

**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Gerardo A. Canon,

Appellant.

Docket No. 02-2020-GMB-00148

**AMENDED INITIAL ORDER ON SUMMARY
JUDGMENT MOTION**

Agency: Gambling Commission
Program: Washington State Gambling
Commission
Agency No. 2020-00014

****Amended to include the Appeal Rights. All corrections are underlined.****

1. ISSUES:

- 1.1. Whether no genuine dispute of material fact exists as to whether Appellant Gerardo A. Canon's guilty plea to Assault in the Third Degree – Domestic Violence is grounds to revoke an active license per RCW 9.46.075(4), and WAC 230-03-085(2), and in accordance with Section V.C(1) of the Muckleshoot Tribal-State Compact?
- 1.2. Whether Appellant Gerardo A. Canon cannot prove by 'clear and convincing evidence' he is qualified for licensure, as required by RCW 9.46.153(1)?
- 1.3. Whether the Commission is authorized to revoke the Appellant Gerardo A. Canon Class II certification, pursuant to RCW 9.46.075(1),(4), and (8), WAC 230-03-085(1),(2) and (6), and in accordance Section V.C(1) of the Muckleshoot Tribal-State Compact?
- 1.4. If so, what is the appropriate penalty?

ORDER SUMMARY:

- 1.5. No genuine dispute of material fact exists as to whether Appellant Gerardo A. Canon's guilty plea to Assault in the Third Degree – Domestic Violence is grounds to revoke an active license per RCW 9.46.075(4), and WAC 230-03-085(2), and in accordance with Section V.C(1) of the Muckleshoot Tribal-State Compact. The Gambling Commission's Motion for Summary Judgment is **GRANTED**.
- 1.6. Appellant cannot prove by 'clear and convincing evidence' he is qualified for licensure, as required by RCW 9.46.153(1).
- 1.7. The Commission is authorized to revoke the Appellant Gerardo A. Canon Class II certification, pursuant to RCW 9.46.075(1),(4), and (8), WAC 230-03-085(1),(2)

and (6), and in accordance with Section V.C(1) of the Muckleshoot Tribal-State Compact. The Gambling Commission's revocation of Appellant's CRE License, is **AFFIRMED**.

2. GAMBLING COMMISSION'S MOTION FOR SUMMARY JUDGMENT:

- 2.1. Hearing Date: No oral arguments
- 2.2. Administrative Law Judge: Travis Dupree
- 2.3. Appellant: Gerardo A. Canon
- 2.4. Agency: Gambling Commission
 - 2.4.1. Representative: Doug Van de Brake, Assistant Attorney General
- 2.5. Documents Considered: I considered the following documents:

Doc. No.	Document Name	Document Date	No. Pages
1	Gambling Commission's Notice of Administrative Charges	01/31/20	6
2	Appellant's Request for Administrative Hearing	02/13/20	14
3	Office of Administrative Hearings (OAH) Prehearing Conference Order	03/11/20	8
4	Gambling Commission's Motion for Summary Judgment	03/13/20	9
5	Declaration of Special Agent Julie Sullivan in Support of Gambling Commission's Motion for Summary Judgment, with attached Exhibits 1-3	03/13/20	54

3. FACTS FOR PURPOSE OF SUMMARY JUDGMENT:

Jurisdiction

- 3.1. On January 31, 2020, the Washington State Gambling Commission issued the Notice of Administrative Charges revoking the Class II certification of Appellant, Gerardo Canon. The Gambling Commission's revocation asserted Appellant's License, Number 69-23740, was revoked for pleading guilty to a felony involving physical harm to individuals or an intention to inflict physical harm on another person, in violation of RCW 9.46.075(4).
- 3.2. On February 13, 2020, the Appellant contested the Gambling Commission's revocation of his Class II certification and requested an administrative hearing.

Gambling Commission Motion for Summary Judgment

- 3.3. On February 13, 2020, the Gambling Commission filed a Motion for Summary Judgment, along with the Declaration of Special Agent Julie Sullivan in Support of Commission's Motion for Summary Judgment, with attached Exhibits 1-3.
- 3.4. The Appellant did not file a response to the Commission's Motion for Summary Judgment.
- 3.5. As of the date of this Initial Order, the Appellant has failed to file any response, or provide any documentation, challenging the Commission's motion.

Appellant Guilty of Assault in the Third Degree

- 3.6. On November 2, 2019, the Appellant held a gun to the head of his spouse, Maria Elizabeth Canon, and threatened to kill her. After Ms. Canon called the 911, emergency line, the Appellant was arrested and charged with Assault in the Third Degree – Domestic Violence in King County. *Exhibit 1.*
- 3.7. On December 18, 2019, the Appellant pled guilty to the charge of Assault in the Third Degree – Domestic Violence in King County Superior Court. *Declaration of Sullivan and Ex. 1.*

Appellant's Class II Certification Revocation & Investigation

- 3.8. On November 18, 2019, Gambling Commission Special Agent Julie Sullivan received an Affidavit of Undisclosed Criminal History completed by Appellant from Muckleshoot Tribal Gaming Agency and conducted an investigation regarding Appellant's case. *Dec. of Sullivan, Ex. 2.*
- 3.9. Based on her investigation, Special Agent Sullivan recommended the revocation of Appellant's Class II certification for pleading guilty to a felony involving physical harm to individuals or an intention to inflict physical harm on another person. *Dec. of Sullivan: Ex. 2.*
- 3.10. On January 31, 2020, Gambling Commission Director, David Trujillo, issued the Notice of Administrative Charges revoking Appellant's Class II certification. *Dec. of Sullivan: Ex. 3.*

4. CONCLUSIONS OF LAW:

Jurisdiction

- 4.1. The Office of Administrative Hearings (OAH) has jurisdiction over the persons and subject matter of this case under Revised Code of Washington (RCW) 9.46.140(2) & (4), Washington Administrative Code (WAC) 230-17-025 and Chapters 34.05 and 34.12 RCW.

Summary Judgment Motions, Applicable Statutes, Regulations and Case Law

4.2. WAC 10-08-135 'Summary judgment' provides:

A motion for summary judgment may be granted and an order issued if the written record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

4.3. "Summary judgment is appropriate only where the undisputed facts entitle the moving party to judgment as a matter of law." *Verizon NW, Inc. v. Employment Sec. Dep't*, 164 Wn.2d 909, 916 (2008), *citing Alpine Lakes Prot. Soc'y v. Dep't of Natural Res.*, 102 Wn. App. 1, 14 (1999).

4.4. Admissions, stipulations, procedural history, and uncontested declarations and affidavits establish facts for summary judgment.

4.5. In Superior Court matters, CR 56 governs summary judgment. Where the relevant procedural rules do not conflict with CR 56, it and the cases interpreting it serve as persuasive authority in the management of summary judgment under WAC 10-08-135.

4.6. Civil Rule 56(e) provides: "If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party."

Gambling Commission Policy, Rules & Regulations

4.7. RCW 9.46.010 establishes, in relevant part:

The public policy of the state of Washington on gambling is to keep the criminal element out of gambling and to promote the social welfare of the people by limiting the nature and scope of gambling activities and by strict regulation and control.

4.8. RCW 9.46.040 also authorizes the Gambling Commission to enforce the rules and regulations relating to gambling activities in the State.

4.9. The Gambling Commission may deny a license application, revoke or suspend a license for:

- Violating, failing or refusing to comply with the provisions, requirements, conditions, limitations or duties imposed by chapter 9.46 RCW...;
- Having been convicted of, or forfeiting bond upon a charge of, or pled guilty to, forgery, larceny, extortion, conspiracy to defraud, wilful failure to make required payments or reports to a governmental agency at any level, or filing false reports therewith, or of any similar offense or offenses, or of bribing or otherwise unlawfully influencing a public official or

employee of any state or the United States, or of any crime, whether a felony or misdemeanor involving any gambling activity or physical harm to individuals or involving moral turpitude, or

- Failing to prove, by clear and convincing evidence, that he, she or it is qualified in accordance with the provisions of this chapter 9.46 RCW.

RCW 9.46.075(1),(4), & (8).

4.10. The Gambling Commission is authorized to deny, suspend or revoke any application, license or permit, for any of the following reasons, in relevant part:

- Committing any act that constitutes grounds for denying, suspending, or revoking licenses or permits under RCW 9.46.075; or
- Having been convicted of, or forfeiting bond on a charge of, or pleading guilty to a misdemeanor or felony crime involving physical harm to individuals. "Physical harm to individuals" includes any form of criminal assault, any crime involving a threat of physical harm against another person, or any crime involving an intention to inflict physical harm on another person;
- Is serving a period of probation or community supervision imposed as a sentence for any juvenile, misdemeanor, or felony criminal offense, whether or not the offense is covered under RCW 9.46.075(4).

WAC 230-03-085(1),(2), & (6).

4.11. Section V.C(1) of the Muckleshoot Tribal-State Compact provides in relevant part:

The State Gaming Agency may revoke... a State certification under the provisions of RCW 9.46.075, and rules promulgated thereunder, for any reason or reasons it deems to be in the public interest. In addition, these reasons shall include, but shall not be limited to when [a] holder of certification ... [i]s determined to be a person whose prior activities, [or] criminal record ... pose a threat to the effective regulation of gaming.

4.12. RCW 9.46.153(1) establishes:

It shall be the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence the necessary qualifications for licensure of each person required to be qualified under this chapter, as well as the qualifications of the facility in which the licensed activity will be conducted;

- 4.13. In the present case, on December 18, 2019, the Appellant pled guilty to one charge of Assault in the Third Degree.
- 4.14. Appellant did not file any response to the Commission's Motion for Summary Judgment, contesting he pled guilty to a felony involving physical harm to individuals or involving moral turpitude.
- 4.15. The Appellant has raised no genuine dispute of material fact as to whether or not his guilty plea to a felony Assault in the Third Degree – Domestic Violence, is an insufficient basis for the revocation of his Class II certification. Per RCW 9.46.075(4), and WAC 230-03-085(2), and in accordance with Section V.C(1) of the Muckleshoot Tribal-State Compact, the Commission's Motion for Summary Judgment is **GRANTED**.
- 4.16. The Gambling Commission is authorized to revoke Appellant's CRE License per RCW 9.46.075(1),(4), and (8), WAC 230-03-085(1),(2) and (6), and in accordance Section V.C(1) of the Muckleshoot Tribal-State Compact. The Gambling Commission's revocation of Appellant's CRE License, is **AFFIRMED**.
- 4.17. Since the revocation of Appellant's Class II certification is **AFFIRMED**, no fact-finding hearing is warranted. Therefore, the evidentiary hearing, scheduled for June 15, 2020, is **CANCELLED**.

5. INITIAL ORDER:

- 5.1. No genuine dispute of material fact exists as to whether Appellant Gerardo A. Canon's guilty plea to Assault in the Third Degree – Domestic Violence is grounds to revoke an active license per RCW 9.46.075(4), and WAC 230-03-085(2), and in accordance with Section V.C(1) of the Muckleshoot Tribal-State Compact. The Gambling Commission's Motion for Summary Judgment is **GRANTED**.
- 5.2. Appellant, has not proven by 'clear and convincing evidence' he is qualified for licensure, as required by RCW 9.46.153(1).
- 5.3. The Commission is authorized to revoke the Appellant Gerardo A. Canon's Class II certification, pursuant to RCW 9.46.075(1),(4), and (8), WAC 230-03-085(1),(2) and (6), and in accordance Section V.C(1) of the Muckleshoot Tribal-State Compact. The Gambling Commission's revocation of Appellant's CRE License, is **AFFIRMED**.
- 5.4. Therefore, the evidentiary hearing, scheduled for June 15, 2020, is **CANCELLED**.

SIGNED at Tacoma, Washington on the date of mailing.



Travis Dupree
Administrative Law Judge
Office of Administrative Hearings

CERTIFICATE OF SERVICE ATTACHED

PETITION FOR REVIEW

Any party to this proceeding may file a Petition for Review of this Initial Order. The written Petition for Review must be mailed to the Washington State Gambling Commission at:

Washington State Gambling Commission
PO Box 42400
Olympia, WA 98504

The Petition for Review must be received by the Commission within twenty (20) days from the date this Initial Order was mailed to the parties. A copy of the Petition for Review must be sent to all parties of record. The Petition for Review must specify the portions of the Initial Order with which the party disagrees, and must refer to the evidence in the record which supports the party's position. The other party's reply must be received at the address above, and served on all parties of record, within thirty (30) days from the date the petition for review was mailed.

Any party may file a cross appeal. Parties must file cross appeals with the Washington State Gambling Commission within ten days of the date the petition for review was filed with the Washington State Gambling Commission. Copies of the petition or cross appeal must be served on all other parties or their representatives at the time the petition or appeal is filed.

CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 02-2020-GMB-00148

I certify that true copies of this document were served from Tacoma, Washington via Consolidated Mail Services upon the following as indicated:

<p>Gerardo A. Canon 30131 36th PI S Auburn, WA 98001 Appellant</p>	<p><input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>
<p>Doug Van de Brake, AAG Office of the Attorney General MS: 40100 PO Box 40100 Olympia, WA 98504 Agency Representative</p>	<p><input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-mail: Doug.VandeBrake@atg.wa.gov jordan.nimon@atg.wa.gov</p>
<p>Ashlie Laydon Washington State Gambling Commission MS: 42400 PO Box 42400 Olympia, WA 98504 Agency Contact</p>	<p><input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input checked="" type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>

Date: Wednesday, May 27, 2020

OFFICE OF ADMINISTRATIVE HEARINGS

Amber Guarnacci

Amber Guarnacci
Legal Assistant 2