other grounds and given the pending legislation which would

purportedly shorten to five years the cleansing period for a misdemeanor theft conviction, we need not address the issue of whether Ms. Stewart is also statutorily disqualified due to her January 30, 1995 guilty plea.

ORDER

This matter having been considered by the Louisiana Gaming Control Board in open meeting of May 15, 2001:

IT IS ORDERED THAT the Hearing Officer's decision is **AFFIRMED**.

THUS DONE AND SIGNED this 16th day of May, 2001.


LOUISIANA GAMING CONTROL BOARD

BY:



HILLARY J. CRAIN, CHAIRMAN

LOUISIANA GAMING CONTROL BOARD
I HEREBY CERTIFY THAT A CERTIFIED
COPY HAS BEEN MAILED OR SERVED ON
ALL PARTIES THIS 18th DAY
OF May, 2001

APPEAL DOCKET CLERK


**STATE OF LOUISIANA
GAMING CONTROL BOARD**

**ADMINISTRATIVE HEARING
DECEMBER 12, 2000**

**HEARING OFFICER
JOSEPH E. ANZALONE, JR.**

**IN RE: DENISE STEWART
#P040004952**

TRUE COPY
Shirley Adelman
Representative
Louisiana Gaming Corporation

IN RE: DENISE STEWART
#P040004952

APPEARANCES:

For the State of Louisiana:
Mr. Toby Davis
Assistant Attorney General
339 Florida Blvd.
Suite 500
Baton Rouge, LA 70801

For Denise Stewart:
Ms. Denise Stewart
3601 Dee Street
#514
Shreveport, LA 71105
In Proper Person

STATEMENT OF THE CASE:

The Louisiana State Police, Riverboat Gaming Division "(Division)" seeks to deny Ms. Denise Stewart a renewal of her non-key gaming employee permit alleging that:

1. She presently faces unresolved misdemeanor and felony charges for Issuing Worthless Checks in excess of \$500.00, a fact she failed to disclose on her application;
2. She, on January 30, 1995, entered, in the First Judicial District Court, Parish of Caddo, State of Louisiana, a plea of guilty to Misdemeanor Theft and received a probated sentence of eighteen months; and
3. She, on May 11, 1992, entered, in the First Judicial District Court, Parish of Caddo, State of Louisiana, a plea of guilty to Issuing Worthless Checks of a value of more than \$500.00, was sentenced to eighteen months, which was suspended, and was placed on probation for eighteen months, which was successfully completed.

STATE'S EVIDENCE AND CONTENTIONS:

The State has offered, filed, and introduced into evidence an exhibit file marked S-1 (in globo) and containing the following documents:

1. Notice of Hearing Date advising of an administrative hearing scheduled for December 12, 2000;
2. Notice of Hearing Date advising of an administrative hearing scheduled for November 9, 2000;
3. Request for Administrative Hearing;
4. Amended Notice of Denial of Renewal;
5. Notice of Denial of Renewal with Affidavit of Service of Process;
6. Offense Report of the Shreveport Police Department dated September 16, 1994, wherein Ms. Sandy Jacobs accused Ms. Stewart of theft of more than \$500.00;

7. Bill of Information from 1st Judicial District Court, Parish of Caddo, charging Ms. Stewart with Felony Theft over \$500.00;
8. Minute entry of the 1st Judicial District Court, Parish of Caddo, dated January 30, 1995, reflecting a plea of guilty to the charge of Misdemeanor Theft by Denise Stewart;
9. Arrest Report from Bossier Parish Sheriff's Office issued July 3, 2000, reflecting a charge against Denise Stewart for three counts of Issuing Worthless Checks;
10. Suspect Rap Sheet from Bossier Parish Sheriff's Office dated July 3, 2000, reflecting three counts of Issuing Worthless Checks lodged against Denise Stewart;
11. Criminal Warrant dated January 8, 1997, issued by the 26th Judicial District Court, Parish of Bossier against Denise Stewart for Issuing Worthless Checks;
12. Criminal Warrant dated September 12, 1996, issued by the 26th Judicial District Court, Parish of Bossier against Denise Stewart for one count of Issuing Worthless Checks;
13. Criminal Warrant dated January 24, 1998, issued by the 1st Judicial District Court, Parish of Caddo against Denise Stewart for one count of Issuing Worthless Checks;
14. Bill of Information dated October 22, 1991, issued by 1st Judicial District Court, Parish of Caddo against Denise Stewart for issuing worthless checks in an aggregate amount exceeding \$500.00;
15. Minute Entry May 2, 1992, from 1st Judicial District Court, Parish of Caddo reflecting that Denise Stewart entered a plea of guilty to the charge of Issuing Worthless Checks in excess of \$500.00;
16. Special Conditions of Probation dated May 11, 1992, 1st Judicial District Court, Parish of Caddo;
17. Verification of 1st Offender Pardon for Denise Stewart dated December 9, 1993; and
18. 2000-2001 Non-Key Gaming Employee Renewal Application of Denise Stewart.

Division agent, Sgt. Michael Harrell testified that he conducted a review and background investigation on Ms. Stewart. During the background investigation, Division agents discovered that Ms. Stewart had three (3) outstanding arrest warrants, (two (2) misdemeanor warrants for Issuing Worthless Checks in Bossier Parish, and one (1) felony warrant for Issuing Worthless Checks in Caddo Parish). Sgt. Harrell further testified that Ms. Stewart was arrested on the misdemeanor warrants and booked into the Bossier Parish Prison.

The Division later discovered that Ms. Stewart was arrested on September 16, 1994, by the Shreveport Police for Fraud (see exhibits 6-8). The charges were ultimately reduced to Misdemeanor Theft, and Ms. Stewart entered a guilty plea on January 30, 1995.

Further testimony revealed a Bill of Information issued October 22, 1991, in Caddo Parish charging Ms. Stewart with Issuing Worthless Checks (see exhibit 14), and that on May 11, 1992, Ms. Stewart pled guilty and was sentenced to 18 months of incarceration, sentence suspended and probation issued. Ms. Stewart later received a first offender pardon upon completion of her probation on December 9, 1993.

LICENSEE'S EVIDENCE AND CONTENTIONS:

The licensee has offered, filed, and introduced into evidence the following documents:

- | | |
|------------|--|
| Stewart 1. | Proffered. |
| Stewart 2. | Certified True Copy of Criminal Case Minutes from the First Judicial District Court, Parish of Caddo, reflecting that on August 14, 2000, the District Attorney dismissed charges against Ms. Denise Stewart for Issuing Worthless Checks over \$500.00; (Allegation 1.) |

FINDINGS OF FACT:

On May 11, 1992, Ms. Denise Stewart, in the First Judicial District Court, entered a plea of guilty to Issuing Worthless Checks in excess of \$500.00. She was sentenced to eighteen months at hard labor, which was suspended, and placed on active probation for the same period. It is to be noted the probation was successfully completed and received a Division of Probation and Parole First Offender Pardon on December 9, 1993.

On January 30, 1995, Ms. Denise Stewart, in the First Judicial District Court, entered a plea of guilty to Misdemeanor Theft, was fined, and sentenced to eighteen months probation, which was successfully completed.

Further findings of facts related to the several arrests of Ms. Stewart for regarding worthless checks and dismissal of the charges in allegation 1. are but findings unnecessary in rendering a decision by this court.

APPLICABLE LAW:

La. R.S. 27:76 provides in pertinent part:

A. The Division shall not award a license or permit to any person who is disqualified on the basis of any of the following criteria:

- (1) Failure of the applicant to prove by clear and convincing evidence that he is qualified in accordance with the provisions of this Chapter.
- (3) The conviction of or a plea of guilty or nolo contendere by the applicant, or of any person required to be qualified under this Chapter as a condition of a license, for an offense punishable by imprisonment of more than one year, or theft or any offense involving false statements or declarations, or gambling as defined by the laws or ordinances of any municipality, any parish, any state, or of the United States.

La. R.S. 14:71 provides in pertinent part:

A.(1)(a) Issuing worthless checks is the issuing, in exchange for anything of value, whether the exchange is contemporaneous or not, with intent to defraud, of any check, draft or order for the payment of money upon any bank or other depository, knowing at the time of the issuing that the offender has not sufficient credit with the bank, or other depository for the payment of such check, draft, or order in full upon its presentation.

C. Whoever commits the crime of Issuing Worthless Checks, when the amount of the check is five hundred dollars or more, shall be imprisoned, with or without hard labor, for not more than ten years, or may be fined not more than three thousand dollars.

La. R.S. 14:67(A)(3) provides in pertinent part:

(3) When the misappropriation or taking amounts to less than the value of three hundred dollars, the offender shall be imprisoned for not more than six months, or may be fined not more than five hundred dollars, or both. If the offender in such cases has been convicted of theft two or more times previously, upon any subsequent conviction he shall be imprisoned with or without hard labor, for not more than two years, or may be fined not more than two thousand dollars, or both.

REASONS FOR DECISION:

La. R.S. 27:76(A)(3) as amended, effective August 15, 1999, provides that the conviction of an applicant for an offense punishable by imprisonment of more than one year, or **theft**, renders a person, for a period of ten years from the completion of the sentence, unsuitable from holding a non-key gaming employee permit.

In **In Re: James L. Goods** and its progeny, the Louisiana Gaming Control Board has considered the application of La. R.S. 27:76(A)(3) and found:

“ There is no discretion in applying statutory disqualification. . . . Under former La. R.S. 27:76(3) only offenses punishable by imprisonment of more than one year were disqualifying criteria. La. R.S. 27:76 was amended by 1999 La. Acts, No. 1384, section 1, effective August 15, 1999, to include as disqualifying criteria any felony or misdemeanor offense defined by the laws of any jurisdiction as theft or gambling, or offenses involving false statements or declarations..... La. R.S. 26:76 (A)(3) specifically enumerates as disqualifying criteria a conviction of or guilty plea or plea of nolo contendere to theft.”

This court has determined that issuing worthless checks is another form of theft. The applicant was convicted of a felony in May, 1992, and completed her sentence in December, 1993. Further, the applicant entered a plea of guilty to misdemeanor theft in January, 1995, and seemingly completed her sentence in July, 1996.

As such, Ms. Stewart is statutorily disqualified from holding a non-key gaming employee permit.

IN RE: DENISE STEWART
#P040004952

DECISION

When, after a review of the evidence, argument of the parties, and for the reasons aforesaid,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Ms. Denise Stewart be DENIED a renewal of her non-key gaming employee permit.

Baton Rouge, Louisiana this 22 day of February, 2001.



Joseph E. Anzalone, Jr.
Hearing Officer

LOUISIANA GAMING CONTROL BOARD
I HEREBY CERTIFY THAT A CERTIFIED
COPY HAS BEEN MAILED OR SERVED ON
ALL PARTIES THIS 22nd DAY
OF February 2001
A. C. Hutchings
DOCKET CLERK, ADMINISTRATIVE HEARING OFFICE

cc: Denise Stewart
Toby Davis, Esq.
Lt. Dane Morgan

A TRUE COPY ATTEST
LOUISIANA GAMING CONTROL BOARD
HEARING OFFICE
BATON ROUGE, LA 2/22/01

A. C. Hutchings
BY: CLERK