

No. COA22-256

No. _____

THIRTEENTH JUDICIAL DISTRICT

NORTH CAROLINA COURT OF APPEALS

MAURICE DEVALLE,)

)

Petitioner-Appellee,)

)

v.)

)

NORTH CAROLINA SHERIFFS')

)

EDUCATION AND TRAINING)

STANDARDS COMMISSION,)

)

Respondent-Appellant.)

From Columbus County

No. 20 CVS 1273

RECORD ON APPEAL

INDEX

Statement of Organization of Trial Court.....	1
Statement of Jurisdiction	2
Cover Letter to Final Agency Decision (dated 30 October 2020)	3
Final Agency Decision (served 9 November 2020).....	5
General Civil Cover Sheet and Civil Summons (filed 8 December 2020).....	23
Petition for Judicial Review (filed 8 December 2020)	25
Administrative Law Judge Melissa Lassiter’s Proposal for Decision (dated 3 June 2020)	28
[Respondent’s] Motion to Dismiss and Response to Petition for Judicial Review (filed 22 January 2021)	47
Order on Petition for Judicial Review (filed 22 November 2021)	75
[Respondent’s] Notice of Appeal (filed 21 December 2021) ..	88
Transcript Designation.....	90
Transcript Contract (served 7 January 2022)	91
Transcript Documentation (served 7 January 2022)	94
Statement of Rule 9(d)(2) Submission	97

Proposed Issue on Appeal	98
Identification of Counsel.....	99
Stipulation of Settlement of Record on Appeal.....	100
Certificate of Service for Proposed Record on Appeal	101

STATEMENT OF ORGANIZATION OF TRIAL COURT

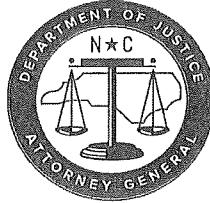
Respondent-Appellant appeals from the 22 November 2021 order by the Honorable James Gregory Bell, Superior Court Judge, granting Petitioner-Appellee's Petition for Judicial Review, thereby reversing Respondent-Appellant's revocation of Petitioner-Appellee's justice officer certification.

The order was signed on 22 November 2021. Respondent-Appellant filed and served written notice of appeal on 21 December 2021.

The record on appeal was filed in the North Carolina Court of Appeals on _____, 2022, and was docketed on _____, 2022.

STATEMENT OF JURISDICTION

This action was commenced by the filing of a petition for contested case hearing with the Office of Administrative Hearings, pursuant to N.C. Gen. § 150B-40(e) on 20 March 2019. The Administrative Law Judge issued a Proposal for Decision on 3 June 2020. The North Carolina Sheriffs' Education and Training Standards Commission issued the Final Agency Decision dated 6 October 2020, which was served on 30 October 2020. On 8 December 2020, Petitioner filed a Petition for Judicial Review in the Columbus County Superior Court. The parties acknowledge that the Office of Administrative Hearings, the North Carolina Sheriffs' Education and Training Standards Commission, and the Superior Court of Columbus County had personal and subject-matter jurisdiction.



JOSH STEIN
ATTORNEY GENERAL

STATE OF NORTH CAROLINA
DEPARTMENT OF JUSTICE
PO Box 629
RALEIGH, NORTH CAROLINA 27602

Reply to:
Law Enforcement Liaison Section
(919) 716-6725
(919) 716-6760 fax

October 30, 2020

Certified Mail Return Receipt Requested

Article No. 7018 0680 0000 8759 2823

Jennifer Knox
4600 Marriott Drive, Suite 200
Raleigh, NC 27612

RE: FINAL AGENCY DECISION

Dear Ms. Knox:

Enclosed is the **Final Agency Decision** entered by the North Carolina Sheriffs' Education and Training Standards Commission. As indicated in the Final Agency Decision, Mr. DeValle's justice officer certification is **DENIED INDEFINITELY** for failure to maintain the good moral character required of all justice officers. In addition, Mr. DeValle's justice officer certification is **SUSPENDED for five years** for the commission of the Class B misdemeanor offense of Failure to Discharge Duties in violation of N.C.G.S. § 14-230, with the conditions that Mr. DeValle does not violate any law (other than infractions) of this state, any federal laws or any rules of this Commission or the North Carolina Criminal Justice Education and Training Standards Commission.

This letter serves as notice that Mr. DeValle is not a certified justice officer, and as such, he is not authorized to exercise authority or perform the duties of a certified justice officer. Therefore, your client must refrain from any such activities.

Under the Administrative Procedures Act (G. S. Chapter 150B), your client has the right to seek judicial review of the enclosed Final Agency Decision

If your client wishes to seek judicial review of the enclosed Final Agency Decision, a petition to do so must be filed in Superior Court within 30 days from the date you were served a written copy of the enclosed Final Agency Decision. Failure to file a petition within the required 30 days will waive your client's right to judicial review of this Final Agency Decision. In filing such a petition, your client must comply with all other applicable requirements of North Carolina General Statutes Chapter 150B and other applicable rules of law.

This Final Agency Decision is the Commission's final decision. If you have any questions concerning this matter, contact our office at (919) 716-6725.

Sincerely,

A handwritten signature in black ink, appearing to read "s/Ryan F. Haigh". The signature is written in a cursive, flowing style.

Ryan F. Haigh
Special Deputy Attorney General
Law Enforcement Liaison Section

RFH/ajt

cc: Office of Administrative Hearings
Diane Konopka, Director, Sheriffs' Standards Division

STATE OF NORTH CAROLINA
COUNTY OF WAYNE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
19 DOJ 01619

MAURICE A. DeVALLE,

Petitioner,

v.

NORTH CAROLINA SHERIFFS'
EDUCATION AND TRAINING
STANDARDS COMMISSION,

Respondent.

FINAL AGENCY
DECISION

THIS MATTER was commenced by a request filed March 20, 2019 with the Director of the Office of Administrative Hearings for the assignment of an Administrative Law Judge. Notice of Contested Case Assignment and Order for Prehearing Statements (19 DOJ 01619) were filed March 22, 2019. The parties received proper Notice of Hearing and the Administrative Hearing was held in Raleigh, North Carolina on December 3-4, 2019, before the Honorable Melissa Owens Lassiter, Administrative Law Judge.

The Petitioner was represented by counsel, Michael Byrne. The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter the Commission or Respondent) was represented by Special Deputy Attorney General, Ryan F. Haigh.

On June 3, 2020, Judge Lassiter filed her Proposal For Decision. On June 11, 2020, counsel to the Commission sent by certified mail a copy of the Proposal For Decision to the Petitioner with a letter explaining Petitioner's rights: (1) to file exceptions or proposed findings of fact; (2) to file written argument; and (3) the right to present oral argument to the Commission.

This matter came before Commission for entry of its **Final Agency Decision** at its regularly scheduled meeting on September 17, 2020.

Having considered all competent evidence and argument and having reviewed the relevant provisions of Chapter 17E of the North Carolina General Statutes and Title 12, Chapter 10B of the North Carolina Administrative Code, the Commission, based upon clear, cogent and convincing evidence, does hereby make the following:

FINDINGS OF FACT

After careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits admitted into evidence, after weighing the evidence, and assessing the credibility of the witnesses including their demeanor, any interests, bias, or prejudice the witnesses may have, the opportunity of the witnesses to see, hear, know or remember the facts or occurrences, whether

the testimony of the witnesses was reasonable, and whether the testimony is consistent with all other believable evidence in the case, the undersigned finds as follows:

Notice of Probable Cause to Deny Certification

1. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, and both parties received notice of the hearing.

2. On January 29, 2019, Respondent ("the Commission") notified Petitioner that its Probable Cause Committee had found probable cause to believe that Petitioner's justice officer certification should be denied based upon:

(1) Commission of the Class B misdemeanor offense of "Willfully Failing to Discharge Duties" in violation of N.C. Gen. Stat. § 14-230 in 2016 when Petitioner, while employed as a law enforcement officer with the N.C. State Highway Patrol ("the Patrol") was untruthful in reporting his work time and failed to report for duty on numerous occasions. Respondent based this determination on Petitioner using his patrol-issued MDC to check on and off duty while remaining at his residence, and the N.C. State Highway Patrol's investigation and determination that Petitioner had neglected his duty by remaining at his Wake County residence on numerous occasions when he was supposed to be performing supervisor and patrol duties in Wayne County. The Patrol's investigation had also determined that Petitioner had reported false, misleading, and inaccurate information into the Beacon Payroll System, resulting in Petitioner being compensated for hours he did not work. In 2017, the Patrol terminated Petitioner's employment after it found Petitioner violated the Patrol's policies, and

(2) No longer possessing the good moral character required of all justice officers due to Petitioner's untruthfulness and the circumstances surrounding his actions while holding his justice officer certification and based on the totality of Petitioner's actions.

Respondent informed Petitioner that it would deny his justice officer certification for five years for committing the Class B misdemeanor of "Willfully Failing to Discharge Duties" while certified as a law enforcement officer, and deny such certification indefinitely based upon a lack of good moral character. (Resp. Ex. 2)

3. The Commission has the authority granted under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B, to certify justice officers and to revoke, suspend, or deny such certification under appropriate circumstances with valid substantial proof of a rule violation.

Background Facts

4. Petitioner applied for deputy sheriff certification through the Columbus County Sheriff's Office where Petitioner began employment on or about August 2017.

5. Respondent had previously certified Petitioner with the Cabarrus County Sheriff's Office as a telecommunicator from 1996 to 1998, as a detention officer from September 1996 to October 1996, and as a deputy sheriff from September 1996 to May 1998.

6. The North Carolina Criminal Justice Education and Training Standards Commission had previously certified Petitioner through the N.C. Department of Public Safety/N.C. State Highway Patrol ("the Patrol") from November 25, 1998 through April 24, 2017.

7. Petitioner was employed with the Patrol for 19 years, from November 25, 1998 through April 24, 2017, during which time Petitioner received one disciplinary action in the form of a written warning.

8. In November 2016, a local news station reported to the Patrol that Petitioner spent various days at his residence in Wake County, North Carolina while he was supposed to be working at his duty station in Wayne County.

9. After conducting an internal investigation, on April 24, 2017, the Patrol terminated Petitioner from employment for substantiated untruthfulness, neglect of duty, and insubordination in violation of the Patrol's policies, and for violating the Patrol's policy on residency. The issue of whether the Patrol had just cause to dismiss Petitioner from employment is not before this Tribunal.

Respondent's Investigation

10. On April 28, 2017, Respondent Commission received an Affidavit of Separation from the N.C. State Highway Patrol that it had dismissed Petitioner from employment on April 24, 2017 for violating the Patrol's policies regarding Truthfulness, Neglect Of Duty, and Insubordination, and for violating the Patrol's Rules Establishing Residence Policies. (Resp. Ex. 1)

11. 12 NCAC 10B .0201 INVESTIGATION OF VIOLATION OF RULES provides:

(b) Before taking action against an agency, school, or individual for a violation, the Division shall investigate the alleged violation and, when required by the Director, shall present a report of its findings to the Probable Cause Committee of the Commission.

12. Respondent's Sirena Jones investigated Petitioner's application for certification with the Columbus County Sheriff's Department. Ms. Jones has been employed by Respondent for approximately 15 years.

13. Ms. Jones has no background in law enforcement and no law degree. She has never served as a law enforcement officer, including as a deputy sheriff. She has never taken Basic Law Enforcement Training. She obtained a college degree in Sociology with a minor in Criminal Justice.

14. Ms. Jones' investigation consisted of reading the Patrol's Internal Affairs ("IA") investigative file, drafting a written summary of the Patrol's IA file, and reviewing Petitioner's applicant/officer profile and the Patrol's Report of Separation (Form F-5B). Resp. Ex. 1

15. Ms. Jones drafted a Memorandum for Respondent's Probable Cause Committee and attached her summary of the Patrol's IA file, the applicant/officer profile, and the Patrol's Report of Separation to such memorandum. Resp. Ex. 1. Attachments 1-3. Ms. Jones sent a copy of her memorandum and attachments to the Probable Cause Committee before its probable cause hearing on Petitioner's justice officer certification application. T. pp. 50-54. In her summary of the Patrol's IA file, Ms. Jones referenced fuel logs for Petitioner's patrol vehicle for September 2, 2016 to November 13, 2016, and Petitioner's weekly report of work activity from September 30, 2016, October 1-2, 2016, October 6, 2016, October 11, 2016 and October 14, 2016. Personnel Charge Sheets from the Patrol's IA file were also attached to Jones' memorandum. Resp. Ex. 1.

16. By her own admission at hearing, Ms. Jones agreed that her summary of the Patrol's IA file was "essentially writing what someone else said in the Patrol's IA report." T. p. 57.

17. Ms. Jones admitted that her summary was not the result of an independent investigation into Petitioner's time slips. T. p. 57. Ms. Jones could not recall if she actually reviewed Petitioner's time slips at issue. T. p. 57. She acknowledged that she did not obtain any information from Beacon, the State of North Carolina Human Resources Payroll system, showing what hours Petitioner had recorded his time worked for the Patrol. T. p. 58.

18. Ms. Jones was unable to state what was Petitioner's job when he was employed by the Highway Patrol. T. p. 65. She was likewise unable to state whether Petitioner's job duties included regularly responding to calls. T. p. 65. When asked how she could claim that Petitioner neglected his duties to the extent of committing a crime if she does not know the duties that a Highway Patrol sergeant performed, Jones replied, "That was the finding of the Highway Patrol." T. p. 65.

19. Despite agreeing that interviewing persons with knowledge is one of the primary methods by which an investigator would find facts, Ms. Jones admitted that she interviewed no one in the course of her investigation. T. pp. 56-58.

20. Ms. Jones did not interview Petitioner. She explained she didn't interview Petitioner because he was interviewed by the Patrol. T. pp. 59-60.

21. Despite knowing that Petitioner had been working as a deputy sheriff for two and a half years, Ms. Jones did not interview the Columbus County Sheriff or the school principal for whom Petitioner served as a school resource officer since August 2017. Ms. Jones had no knowledge of what Petitioner did while working as a school resource officer or how he discharged his duties as a school resource officer. T. pp. 56- 57, 67.

22. When asked if Petitioner was ever charged by any district attorney, arrested by law enforcement, arraigned in court or tried in court for the crime of "Willful Neglect of Duties," Ms. Jones responded, "To my knowledge, no." T. pp. 59-60. Ms. Jones failed to advise the Probable Cause Committee, in her memorandum, that Petitioner was never charged with the crime of "Willfully Failing to Discharge Duties." T. p. 61.

23. At no time did the Highway Patrol find that Petitioner committed a crime of "Willfully Failing to Discharge Duties" or "Willfully Neglecting his duties" in violation of N.C. Gen. Stat. § 14-

230.

24. The Tribunal specifically finds as fact that Petitioner has never been charged for the crime of "Willfully Failing to Discharge Duties." Petitioner has never been found civilly responsible for any such crime. Petitioner has never been charged, arraigned, or been indicted by a grand jury for the crime Respondent alleges he committed. T. pp. 59-60.

25. Despite having no legal or law enforcement background, and relying solely based upon the Patrol's IA investigation for her investigative results, Ms. Jones advised the Probable Cause Committee that this matter was before them to determine whether sufficient evidence exists to establish probable cause to believe that "in 2016, Maurice Devalle committed the felony offense of "Obtaining Property by False Pretenses" in violation of N.C. Gen. Stat. § 14-100, such that certification should be denied as set out in Rule .0204(a)(1)." Resp. Ex. 1, p. 2.

26. Ms. Jones also advised the Probable Cause Committee, in her memorandum:

You may also wish to consider whether there is sufficient evidence to show Maurice Devalle committed the class B offense of "Willful Fail to Discharge Duties" in violation of NC General Statute § 14-230, such that certification should be denied as set out in Rule .0204(d)(1).

Resp. Ex. 1, p. 2. Lastly, Ms. Jones stated that "[b]ased upon Mr. Devalle's untruthfulness in the reporting of his work time, failing to report for duty and/or the commission of criminal offenses," this matter is before the Probable Cause Committee to determine whether Petitioner possesses the good moral character required of all justice officers. Resp. Ex. 1, p. 2.

27. At the Probable Cause Committee hearing, Ms. Jones read her memorandum to the Committee, and Petitioner was allowed an opportunity to present evidence. Petitioner did not see or receive a copy of Ms. Jones' memorandum to the Probable Cause Committee. T. pp. 266-267.

Neglect of Duty

28. The State Highway Patrol Policy Manual, Directive H.1, paragraph XV Reporting for Duty provided:

Members shall report for duty at the time and place required by assignment or orders and shall be capable of performing their duties. They shall be properly equipped and cognizant of information required for the proper performance of duty so that they can immediately perform their duties.

Resp. Ex. 10, p. 5.

29. In November of 2016, pursuant to the Patrol's policy on Reporting for Duty, Highway Patrol protocol required Patrol employees to check in as being on-duty when they reached their assigned duty station. The Patrol employees used the code 10-41 to designate in the Patrol's computerized automated dispatch system ("CAD") that they were in uniform and on duty in their assigned duty station. All Patrol employees were required to remain in their duty station until the time they were supposed to end work. After ending work, they could then travel to their residences in an off-duty travel status. Resp. Ex. 10, p. 5; T. p. 113.

30. At all times relevant to this case, Petitioner's duty station with the Patrol was Wayne County, North Carolina where he served as a sergeant.

31. At all times relevant to this case, Petitioner's residence was in Wake County, approximately 35 miles from the county line of Wayne County and approximately 44 miles from Troop C, District 2, District Office in violation of Patrol policy regarding residency requirements. At this hearing, Petitioner admitted that he violated the Patrol's policy on residency requirements by living in Wake County.

32. At the time of his dismissal, Petitioner's chain of command was First Sergeant Jerry Burton (now retired) as Petitioner's direct supervisor. Troop C Lieutenants Christopher Morton and Steve Finney, and Captain Jeffrey O'Neill Holmes (now retired).

33. At all times relevant to this case, Sgt. Burton, Capt. Holmes, Capt. Henderson, Lt. Morton, all knew Petitioner was living in Wake County.

34. In early 2016, Petitioner met with Capt. Holmes, Lt. Finney, and First Sgt. Gerald Burton. Captain Holmes told Petitioner that "he was to be where he was supposed to be and doing what he was supposed to be doing." Petitioner and First Sgt. Burton acknowledged to Capt. Holmes they understood what he was telling them.

35. Later that day, First Sgt. Burton discussed Captain Holmes' statements from earlier that day with Petitioner and emphasized that this meant that Petitioner should be in Wayne County when he was supposed to be working. T. p. 319.

36. During the Patrol's Internal Affairs interview, Petitioner admitted that he understood he was supposed to be in Wayne County when working.

37. Petitioner's prior supervisor in Durham County, First Sgt. Cain, had approved Petitioner to work from home. When Petitioner began working in Wayne County, he continued to work from home while on duty.

38. The undisputed evidence proved that Sgt. Burton, Petitioner's direct supervisor, never granted Petitioner permission to work from home while on-duty and assigned to Wayne County. In fact, Petitioner never requested to do so. T. pp. 319-321. Petitioner never informed Sgt. Burton that he was working from his home in Wake County.

39. Petitioner never requested that he be allowed to work from home in Wake County.

40. After Hurricane Matthew hit Wayne County in 2016, Sgt. Burton never told Petitioner he could work from home instead of working in Wayne County. Sgt. Burton advised Petitioner and Sgt. Whitley that they were strictly in a response mode, they were not going to be taking preventive patrol action, and as supervisors, we needed to make sure troopers had what they needed. Sgt. Burton told Petitioner and Sgt. Whitley that when they were not specifically going to meet the needs of the troopers or the citizens of the county, they should be stationary so they're not burning fuel and that "we should be just ready to go." T. pp. 320, 329.

41. On Friday, November 11, 2016, at approximately 2:53 p.m., Petitioner signed into the Highway Patrol CAD system as being on-duty while he remained at his residence in Wake County.

42. At approximately 7:00 p.m. that day, and upon orders from his superiors, Captain Morton visited Petitioner's residence. Petitioner's patrol vehicle was parked in the driveway. Petitioner came to the door wearing shorts and a t-shirt. Morton asked Petitioner if he was on-duty. Petitioner replied that he was off-duty, but he thought the CAD was showing him as on-duty. Petitioner told Capt. Morton he had attempted to sign off-duty from the CAD system at 5:00 p.m. through his mobile data computer (MDC), but realized he had not done so. Petitioner acknowledged that he had not left the house that day.

43. Morton ordered Petitioner to come to Patrol. Petitioner stated that he was not leaving his house. Petitioner then questioned Morton's leadership style and the legacy Morton was leaving at Patrol.

44. Immediately after Lt. Morton left Petitioner's residence, at approximately 7:35 p.m., Petitioner signed off-duty on the Patrol's CAD system.

45. At hearing, Petitioner admitted that during this two-hour period on November 11, 2016, he was lying in bed and showering, and had not been engaged in work-related activity. Petitioner admitted that he had been at his residence and out of uniform the whole day. Petitioner never called anyone on the Patrol for coverage or notified anyone, including Sgt. Burton, that he was ill.

46. Petitioner signed in for work eight days between September 22, 2016 and October 6, 2016. T. p. 149. During that period, Petitioner claimed 767 miles driven on his Weekly Reports of Daily Activity.

47. The Patrol's fuel logs for Petitioner's vehicle established that Petitioner had only driven a total of 292 miles during the September 22 to October 6, 2016 period. If Petitioner had driven to the Wayne County line from his residence in Wake County on eight days, it would have required a minimum of 560 miles. T. pp. 149-151. Having driven a total of 292 miles, Petitioner could have made it to the Wayne County line and back only three times during these eight working days. Resp. Exs. 15, 20, 21.

48. Substantial evidence at hearing proved that Petitioner was not present at his duty station in Wayne County from September 22, 2016 through October 6, 2016 at times when he claimed that he was present and on-duty.

49. At no time did Petitioner contact Patrol troopers or his superiors and tell them that he was not at his duty station and that he needed coverage.

50. Petitioner admitted that on occasion he drove home for lunch and stayed at home for extended periods of time while he was on-duty. Petitioner admitted that on multiple occasions, he returned to his residence before the end of his shift and remained there for the remainder of his shift.

51. Petitioner also admitted that he signed on as on-duty and stayed home for his entire shift on some days. Petitioner admitted that when he was on-duty at his residence he should have been in Wayne County. Petitioner admitted this was a violation of Patrol policy.

52. Petitioner admitted that time spent at his residence was nonetheless time he claimed hours worked for the Patrol.

53. Petitioner admitted that these acts were a violation of Patrol policy.

54. At hearing, Petitioner attempted to justify his working from home while on-duty by stating that a "very, very small percentage" of his job duties involved being on patrol. However, Petitioner completed weekly reports of daily activity claiming approximately 40% of his time was spent on patrol in Wayne County.

55. The transcripts of Petitioner's statements to the Patrol's Internal Affairs on November 15, 2016, November 18, 2016, and March 27, 2017 corroborate Petitioner's above-cited admissions. They also provide substantial statements of Petitioner made closer in time to the events in question, shedding light on facts that Petitioner allegedly no longer recalls.

56. Petitioner alleged that during the eight days he was on-duty between September 22, 2016, and October 6, 2016, he was allegedly spending time on administrative duties. He described his duties as a sergeant as including answering and sending e-mails, scheduling, preparing documentation for wrecker inspections, and personnel file inspections. T. pp 274-75. However, during that period, Patrol records showed Petitioner only sent two emails – one of which was for fantasy football. T. pp. 155-156.

57. At hearing, Sgt. Burton opined that sergeants could fulfill most of their supervisory duties while located outside their assigned county, and from anywhere in the State, as they have mobile computers and air cards in their cars. T. p. 321.

58. However, sergeants must be located in their assigned duty station to meet with the troopers they supervise to ensure the troopers have all they need, to oversee the troopers' completion of paperwork, completion of inspection inventory and evidence, their completion of

wrecker files and inspections, and to review video from the troopers' in-car videos. Sergeants must interview people who file complaints and handle evidence at the district office. Sergeants are also required to meet and build rapport with the community by participating in numerous community activities. T. p. 322.

59. Part of Petitioner's responsibilities as a supervisor was overseeing troopers that were his junior. The undisputed evidence at hearing established that Petitioner supervised between one and seven troopers daily in his district. Petitioner acknowledged that his duty was to assist troopers in the field when they called for assistance and review their work. T. pp. 220-221.

60. The State paid Petitioner to perform his duties in his assigned duty station of Wayne County. However, for multiple days, Petitioner was not in Wayne County, and accordingly, Petitioner could not perform his duties as assigned. Common sense dictates that Petitioner was unable to provide training and support to troopers under his command in light of his absence from Wayne County. As a result, Wayne County was deprived of Petitioner's services and the public paid Petitioner for work that he did not fulfill. Petitioner's conduct also created an inherent lack of trust and dispersion of the reputation of the Patrol, which is also a public injury.

Good Moral Character

61. In November 2016, Petitioner's duty station with the Patrol was Wayne County, North Carolina.

62. In November 2016, it was Patrol policy that a trooper must live within 20 miles of his or her duty station.

63. On February 15, 2015, Respondent requested to reside in Johnston County at 400 Hillside Drive. This residence was within the 20 mile requirement. This was approved.

64. Petitioner did not live in Johnston County. Petitioner resided on Blue Ridge Road, in Southern Wake County.

65. Petitioner's residence was approximately 35 miles from the county line of Wayne County and approximately 44 miles from Troop C, District 2, District Office.

66. During the Patrol's internal affairs investigation into Petitioner's conduct, admitted that he never stayed, resided, or parked his patrol car at 400 Hillside Drive in Johnston County.

67. Petitioner thereby submitted a falsified official document in the course of his duties with regard to his residency status.

68. As provided above, Petitioner also falsified his timekeeping from September 22 to October 6, 2016 as it was impossible for him to spent the time he claimed he was on patrol in light of his location in Wake County and the mileage on his vehicle.

69. Steadman Jody Greene is the Sheriff of Columbus County, Whiteville, North Carolina. Petitioner works for Sheriff Greene as a deputy in the capacity of the school resource officer. In this capacity, Petitioner is armed with both lethal and non-lethal weapons. T. p. 31. Petitioner serves at the pleasure of the Sheriff. T. p. 32. At the time of hearing, Sheriff Greene had just been released from the hospital and voluntarily came to testify that Petitioner does a fine job for him and how important Petitioner is to his agency. T. p. 30.

70. When Sheriff Greene hired Petitioner, he was aware that Petitioner had been dismissed from the Patrol. Petitioner had told him. Sheriff Greene is satisfied that Petitioner has good moral character. Given the importance of the school resource officer, Greene must place someone in that position upon which he has a special trust and confidence. Sheriff Green has that special trust and confidence in Petitioner. T. pp. 32-33. He hired Petitioner based upon the principal, school board members, parents and students all recommending him and not based upon the past. T. p. 31. Sheriff Greene is satisfied that Petitioner had performed his duties "above and beyond." T. p. 34. If Petitioner was unable to serve as a deputy, it would negatively impact Greene's force.

71. Based on Petitioner's service as a deputy sheriff, Sheriff Greene has no hesitation as to Petitioner's truthfulness or ability to tell the truth. T. p. 38.

72. Jeremiah Johnson is the principal at East Columbus High School in Lake Waccamaw, North Carolina. T. p. 233. Johnson knows Petitioner in two capacities: as the school resource officer at East Columbus High School and as an assistant football coach and track coach at that school. Petitioner has served, and continues to serve, in those capacities since 2017. T. p. 233. Johnson has had the opportunity to watch Petitioner perform those duties "every day" that school is in session. T. p. 233. Johnson described Petitioner, in performing his duties as a school resource officer, as "dedicated to the school, dedicated to the students, dedicated to the staff. He comes to school – comes to work every day, is there to serve and protect. He's part of my administrative team. He's almost my right-hand man." T. p. 234.

73. When asked whether he had had an opportunity to form an opinion as to Petitioner's character, Johnson said, "He is an awesome person. He is an awesome man. And I'm not just saying that for me. I'm saying that for my kids at my school." T. p. 234. When asked whether Petitioner had ever committed any act that would cause Johnson to doubt Petitioner's capacity to be truthful, Johnson answered, "No." T. p. 234.

74. Mr. Johnson has no doubt, based on what he's observed from Petitioner, that Petitioner does not lack the character necessary to serve as a school resource officer at Johnson's high school. T. p. 239. Johnson would not have permitted Petitioner to serve as an assistant football coach and track coach, in addition to serving as a school resource officer, if he had any doubts about Petitioner's character. T. p. 235.

75. Mr. Johnson opined that if Petitioner was no longer able to serve East Columbus as a school resource officer, the lack of Petitioner's presence would make the school less safe. T. p. 236.

76. Johnson also spoke of the strong professional bond that exists between himself as principal and Petitioner as the school resource officer. T. p. 236. Johnson thinks that Petitioner is the best school resource officer he has ever worked with and as a school administrator, Johnson has trained many SROs. T. p. 239. He opined that interaction with the students would suffer tremendously if Petitioner was not at East Columbus High. "... These kids, they look up to him." T. p. 239. Johnson explained how Petitioner has helped other students such as buying shoes for kids, bought lunch for kids, and given them food. "You know, we all – he's where he – he's where he belongs." T. p. 240.

77. Johnson completed his testimony by describing an event where Petitioner intervened to help a student stay in school after a traumatic family event. That student recently signed a letter of intent to play college football. T. p. 240.

78. No one from the Respondent, including Jones, ever contacted Johnson regarding Petitioner's performance of his duties as a school resource officer, his character, or anything else. T. p. 238.

79. Neither Ms. Jones nor Respondent presented any evidence at hearing regarding Petitioner's performance of his duties as a Columbus County deputy sheriff. Respondent failed to present any evidence concerning any activities involving Petitioner that took place more recently than 2016. T. p. 56. While four witnesses from the Patrol testified regarding Petitioner's dismissal from the Patrol, none of those witnesses possessed any first-hand knowledge of how Petitioner has conducted himself in terms of truthfulness or conformance with policies while employed as a deputy sheriff in Columbus County. T. pp. 168-169. None of those witnesses opined that Petitioner lacked good moral character, either generally, or to serve as a deputy sheriff in this State.

80. At hearing, Petitioner's testimony exhibited a lack of candor and sincerity during cross-examination by Respondent's counsel. During Respondent's questions, Petitioner was evasive and feigned a lack of memory or confusion in response to Respondent's questions about Petitioner's conduct with the Patrol in 2016. Petitioner remained evasive and elusive even after having his recollection refreshed with his prior statements. In contrast, Petitioner readily recollected circumstances from this period, when questioned by his own counsel, without having to review any materials.

81. During his case in chief, Petitioner presented significant evidence demonstrating that Petitioner has rehabilitated and rebuilt his career since 2016 and 2017 while working as a school resource officer at East Columbus High School. Such evidence showed that Petitioner has exhibited highly favorable traits, including but not limited to helping, teaching, and serving as positive role models for students at East Columbus High School not only as a school resource officer, but as a coach in two sports. Sheriff Greene and Principal Johnson opined that Petitioner's absence from their respective entities would have a negative impact on their workplaces. The scope and magnitude of Petitioner's character traits, as witnessed by Sheriff Greene and Principal Johnson, qualify as extenuating circumstances which the Respondent should consider in determining whether Petitioner possesses the good moral character required of a justice officer.

CONCLUSIONS OF LAW

1. The parties are properly before the undersigned, and jurisdiction and venue are proper. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. The parties received proper notice of the hearing in this matter. To the extent that the Findings of Facts contain Conclusions of Law, or that the Conclusions or Law are Findings of Fact, they should be so considered without regard to the given labels. *Charlotte v. Heath*, 226 N.C. 750, 755, 40 S.E.2d 600, 604 (1946); *Peters v. Pennington*, 210 N.C. App. 1, 15, 707 S.E.2d 724, 735 (2011).

2. A court need not make findings as to every fact that arises from the evidence and need only find those facts which are material to the settlement of the dispute. *Flanders v. Gabriel*, 110 N.C. App. 438, 440, 429 S.E. 2d 611, 612, *aff'd*, 335 N.C. 234, 436 S.E. 2d 588 (1993).

Article 3A Case Procedure

3. Pursuant to 12 NCAC 10B.0201(b), before taking action against an agency, school, or individual for a violation, Respondent "shall investigate the alleged violation and, when required by the Director, shall present a report of its findings to the Probable Cause Committee of the Commission." (Emphasis added) After an investigation, Respondent's Probable Cause Committee may convene to consider investigative reports and determine whether probable cause exists that the Commission's rules have been violated, or it may delegate authority to the Director for further action.

4. If a person appeals the Probable Cause Committee's finding of probable cause to take an agency action, then N.C. Gen. Stat. § 150B-38(b) requires the agency, before taking any action, to give the parties an opportunity for a hearing without undue delay and notice not less than 15 days before the hearing. Notice to the parties shall include:

- (1) A statement of the date, hour, place, and nature of the hearing;
- (2) A reference to the particular sections of the statutes and rules involved; and
- (3) A short and plain statement of the facts alleged.

(Emphasis added)

5. N.C. Gen. Stat. §§ 150B-40, 150B-41, and 150B-42 establish how an Article 3A contested case hearing is conducted including the presentation of evidence, arguments on the issues or policies, and the evidence to be considered during such hearing. N.C. Gen. Stat. § 150B-41(b) specifically states that "[o]ther factual information or evidence shall not be considered in determination of the case, except as permitted under subsection (d) of this section." Likewise, N.C. Gen. Stat. § 150B-42(a) declares that "Findings of Fact shall be based exclusively on the evidence and on matters officially notices." The plain language of N.C. Gen. Stat. § 150B-38, read in conjunction with the other statutes under Article 3A, Chapter 150B of the North Carolina

General Statutes, is clear that the evidence at a contested case hearing is limited to the particular statutes and rules involved, the facts alleged in Respondent's Notification of Probable Cause issued to an applicant or certified officer, and evidence submitted in rebuttal.

6. Pursuant to the requirements of N.C. Gen. Stat. § 150B-38(b) and Respondent's January 28, 2019 Notification of Probable Cause, the particular statutes and rules involved and the facts at issue in this case were whether substantial evidence exists to deny Petitioner's application for justice officer certification for:

- (1) committing the Class B misdemeanor offense of "Willfully Failing to Discharge Duties" in violation of N.C. Gen. Stat. § 14-230 in 2016 while employed as a certified law enforcement officer with the North Carolina State Highway Patrol officer, and
- (2) no longer possessing the good moral character required of all justice officers. Resp. Ex. 2.

**Commission of Class B
Misdemeanor**

7. 12 NCAC 10B .0204(d)(2) provides that Respondent may deny certification of a criminal justice officer when the Commission finds that the applicant has committed a Class B misdemeanor within five years prior to the date of appointment.

8. 12 NCAC 10B .0103(16) provides that the term "Commission" as it pertains to criminal offenses means:

[A] finding by the North Carolina Sheriffs' Education and Training Standards Commission or an administrative body, pursuant to the provisions of G.S. 150B, that a person **performed the acts necessary to satisfy the elements of a specified criminal offense.**

(Emphasis added)

9. 12 NCAC 10B .0103(10)(b)(i) defines a "Class B Misdemeanor" as:

[A]n act committed or omitted in violation of any common law, criminal statute or criminal traffic code of this State which is classified as a Class B Misdemeanor as set forth in the "Class B Misdemeanor Manual" as published by the North Carolina Department of Justice.

10. "Willfully Failing to Discharge Duties" in violation of North Carolina General Statute § 14-230 is a Class B Misdemeanor according to the "Class B Misdemeanor Manual."

11. The essential elements of the offense of "Willfully Failing to Discharge Duties" described in N.C. Gen. Stat. § 14-230 has two components: (1) that the defendant be an official of a State institution, and (2) that he willfully failed to discharge the duties of his office. Additionally, injury to the public is a judicially recognized element of the crime. *State v. Birdsong*, 325 N.C. 418, 384 S.E.2d 5 (1989). Specifically, injury to the public must occur as a consequence of the omission, neglect or refusal. *State v. Rhome*, 120 N.C. App. 278, 462 S.E.2d 656 (1995).

12. In this case, Petitioner's role of being a Highway Patrol officer satisfies the first element of the subject offense. See, e.g., *State v. Fesperman*, 264 N.C. 160, 141 S.E.2d 255 (1965); *State v. Teeter*, 264 N.C. 162, 141 S.E.2d 253 (1965); *State v. Stogner*, 264 N.C. 163, 141 S.E.2d 248 (1965); *State v. Hord*, 264 N.C. 149, 141 S.E.2d 241 (1965).

13. Respondent's investigation into Petitioner's conduct as a Patrol sergeant was adequate enough for the Probable Cause Committee to find probable cause for a hearing on the merits in this matter. However, such investigation was insufficient, standing alone, to prove the charges at issue in this contested case hearing.

14. Once probable cause is found to exist, and the Notice of Probable Cause is appealed to a contested case hearing, the scope of evidence allowed during such hearing is established Article 3A, Chapter 150B of the North Carolina General Statutes.

15. The substantial evidence, through testimony and documentation, at this contested case hearing on the merits established the second element of the "Willful Failing to Discharge Duties" offense.

- a. Petitioner's duties required him to be present in Wayne County when on-duty, as that was his duty station. In early 2016, numerous superiors emphasized this fact to Petitioner. However, between September 22, 2016 and November 11, 2016, Petitioner failed to leave his home and report to his duty station on numerous occasions.
- b. At no time did Petitioner contact Patrol troopers or his superiors and tell them that he was not at his duty station and that he needed coverage.
- c. Petitioner admitted that on occasion he drove home for lunch and stayed at home for extended periods of time while he was on-duty. Petitioner admitted that on multiple occasions, he returned to his residence before the end of his shift and remained there for the remainder of his shift. Petitioner also admitted that he signed on as on-duty and stayed home for his entire shift on some days. Petitioner admitted that when he was on-duty at his residence he should have been in Wayne County. Petitioner admitted this was a violation of Patrol policy.

16. Petitioner admitted that time spent at his residence was nonetheless time he claimed hours worked for the Patrol. Petitioner received compensation for his alleged working hours. The State was deprived of the services for which it subsequently paid Petitioner based

upon his false assertions, and Wayne County was deprived of his Patrol services. This amounts to injury to the public.

17. Accordingly, substantial evidence presented at hearing support the Probable Cause Committee's finding that Petitioner committed the crime of "Willfully Failing to Discharge Duties" in violation of North Carolina General Statute § 14-230.

Maintain Good Moral Character

18. Pursuant to 12 NCAC 10B .0204(b)(2), Respondent "shall revoke, deny, or suspend the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer: "fails to meet or maintain any of the employment or certification standards required by 12 NCAC 10B .0300." One of these minimum standards of employment is that the applicant be of good moral character pursuant to 12 NCAC 10B. 0301(a)(8).

19. Good moral character has been defined as "honesty, fairness, and respect for the rights of others and for the laws of the state and nation." *In re Willis*, 288 N.C. 1, 10, 215 S.E.2d 771, 779 (1975), *appeal dismissed*, 423 U.S. 976, 96 S. Ct. 389, 46 L. Ed. 2d 300 (1975).

20. In this case, Petitioner was dishonest and untruthful when he reported he was performing his duties as a Patrol sergeant assigned to Wayne County, when in fact he was at home in Wake County on numerous occasions. He did not respect the rights of those members of the public of Wayne County who are entitled to law enforcement protection – rights which he was sworn to protect. He failed to uphold the laws of this State as a Patrol officer while remaining at his home while on-duty for the Patrol.

21. In addition, Petitioner submitted false time and mileage sheets, thereby defrauding the State, and falsely claiming to have been actively serving members of the community. Petitioner's untruthfulness in such actions demonstrate a lack of good moral character at that time.

22. Generally, isolated instances of conduct are insufficient to properly conclude that someone lacks good moral character. *In Re Rogers*, 297 N.C. 48, 59, 253 S.E. 2d 912, 919 (1979).

23. In Petitioner's case, the aforementioned conduct did not occur one time, but occurred multiple times over the course of weeks or months in 2016, even after being cautioned about such conduct by his superiors.

24. Sheriff Greene and Principal Johnson testified that Petitioner has rehabilitated and rebuilt his character, since being fired by the Patrol, and as a deputy sheriff, and as school resource officer and coach at East Columbus High School. Green and Johnson testified that for two and a half years, Petitioner's service as a deputy sheriff has been nothing but exemplary both of that service and of Petitioner's character while engaging in that service. Such testimony was credible, honest, and believable.

25. However, the most recent demonstration of Petitioner's character was the hearing

itself. Petitioner's profound lack of candor and truthfulness while testifying under oath at this contested case demonstrated that truthfulness is still a challenge for Petitioner.

26. 12 NCAC 10B .0205 provides:

When the Commission suspends, revokes, or denies the certification of a justice officer, the period of sanction shall be:

(l) for an indefinite period, but continuing so long as the stated deficiency, infraction, or impairment continues to exist, where the cause of sanction is: . . .

(b) failure to meet or maintain the minimum standards of employment or certification:

. . .

(d) commission or conviction of offenses as specified in 12 NCAC 10B .0204(d)(2) . . .

The Commission may either reduce or suspend the periods of sanction where revocation, denial or suspension of certification is based upon the Subparagraphs set out in 12 NCAC 10B .0204(d) or substitute a period of probation in lieu of revocation, suspension or denial following an administrative hearing. This authority to reduce or suspend the period of sanction may be utilized by the Commission when extenuating circumstances brought out at the administrative hearing warrant such a reduction or suspension.

27. The sanction for the charges as issue here, under 12 NCAC 10B .0205(3)(b) and (d), continues for so long as the stated deficiency exists. As held in *In re Dillingham*, 188 N.C. 162. 124 S.E.130 (1924), when one seeks to establish a restoration of a character, the question becomes one of "time and growth.

28. Although Sheriff Greene and Principal Johnson provided credible and persuasive testimonies regarding Petitioner's rehabilitation, Petitioner's own conduct demonstrates that he currently does not possess the good moral character required to continue certification as a deputy sheriff.

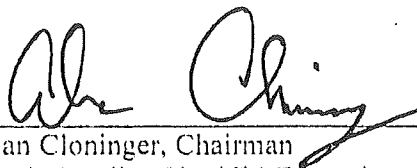
ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Petitioner's justice officer certification **BE DENIED INDEFINITELY**, pursuant to Petitioner's lack of good moral character. Additionally, Petitioner's justice officer certification shall be **DENIED** for **FIVE (5) YEARS**, and that sanction is **SUSPENDED** for **FIVE (5) YEARS** for the commission of the Class B offense of failure to discharge duties, with the conditions that

Petitioner not violate any law (other than infractions) of this state, any federal laws, or any rules of this Commission or the North Carolina Criminal Justice Education and Training Standards Commission.

IT IS SO ORDERED.

This the 6th day of October, 2020.

A handwritten signature in black ink, appearing to read "Alan Cloninger", written over a horizontal line.

Alan Cloninger, Chairman
North Carolina Sheriffs' Education and Training
Standards Commission

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the foregoing **PROPOSED FINAL AGENCY DECISION** has been electronically filed using the Office of Administrative Hearings electronic filing system, and duly served upon **Petitioner's counsel** via same to the address below:

Jennifer Knox
jennifer@jenniferknoxlaw.com

This the 9th day of November, 2020.

JOSHUA H. STEIN
Attorney General

/s/ Ryan F. Haigh
Ryan F. Haigh
Special Deputy Attorney General
ATTORNEY FOR THE COMMISSION

STATE OF NORTH CAROLINA		File No.
COLUMBUS County		In The General Court Of Justice <input type="checkbox"/> District <input type="checkbox"/> Superior Court Division
Name And Address Of Plaintiff 1 MAURICE DEVALLE 506 VINELAND STREET WHITEVILLE, NC 28472		GENERAL CIVIL ACTION COVER SHEET <input checked="" type="checkbox"/> INITIAL FILING <input type="checkbox"/> SUBSEQUENT FILING
Name And Address Of Plaintiff 2 <div style="text-align: center; font-size: 2em; margin-top: 20px;">JCB</div>		
VERSUS		Rule 5(b) of the General Rules of Practice for the Superior and District Courts
Name And Address Of Defendant 1 NORTH CAROLINA SHERIFFS' EDUCATION & TRAINING STANDARDS COMMISSION 114 W. EDENTON STREET RALEIGH, NC 27603		Name And Address Of Attorney Or Party, If Not Represented (complete for initial appearance or change of address) JENNIFER KNOX 4600 MARIOTT DRIVE, SUITE 200 RALEIGH, NC 27612
Summons Submitted <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Telephone No. 919-624-5171 Cellular Telephone No.
Name And Address Of Defendant 2		NC Attorney Bar No. 29302 Attorney Email Address JENNIFER@JENNIFERKNOXLAW.COM
Summons Submitted <input type="checkbox"/> Yes <input type="checkbox"/> No		<input checked="" type="checkbox"/> Initial Appearance in Case <input type="checkbox"/> Change of Address
Name Of Firm		Fax No.
Summons Submitted <input type="checkbox"/> Yes <input type="checkbox"/> No		Counsel For <input checked="" type="checkbox"/> All Plaintiffs <input type="checkbox"/> All Defendants <input type="checkbox"/> Only: (list parties represented)
<input type="checkbox"/> Jury Demanded In Pleading <input type="checkbox"/> Complex Litigation <input type="checkbox"/> Stipulate to Arbitration		
TYPE OF PLEADING		
<div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> <p>(check all that apply)</p> <input type="checkbox"/> Amend (AMND) <input type="checkbox"/> Amended Answer/Reply (AMND-Response) <input type="checkbox"/> Amended Complaint (AMND) <input type="checkbox"/> Assess Costs (COST) <input type="checkbox"/> Answer/Reply (ANSW-Response) (see Note) <input type="checkbox"/> Change Venue (CHVN) <input type="checkbox"/> Complaint (COMP) <input type="checkbox"/> Confession Of Judgment (CNFJ) <input type="checkbox"/> Consent Order (CONS) <input type="checkbox"/> Consolidate (CNSL) <input type="checkbox"/> Contempt (CNTP) <input type="checkbox"/> Continue (CNTN) <input type="checkbox"/> Compel (CMPL) <input type="checkbox"/> Counterclaim (CTCL) Assess Court Costs <input type="checkbox"/> Crossclaim (list on back) (CRSS) Assess Court Costs <input type="checkbox"/> Dismiss (DISM) Assess Court Costs <input type="checkbox"/> Exempt/Waive Mediation (EXMD) <input type="checkbox"/> Extend Statute Of Limitations, Rule 9 (ESOL) <input type="checkbox"/> Extend Time For Complaint (EXCO) <input type="checkbox"/> Failure To Join Necessary Party (FJNP) </div> <div style="width: 48%;"> <input type="checkbox"/> Failure To State A Claim (FASC) <input type="checkbox"/> Implementation Of Wage Withholding In Non-IV-D Cases (OTHR) <input type="checkbox"/> Improper Venue/Division (IMVN) <input type="checkbox"/> Including Attorney's Fees (ATTY) <input type="checkbox"/> Intervene (INTR) <input type="checkbox"/> Interplead (OTHR) <input type="checkbox"/> Lack Of Jurisdiction (Person) (LJPN) <input type="checkbox"/> Lack Of Jurisdiction (Subject Matter) (LJSM) <input type="checkbox"/> Modification Of Child Support In IV-D Actions (MSUP) <input type="checkbox"/> Notice Of Dismissal With Or Without Prejudice (VOLD) <input type="checkbox"/> Petition To Sue As Indigent (OTHR) <input type="checkbox"/> Rule 12 Motion In Lieu Of Answer (MDLA) <input type="checkbox"/> Sanctions (SANC) <input type="checkbox"/> Set Aside (OTHR) <input type="checkbox"/> Show Cause (SHOW) <input type="checkbox"/> Transfer (TRFR) <input type="checkbox"/> Third Party Complaint (list Third Party Defendants on back) (TPCL) <input type="checkbox"/> Vacate/Modify Judgment (VCMD) <input type="checkbox"/> Withdraw As Counsel (WDCN) <input checked="" type="checkbox"/> Other (specify and list each separately) PETITION FOR JUDICIAL REVIEW </div> </div>		

NOTE: All filings in civil actions shall include as the first page of the filing a cover sheet summarizing the critical elements of the filing in a format prescribed by the Administrative Office of the Courts, and the Clerk of Superior Court shall require a party to refile a filing which does not include the required cover sheet. For subsequent filings in civil actions, the filing party must include either a General Civil (AOC-CV-751), Motion (AOC-CV-752), or Court Action (AOC-CV-753) cover sheet.

(Over)

STATE OF NORTH CAROLINA		File No.
COLUMBUS County		In The General Court Of Justice <input type="checkbox"/> District <input checked="" type="checkbox"/> Superior Court Division
Name Of Plaintiff MAURICE DEVALLE		CIVIL SUMMONS <input type="checkbox"/> ALIAS AND PLURIES SUMMONS (ASSESS FEE)
Address 506 VINELAND STREET		
City, State, Zip WHITEVILLE, NC 28472		
VERSUS		
Name Of Defendant(s) NC SHERIFFS' EDUCATION & TRAINING STANDARDS COMMISSION		G.S. 1A-1, Rules 3 and 4
		Date Original Summons Issued
		Date(s) Subsequent Summons(es) Issued
To Each Of The Defendant(s) Named Below:		
Name And Address Of Defendant 1 NC SHERIFFS' EDUCATION & TRAINING STANDARDS COMMISSION 114 W. EDENTON STREET RALEIGH, NC 27603		Name And Address Of Defendant 2
<div style="display: flex; align-items: center; justify-content: center;"><div><p>IMPORTANT! You have been sued! These papers are legal documents, DO NOT throw these papers out! You have to respond within 30 days. You may want to talk with a lawyer about your case as soon as possible, and, if needed, speak with someone who reads English and can translate these papers!</p><p>¡IMPORTANTE! ¡Se ha entablado un proceso civil en su contra! Estos papeles son documentos legales. ¡NO TIRE estos papeles!</p><p>Tiene que contestar a más tardar en 30 días. ¡Puede querer consultar con un abogado lo antes posible acerca de su caso y, de ser necesario, hablar con alguien que lea inglés y que pueda traducir estos documentos!</p></div></div>		
A Civil Action Has Been Commenced Against You! You are notified to appear and answer the complaint of the plaintiff as follows: <ol style="list-style-type: none">1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and2. File the original of the written answer with the Clerk of Superior Court of the county named above. <p>If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.</p>		
Name And Address Of Plaintiff's Attorney (if none, Address Of Plaintiff) JENNIFER KNOX 4600 MARRIOTT DRIVE, SUITE 200 RALEIGH, NC 27612		Date Issued 12/8/20 Time 12:08 <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM Signature <input type="checkbox"/> Deputy CSC <input checked="" type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court
<input type="checkbox"/> ENDORSEMENT (ASSESS FEE) This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.		Date Of Endorsement Time <input type="checkbox"/> AM <input type="checkbox"/> PM Signature <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court
NOTE TO PARTIES: Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$25,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.		
(Over)		

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

COUNTY OF COLUMBUS

MAURICE DEVALLE,

Petitioner,

v.

NORTH CAROLINA SHERIFF'
EDUCATION AND TRAINING
STANDARDS COMMISSION,

Defendant,

JCB

PETITION FOR JUDICIAL REVIEW

PURSUANT TO N.C.G.S. 150-143, now comes the Petitioner, Maurice DeValle, seeking judicial review of the Final Agency Decision, filed on November 9, 2020 by the North Carolina Sheriff's Education and Training Standards Commission in the Office of Administrative Hearings in docket number 19 DOJ 01619. The Final Agency Decision was received by counsel for the Petitioner on November 10, 2020.

1. The Petitioner was employed by the North Carolina Highway Patrol for 19 years. He was terminated from the Patrol on April 24, 2017, and subsequently was hired by the Columbus County Sheriff in May 2017.
2. In its Final Agency Decision, the Commission determined that the Petitioner was in violation of 12 NCAC 10 B.0204(D)(2) by committing the Class B misdemeanor of "Willfully Failing to Discharge Duties" within 5 years prior to the date of his appointment. It suspended his justice officer certification for 5 years but suspended that sanction for 5 years under the condition that he not violate any law (other than infractions) of this state, and federal laws or any rules of the Commission of the North Carolina Criminal Justice Education and Training Standards Commission.
3. The Respondent also found that the Petitioner lacked the good moral character required of every justice officer under 12 NCAC 10B .0301(a)(8). The Commission then ordered

that the Petitioner's justice officer certification be revoked indefinitely for lack of good moral character.

4. The Petitioner is a resident of Columbus County, North Carolina.
5. The Petitioner is a person aggrieved by the final decision in a contested case and has exhausted all administrative remedies made available to her by statute or agency rule, and therefore is entitled to judicial review.
6. A request for a contested case in the Office of Administrative Hearings was filed by the Respondent on March 20, 2019. A hearing was held before the Honorable Melissa Owens Lassiter, Administrative Law Judge, on December 3-4, 2019 in Raleigh, North Carolina. Judge Lassiter filed her Proposal for Decision on June 3, 2020. This matter was heard by the Respondent on September 17, 2020. The Final Agency Decision was filed on November 9, 2020.

EXCEPTION.

The Respondent found that the Petitioner lacks the good moral character necessary to be a certified justice officer. Specifically, it found that he was dishonest and untruthful when he reported in 2016 that he was performing duties for the North Carolina State Highway Patrol in Wayne County when he was actually working from home in Wake County, and when he submitted false time and mileage sheets. In addition, the Respondent found that the Petitioner showed a lack of candor and truthfulness while testifying at the contested case hearing.

Pursuant to 12 NCAC 10B .0205(3)(b), the sanction for a violation of 12 NCAC 10B .0204(b)(2) is a revocation for an indefinite period, continuing so long as the stated deficiency exists. As held by our Supreme Court in In Re Dillingham, 188 N.C. 162, 124 S.E.130 (1924), when one seeks to establish a restoration of character, the question becomes one of "time and growth".

Jody Greene, the Sheriff of Columbus County testified at both the contested case hearing and the hearing before the Commission that he is confident that the Petitioner has rehabilitated and rebuilt his character, and that his service as a deputy sheriff has been nothing but exemplary. Principal Jeremiah Johnson also confirmed that he has absolute confidence in the Petitioner's current good moral character and considers him to be a role model for the students and young people in Columbus County. The Commission found the testimony of Sheriff Greene and

Principal Johnson credible, honest, and believable.

THEREFORE, the Petitioner prays that the Court

1. Reverse the portion of the Final Agency Decision that determined that he continues to lack good moral character;
2. Reinstate the Petitioner's justice officer certification; and
3. Grant any other relief that is just and reasonable.

THIS, the 3rd day of December, 2020.



Jennifer J. Knox
Attorney for the Petitioner
4600 Marriott Drive, Suite 200
Raleigh, NC 27612
jennifer@jenniferknoxlaw.com
919.624.5171
NC State Bar No. 29302


CERTIFICATE OF SERVICE

I hereby certify that a copy of this Petition for Judicial Review was served by certified mail return requested on

Diane Konopka
Sheriff's Standards Commission
114 W. Edenton Street
Raleigh, NC 27603

Ryan Haigh
NCDOJ
114 W. Edenton Street
Raleigh, NC 27603.

This, the 3rd day of December, 2020.



Jennifer J. Knox

STATE OF NORTH CAROLINA
COUNTY OF COLUMBUS

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
19 DOJ 01619

Maurice A Devalle Petitioner, v. NC Sheriffs Education and Training Standards Commission Respondent.	PROPOSAL FOR DECISION
---	------------------------------

On December 3-4, 2019, Administrative Law Judge Melissa Owens Lassiter conducted a hearing in this matter in Raleigh, North Carolina pursuant to N.C. Gen. Stat. § 150B-40(e) and Respondent's request for designation of an Administrative Law Judge to preside at a hearing, under Article 3A, Chapter 150B of the North Carolina General Statutes regarding Respondent's denial of Petitioner's application for justice officer certification.

APPEARANCES

For Petitioner: Michael C. Byrne
Attorney for Petitioner
Law Offices of Michael C. Byrne
Raleigh, North Carolina

For Respondent: Ryan Haigh
Special Deputy Attorney General
North Carolina Department of Justice
Raleigh, North Carolina

ISSUES

1. Does substantial evidence exist for Respondent to deny Petitioner's application for justice officer certification for committing the Class B misdemeanor offense of "Willfully Failing to Discharge his Duties"?

2. Does substantial evidence exist for Respondent to deny Petitioner's application for justice officer certification for failure to maintain good moral character in violation of 12 NCAC 10B .0301(a)(8)?

APPLICABLE RULES AND STATUTES

Article 3A, N.C. Gen. Stat. § 150B
N.C. Gen. Stat. § 14-230
12 NCAC 10B .0103(10)(b)
12 NCAC 10B .0204 (b) and (d)
12 NCAC 10B .0201 & .0205
12 NCAC 10B .0301(a)(8)
12 NCAC 10B .0204(b)(2)

EXHIBITS ADMITTED INTO EVIDENCE

For Petitioner: 1
For Respondent: 1, 2, 7, 8-10, 15-17, 20-22, 32-36, 38
Offer of Proof: 3-6, 11, 13

WITNESSES

For Petitioner: Petitioner, Stedman Jody Greene, Jeremiah Johnson
For Respondent: Sirena Jones, Petitioner, Gerald Burton, John Christopher Morton, James Wingo, Rodney Sawyer

FINDINGS OF FACT

After careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits admitted into evidence, after weighing the evidence, and assessing the credibility of the witnesses including their demeanor, any interests, bias, or prejudice the witnesses may have, the opportunity of the witnesses to see, hear, know or remember the facts or occurrences, whether the testimony of the witnesses was reasonable, and whether the testimony is consistent with all other believable evidence in the case, the undersigned finds as follows:

Notice of Probable Cause to Deny Certification

1. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, and both parties received notice of the hearing.
2. On January 29, 2019, Respondent ("the Commission") notified Petitioner that its Probable Cause Committee had found probable cause to believe that Petitioner's justice officer certification should be denied based upon:
 - (1) Commission of the Class B misdemeanor offense of "Willfully Failing to Discharge Duties" in violation of N.C. Gen. Stat. § 14-230 in 2016 when Petitioner, while employed as a law enforcement officer with the N.C. State

Highway Patrol ("the Patrol") was untruthful in reporting his work time and failed to report for duty on numerous occasions. Respondent based this determination on Petitioner using his patrol-issued MDC to check on and off duty while remaining at his residence, and the N.C. State Highway Patrol's investigation and determination that Petitioner had neglected his duty by remaining at his Wake County residence on numerous occasions when he was supposed to be performing supervisor and patrol duties in Wayne County. The Patrol's investigation had also determined that Petitioner had reported false, misleading, and inaccurate information into the Beacon Payroll System, resulting in Petitioner being compensated for hours he did not work. In 2017, the Patrol terminated Petitioner's employment after it found Petitioner violated the Patrol's policies, and

(2) No longer possessing the good moral character required of all justice officers due to Petitioner's untruthfulness and the circumstances surrounding his actions while holding his justice officer certification and based on the totality of Petitioner's actions.

Respondent informed Petitioner that it would deny his justice officer certification for five years for committing the Class B misdemeanor of "Willfully Failing to Discharge Duties" while certified as a law enforcement officer, and deny such certification indefinitely based upon a lack of good moral character. (Resp. Ex. 2)

3. The Commission has the authority granted under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B, to certify justice officers and to revoke, suspend, or deny such certification under appropriate circumstances with valid substantial proof of a rule violation.

Background Facts

4. Petitioner applied for deputy sheriff certification through the Columbus County Sheriff's Office where Petitioner began employment on or about August 2017.

5. Respondent had previously certified Petitioner with the Cabarrus County Sheriff's Office as a telecommunicator from 1996 to 1998, as a detention officer from September 1996 to October 1996, and as a deputy sheriff from September 1996 to May 1998.

6. The North Carolina Criminal Justice Education and Training Standards Commission had previously certified Petitioner through the N.C. Department of Public Safety/N.C. State Highway Patrol ("the Patrol") from November 25, 1998 through April 24, 2017.

7. Petitioner was employed with the Patrol for 19 years, from November 25, 1998 through April 24, 2017, during which time Petitioner received one disciplinary action in the form of a written warning.

8. In November 2016, a local news station reported to the Patrol that Petitioner spent various days at his residence in Wake County, North Carolina while he was supposed to be working at his duty station in Wayne County.

9. After conducting an internal investigation, on April 24, 2017, the Patrol terminated Petitioner from employment for substantiated untruthfulness, neglect of duty, and insubordination in violation of the Patrol's policies, and for violating the Patrol's policy on residency. The issue of whether the Patrol had just cause to dismiss Petitioner from employment is not before this Tribunal.

Respondent's Investigation

10. On April 28, 2017, Respondent Commission received an Affidavit of Separation from the N.C. State Highway Patrol that it had dismissed Petitioner from employment on April 24, 2017 for violating the Patrol's policies regarding Truthfulness, Neglect Of Duty, and Insubordination, and for violating the Patrol's Rules Establishing Residence Policies. (Resp. Ex. 1)

11. 12 NCAC 10B .0201 INVESTIGATION OF VIOLATION OF RULES provides:

(b) Before taking action against an agency, school, or individual for a violation, the Division shall investigate the alleged violation and, when required by the Director, shall present a report of its findings to the Probable Cause Committee of the Commission.

12. Respondent's Sirena Jones investigated Petitioner's application for certification with the Columbus County Sheriff's Department. Ms. Jones has been employed by Respondent for approximately 15 years.

13. Ms. Jones has no background in law enforcement and no law degree. She has never served as a law enforcement officer, including as a deputy sheriff. She has never taken Basic Law Enforcement Training. She obtained a college degree in Sociology with a minor in Criminal Justice.

14. Ms. Jones' investigation consisted of reading the Patrol's Internal Affairs ("IA") investigative file, drafting a written summary of the Patrol's IA file, and reviewing Petitioner's applicant/officer profile and the Patrol's Report of Separation (Form F-5B). Resp. Ex. 1

15. Ms. Jones drafted a Memorandum for Respondent's Probable Cause Committee and attached her summary of the Patrol's IA file, the applicant/officer profile, and the Patrol's Report of Separation to such memorandum. Resp. Ex. 1, Attachments 1-3. Ms. Jones sent a copy of her memorandum and attachments to the Probable Cause Committee before its probable cause hearing on Petitioner's justice officer certification application. T. pp. 50-54. In her summary of the Patrol's IA file, Ms. Jones referenced

fuel logs for Petitioner's patrol vehicle for September 2, 2016 to November 13, 2016, and Petitioner's weekly report of work activity from September 30, 2016, October 1-2, 2016, October 6, 2016, October 11, 2016 and October 14, 2016. Personnel Charge Sheets from the Patrol's IA file were also attached to Jones' memorandum. Resp. Ex. 1.

16. By her own admission at hearing, Ms. Jones agreed that her summary of the Patrol's IA file was "essentially writing what someone else said in the Patrol's IA report." T. p. 57.

17. Ms. Jones admitted that her summary was not the result of an independent investigation into Petitioner's time slips. T. p. 57. Ms. Jones could not recall if she actually reviewed Petitioner's time slips at issue. T. p. 57. She acknowledged that she did not obtain any information from Beacon, the State of North Carolina Human Resources Payroll system, showing what hours Petitioner had recorded his time worked for the Patrol. T. p. 58.

18. Ms. Jones was unable to state what was Petitioner's job when he was employed by the Highway Patrol. T. p. 65. She was likewise unable to state whether Petitioner's job duties included regularly responding to calls. T. p. 65. When asked how she could claim that Petitioner neglected his duties to the extent of committing a crime if she does not know the duties that a Highway Patrol sergeant performed, Jones replied, "That was the finding of the Highway Patrol." T. p. 65.

19. Despite agreeing that interviewing persons with knowledge is one of the primary methods by which an investigator would find facts, Ms. Jones admitted that she interviewed no one in the course of her investigation. T. pp. 56-58.

20. Ms. Jones did not interview Petitioner. She explained she didn't interview Petitioner because he was interviewed by the Patrol. T. pp. 59-60.

21. Despite knowing that Petitioner had been working as a deputy sheriff for two and a half years, Ms. Jones did not interview the Columbus County Sheriff or the school principal for whom Petitioner served as a school resource officer since August 2017. Ms. Jones had no knowledge of what Petitioner did while working as a school resource officer or how he discharged his duties as a school resource officer. T. pp. 56-57, 67.

22. When asked if Petitioner was ever charged by any district attorney, arrested by law enforcement, arraigned in court or tried in court for the crime of "Willful Neglect of Duties," Ms. Jones responded, "To my knowledge, no." T. pp. 59-60. Ms. Jones failed to advise the Probable Cause Committee, in her memorandum, that Petitioner was never charged with the crime of "Willfully Failing to Discharge Duties." T. p. 61.

23. At no time did the Highway Patrol find that Petitioner committed a crime of "Willfully Failing to Discharge Duties" or "Willfully Neglecting his duties" in violation of N.C. Gen. Stat. § 14-230.

24. The Tribunal specifically finds as fact that Petitioner has never been charged for the crime of "Willfully Failing to Discharge Duties." Petitioner has never been found civilly responsible for any such crime. Petitioner has never been charged, arraigned, or been indicted by a grand jury for the crime Respondent alleges he committed. T. pp. 59-60.

25. Despite having no legal or law enforcement background, and relying solely based upon the Patrol's IA investigation for her investigative results, Ms. Jones advised the Probable Cause Committee that this matter was before them to determine whether sufficient evidence exists to establish probable cause to believe that "in 2016, Maurice Devalle committed the felony offense of "Obtaining Property by False Pretenses" in violation of N.C. Gen. Stat. § 14-100, such that certification should be denied as set out in Rule .0204(a)(1)." Resp. Ex. 1, p. 2.

26. Ms. Jones also advised the Probable Cause Committee, in her memorandum:

You may also wish to consider whether there is sufficient evidence to show Maurice Devalle committed the class B offense of "Willful Fail to Discharge Duties" in violation of NC General Statute § 14-230, such that certification should be denied as set out in Rule .0204(d)(1).

Resp. Ex. 1, p. 2. Lastly, Ms. Jones stated that "[b]ased upon Mr. Devalle's untruthfulness in the reporting of his work time, failing to report for duty and/or the commission of criminal offenses," this matter is before the Probable Cause Committee to determine whether Petitioner possesses the good moral character required of all justice officers. Resp. Ex. 1, p. 2.

27. At the Probable Cause Committee hearing, Ms. Jones read her memorandum to the Committee, and Petitioner was allowed an opportunity to present evidence. Petitioner did not see or receive a copy of Ms. Jones' memorandum to the Probable Cause Committee. T. pp. 266-267.

Neglect of Duty

28. The State Highway Patrol Policy Manual, Directive H.1, paragraph XV Reporting for Duty provided:

Members shall report for duty at the time and place required by assignment or orders and shall be capable of performing their duties. They shall be properly equipped and cognizant of information required for the proper performance of duty so that they can immediately perform their duties.

Resp. Ex. 10, p. 5.

29. In November of 2016, pursuant to the Patrol's policy on Reporting for Duty, Highway Patrol protocol required Patrol employees to check in as being on-duty when they reached their assigned duty station. The Patrol employees used the code 10-41 to designate in the Patrol's computerized automated dispatch system ("CAD") that they were in uniform and on duty in their assigned duty station. All Patrol employees were required to remain in their duty station until the time they were supposed to end work. After ending work, they could then travel to their residences in an off-duty travel status. Resp. Ex. 10, p. 5; T. p. 113.

30. At all times relevant to this case, Petitioner's duty station with the Patrol was Wayne County, North Carolina where he served as a sergeant.

31. At all times relevant to this case, Petitioner's residence was in Wake County, approximately 35 miles from the county line of Wayne County and approximately 44 miles from Troop C, District 2, District Office in violation of Patrol policy regarding residency requirements. At this hearing, Petitioner admitted that he violated the Patrol's policy on residency requirements by living in Wake County.

32. At the time of his dismissal, Petitioner's chain of command was First Sergeant Jerry Burton (now retired) as Petitioner's direct supervisor, Troop C Lieutenants Christopher Morton and Steve Finney, and Captain Jeffrey O'Neill Holmes (now retired).

33. At all times relevant to this case, Sgt. Burton, Capt. Holmes, Capt. Henderson, Lt. Morton, all knew Petitioner was living in Wake County.

34. In early 2016, Petitioner met with Capt. Holmes, Lt. Finney, and First Sgt. Gerald Burton. Captain Holmes told Petitioner that "he was to be where he was supposed to be and doing what he was supposed to be doing." Petitioner and First Sgt. Burton acknowledged to Capt. Holmes they understood what he was telling them.

35. Later that day, First Sgt. Burton discussed Captain Holmes' statements from earlier that day with Petitioner and emphasized that this meant that Petitioner should be in Wayne County when he was supposed to be working. T. p. 319.

36. During the Patrol's Internal Affairs interview, Petitioner admitted that he understood he was supposed to be in Wayne County when working.

37. Petitioner's prior supervisor in Durham County, First Sgt. Cain, had approved Petitioner to work from home. When Petitioner began working in Wayne County, he continued to work from home while on duty.

38. The undisputed evidence proved that Sgt. Burton, Petitioner's direct supervisor, never granted Petitioner permission to work from home while on-duty and assigned to Wayne County. In fact, Petitioner never requested to do so. T. pp. 319-321. Petitioner never informed Sgt. Burton that he was working from his home in Wake County.

39. After Hurricane Matthew hit Wayne County in 2016, Sgt. Burton never told Petitioner he could work from home instead of working in Wayne County. Sgt. Burton advised Petitioner and Sgt. Whitley that they were strictly in a response mode, they were not going to be taking preventive patrol action, and as supervisors, we needed to make sure troopers had what they needed. Sgt. Burton told Petitioner and Sgt. Whitley that when they were not specifically going to meet the needs of the troopers or the citizens of the county, they should be stationary so they're not burning fuel and that "we should be just ready to go." T. pp. 320, 329.

40. On Friday, November 11, 2016, at approximately 2:53 p.m., Petitioner signed into the Highway Patrol CAD system as being on-duty while he remained at his residence in Wake County.

41. At approximately 7:00 p.m. that day, and upon orders from his superiors, Captain Morton visited Petitioner's residence. Petitioner's patrol vehicle was parked in the driveway. Petitioner came to the door wearing shorts and a t-shirt. Morton asked Petitioner if he was on-duty. Petitioner replied that he was off-duty, but he thought the CAD was showing him as on-duty. Petitioner told Capt. Morton he had attempted to sign off-duty from the CAD system at 5:00 p.m. through his mobile data computer (MDC), but realized he had not done so. Petitioner acknowledged that he had not left the house that day. He indicated he was sick, and that he would not be leaving his home and reporting to the Patrol's district office in Wayne County. Petitioner questioned Morton's leadership style and the legacy Morton was leaving at the Patrol.

42. Immediately after Lt. Morton left Petitioner's residence, at approximately 7:35 p.m., Petitioner signed off-duty on the Patrol's CAD system.

43. At hearing, Petitioner admitted that during this two-hour period on November 11, 2016, he was lying in bed and showering, and had not been engaged in work-related activity. Petitioner admitted that he had been at his residence and out of uniform the whole day. Petitioner never called anyone on the Patrol for coverage or notified anyone, including Sgt. Burton, that he was ill.

44. Petitioner signed in for work eight days between September 22, 2016 and October 6, 2016. T. p. 149. During that period, Petitioner claimed 767 miles driven on his Weekly Reports of Daily Activity.

45. The Patrol's fuel logs for Petitioner's vehicle established that Petitioner had only driven a total of 292 miles during the September 22 to October 6, 2016 period. If Petitioner had driven to the Wayne County line from his residence in Wake County on eight days, it would have required a minimum of 560 miles. T. pp. 149-151. Having driven a total of 292 miles, Petitioner could have made it to the Wayne County line and back only three times during these eight working days. Resp. Exs. 15, 20, 21.

46. Substantial evidence at hearing proved that Petitioner was not present at his duty station in Wayne County from September 22, 2016 through October 6, 2016 at times when he claimed that he was present and on-duty.

47. At no time did Petitioner contact Patrol troopers or his superiors and tell them that he was not at his duty station and that he needed coverage.

48. Petitioner admitted that on occasion he drove home for lunch and stayed at home for extended periods of time while he was on-duty. Petitioner admitted that on multiple occasions, he returned to his residence before the end of his shift and remained there for the remainder of his shift.

49. Petitioner also admitted that he signed on as on-duty and stayed home for his entire shift on some days. Petitioner admitted that when he was on-duty at his residence he should have been in Wayne County. Petitioner admitted this was a violation of Patrol policy.

50. Petitioner admitted that time spent at his residence was nonetheless time he claimed hours worked for the Patrol.

51. At hearing, Petitioner attempted to justify his working from home while on-duty by stating that a "very, very small percentage" of his job duties involved being on patrol. However, Petitioner completed weekly reports of daily activity claiming approximately 40% of his time was spent on patrol in Wayne County.

52. The transcripts of Petitioner's statements to the Patrol's Internal Affairs on November 15, 2016, November 18, 2016, and March 27, 2017 corroborate Petitioner's above-cited admissions. They also provide substantial statements of Petitioner made closer in time to the events in question, shedding light on facts that Petitioner allegedly no longer recalls.

53. Petitioner alleged that during the eight days he was on-duty between September 22, 2016, and October 6, 2016, he was allegedly spending time on administrative duties. He described his duties as a sergeant as including answering and sending e-mails, scheduling, preparing documentation for wrecker inspections, and personnel file inspections. T. pp 274-75. However, during that period, Patrol records showed Petitioner only sent two emails – one of which was for fantasy football. T. pp. 155-156.

54. At hearing, Sgt. Burton opined that sergeants could fulfill most of their supervisory duties while located outside their assigned county, and from anywhere in the State, as they have mobile computers and air cards in their cars. T. p. 321.

55. However, sergeants must be located in their assigned duty station to meet with the troopers they supervise to ensure the troopers have all they need, to oversee the troopers' completion of paperwork, completion of inspection inventory and evidence, their

completion of wrecker files and inspections, and to review video from the troopers' in-car videos. Sergeants must interview people who file complaints and handle evidence at the district office. Sergeants are also required to meet and build rapport with the community by participating in numerous community activities. T. p. 322.

56. Part of Petitioner's responsibilities as a supervisor was overseeing troopers that were his junior. The undisputed evidence at hearing established that Petitioner supervised between one and seven troopers daily in his district. Petitioner acknowledged that his duty was to assist troopers in the field when they called for assistance and review their work. T. pp. 220-221.

57. The State paid Petitioner to perform his duties in his assigned duty station of Wayne County. However, for multiple days, Petitioner was not in Wayne County, and accordingly, Petitioner could not perform his duties as assigned. Common sense dictates that Petitioner was unable to provide training and support to troopers under his command in light of his absence from Wayne County. As a result, Wayne County was deprived of Petitioner's services and the public paid Petitioner for work that he did not fulfill. Petitioner's conduct also created an inherent lack of trust and dispersion of the reputation of the Patrol, which is also a public injury.

Good Moral Character

58. Steadman Jody Greene is the Sheriff of Columbus County, Whiteville, North Carolina. Petitioner works for Sheriff Greene as a deputy in the capacity of the school resource officer. In this capacity, Petitioner is armed with both lethal and non-lethal weapons. T. p. 31. Petitioner serves at the pleasure of the Sheriff. T. p. 32. At the time of hearing, Sheriff Greene had just been released from the hospital and voluntarily came to testify that Petitioner does a fine job for him and how important Petitioner is to his agency. T. p. 30.

59. When Sheriff Greene hired Petitioner, he was aware that Petitioner had been dismissed from the Patrol. Petitioner had told him. Sheriff Greene is satisfied that Petitioner has good moral character. Given the importance of the school resource officer, Greene must place someone in that position upon which he has a special trust and confidence. Sheriff Green has that special trust and confidence in Petitioner. T. pp. 32-33. He hired Petitioner based upon the principal, school board members, parents and students all recommending him and not based upon the past. T. p. 31. Sheriff Greene is satisfied that Petitioner had performed his duties "above and beyond." T. p. 34. If Petitioner was unable to serve as a deputy, it would negatively impact Greene's force.

60. Based on Petitioner's service as a deputy sheriff, Sheriff Greene has no hesitation as to Petitioner's truthfulness or ability to tell the truth. T. p. 38.

61. Jeremiah Johnson is the principal at East Columbus High School in Lake Waccamaw, North Carolina. T. p. 233. Johnson knows Petitioner in two capacities: as the school resource officer at East Columbus High School and as an assistant football coach

and track coach at that school. Petitioner has served, and continues to serve, in those capacities since 2017. T. p. 233. Johnson has had the opportunity to watch Petitioner perform those duties “every day” that school is in session. T. p. 233. Johnson described Petitioner, in performing his duties as a school resource officer, as “dedicated to the school, dedicated to the students, dedicated to the staff. He comes to school – comes to work every day, is there to serve and protect. He’s part of my administrative team. He’s almost my right-hand man.” T. p. 234.

62. When asked whether he had had an opportunity to form an opinion as to Petitioner’s character, Johnson said, “He is an awesome person. He is an awesome man. And I’m not just saying that for me. I’m saying that for my kids at my school.” T. p. 234. When asked whether Petitioner had ever committed any act that would cause Johnson to doubt Petitioner’s capacity to be truthful, Johnson answered, “No.” T. p. 234.

63. Mr. Johnson has no doubt, based on what he’s observed from Petitioner, that Petitioner does not lack the character necessary to serve as a school resource officer at Johnson’s high school. T. p. 239. Johnson would not have permitted Petitioner to serve as an assistant football coach and track coach, in addition to serving as a school resource officer, if he had any doubts about Petitioner’s character. T. p. 235.

64. Mr. Johnson opined that if Petitioner was no longer able to serve East Columbus as a school resource officer, the lack of Petitioner’s presence would make the school less safe. T. p. 236.

65. Johnson also spoke of the strong professional bond that exists between himself as principal and Petitioner as the school resource officer. T. p. 236. Johnson thinks that Petitioner is the best school resource officer he has ever worked with and as a school administrator, Johnson has trained many SROs. T. p. 239. He opined that interaction with the students would suffer tremendously if Petitioner was not at East Columbus High. “. . . These kids, they look up to him.” T. p. 239. Johnson explained how Petitioner has helped other students such as buying shoes for kids, bought lunch for kids, and given them food. “You know, we all – he’s where he – he’s where he belongs.” T. p. 240.

66. Johnson completed his testimony by describing an event where Petitioner intervened to help a student stay in school after a traumatic family event. That student recently signed a letter of intent to play college football. T. p. 240.

67. No one from the Respondent, including Jones, ever contacted Johnson regarding Petitioner’s performance of his duties as a school resource officer, his character, or anything else. T. p. 238.

68. Neither Ms. Jones nor Respondent presented any evidence at hearing regarding Petitioner’s performance of his duties as a Columbus County deputy sheriff. Respondent failed to present any evidence concerning any activities involving Petitioner that took place more recently than 2016. T. p. 56. While four witnesses from the Patrol

testified regarding Petitioner's dismissal from the Patrol, none of those witnesses possessed any first-hand knowledge of how Petitioner has conducted himself in terms of truthfulness or conformance with policies while employed as a deputy sheriff in Columbus County. T. pp. 168-169. None of those witnesses opined that Petitioner lacked good moral character, either generally, or to serve as a deputy sheriff in this State.

69. At hearing, Petitioner's testimony exhibited a lack of candor and sincerity during cross-examination by Respondent's counsel. During Respondent's questions, Petitioner was evasive and feigned a lack of memory or confusion in response to Respondent's questions about Petitioner's conduct with the Patrol in 2016. Petitioner remained evasive and elusive even after having his recollection refreshed with his prior statements. In contrast, Petitioner readily recollected circumstances from this period, when questioned by his own counsel, without having to review any materials.

70. During his case in chief, Petitioner presented significant evidence demonstrating that Petitioner has rehabilitated and rebuilt his career since 2016 and 2017 while working as a school resource officer at East Columbus High School. Such evidence showed that Petitioner has exhibited highly favorable traits, including but not limited to helping, teaching, and serving as positive role models for students at East Columbus High School not only as a school resource officer, but as a coach in two sports. Sheriff Greene and Principal Johnson opined that Petitioner's absence from their respective entities would have a negative impact on their workplaces. The scope and magnitude of Petitioner's character traits, as witnessed by Sheriff Greene and Principal Johnson, qualify as extenuating circumstances which the Respondent should consider in determining whether Petitioner possesses the good moral character required of a justice officer.

CONCLUSIONS OF LAW

1. The parties are properly before the undersigned, and jurisdiction and venue are proper. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. The parties received proper notice of the hearing in this matter. To the extent that the Findings of Facts contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels. *Charlotte v. Heath*, 226 N.C. 750, 755, 40 S.E.2d 600, 604 (1946); *Peters v. Pennington*, 210 N.C. App. 1, 15, 707 S.E.2d 724, 735 (2011).

2. A court need not make findings as to every fact that arises from the evidence and need only find those facts which are material to the settlement of the dispute. *Flanders v. Gabriel*, 110 N.C. App. 438, 440, 429 S.E. 2d 611, 612, *aff'd*, 335 N.C. 234, 436 S.E. 2d 588 (1993).

Article 3A Case Procedure

3. Pursuant to 12 NCAC 10B .0201(b), before taking action against an agency, school, or individual for a violation, Respondent "**shall investigate** the alleged violation

and, when required by the Director, shall present a report of its findings to the Probable Cause Committee of the Commission.” (Emphasis added) After an investigation, Respondent’s Probable Cause Committee may convene to consider investigative reports and determine whether probable cause exists that the Commission’s rules have been violated, or it may delegate authority to the Director for further action.

4. If a person appeals the Probable Cause Committee’s finding of probable cause to take an agency action, then N.C. Gen. Stat. § 150B-38(b) requires the agency, before taking any action, to give the parties an opportunity for a hearing without undue delay and notice not less than 15 days before the hearing. Notice to the parties shall include:

- (1) A statement of the date, hour, place, and nature of the hearing;
- (2) **A reference to the particular sections of the statutes and rules involved; and**
- (3) **A short and plain statement of the facts alleged.**

(Emphasis added)

5. N.C. Gen. Stat. §§ 150B-40, 150B-41, and 150B-42 establish how an Article 3A contested case hearing is conducted including the presentation of evidence, arguments on the issues or policies, and the evidence to be considered during such hearing. N.C. Gen. Stat. § 150B-41(b) specifically states that “[o]ther factual information or evidence shall not be considered in determination of the case, except as permitted under subsection (d) of this section.” Likewise, N.C. Gen. Stat. § 150B-42(a) declares that “Findings of Fact shall be based exclusively on the evidence and on matters officially notices.” The plain language of N.C. Gen. Stat. § 150B-38, read in conjunction with the other statutes under Article 3A, Chapter 150B of the North Carolina General Statutes, is clear that the evidence at a contested case hearing is limited to the particular statutes and rules involved, the facts alleged in Respondent’s Notification of Probable Cause issued to an applicant or certified officer, and evidence submitted in rebuttal.

6. Pursuant to the requirements of N.C. Gen. Stat. § 150B-38(b) and Respondent’s January 28, 2019 Notification of Probable Cause, the particular statutes and rules involved and the facts at issue in this case were whether substantial evidence exists to deny Petitioner’s application for justice officer certification for:

- (1) committing the Class B misdemeanor offense of “Willfully Failing to Discharge Duties” in violation of N.C. Gen. Stat. § 14-230 in 2016 while employed as a certified law enforcement officer with the North Carolina State Highway Patrol officer, and
- (2) no longer possessing the good moral character required of all justice officers. Resp. Ex. 2.

Commission of Class B Misdemeanor

7. 12 NCAC 10B .0204(d)(2) provides that Respondent may deny certification of a criminal justice officer when the Commission finds that the applicant has committed a Class B misdemeanor within five years prior to the date of appointment.

8. 12 NCAC 10B .0103(16) provides that the term "Commission" as it pertains to criminal offenses means:

[A] finding by the North Carolina Sheriffs' Education and Training Standards Commission or an administrative body, pursuant to the provisions of G.S. 150B, that a person **performed the acts necessary to satisfy the elements of a specified criminal offense.**

(Emphasis added)

9. 12 NCAC 10B .0103(10)(b)(i) defines a "Class B Misdemeanor" as:

[A]n act committed or omitted in violation of any common law, criminal statute or criminal traffic code of this State which is classified as a Class B Misdemeanor as set forth in the "Class B Misdemeanor Manual" as published by the North Carolina Department of Justice.

10. "Willfully Failing to Discharge Duties" in violation of North Carolina General Statute § 14-230 is a Class B Misdemeanor according to the "Class B Misdemeanor Manual."

11. The essential elements of the offense of "Willfully Failing to Discharge Duties" described in N.C. Gen. Stat. § 14-230 has two components: (1) that the defendant be an official of a State institution, and (2) that he willfully failed to discharge the duties of his office. Additionally, injury to the public is a judicially recognized element of the crime. *State v. Birdsong*, 325 N.C. 418, 384 S.E.2d 5 (1989). Specifically, injury to the public must occur as a consequence of the omission, neglect or refusal. *State v. Rhome*, 120 N.C. App. 278, 462 S.E.2d 656 (1995).

12. In this case, Petitioner's role of being a Highway Patrol officer satisfies the first element of the subject offense. See, e.g., *State v. Fesperman*, 264 N.C. 160, 141 S.E.2d 255 (1965); *State v. Teeter*, 264 N.C. 162, 141 S.E.2d 253 (1965); *State v. Stogner*, 264 N.C. 163, 141 S.E.2d 248 (1965); *State v. Hord*, 264 N.C. 149, 141 S.E.2d 241 (1965).

13. Respondent's investigation into Petitioner's conduct as a Patrol sergeant was adequate enough for the Probable Cause Committee to find probable cause for a hearing on the merits in this matter. However, such investigation was insufficient, standing alone, to prove the charges at issue in this contested case hearing.

14. Once probable cause is found to exist, and the Notice of Probable Cause is appealed to a contested case hearing, the scope of evidence allowed during such hearing is established Article 3A, Chapter 150B of the North Carolina General Statutes.

15. The substantial evidence, through testimony and documentation, at this contested case hearing on the merits established the second element of the “Willful Failing to Discharge Duties” offense.

a. Petitioner’s duties required him to be present in Wayne County when on-duty, as that was his duty station. In early 2016, numerous superiors emphasized this fact to Petitioner. However, between September 22, 2016 and November 11, 2016, Petitioner failed to leave his home and report to his duty station on numerous occasions.

b. At no time did Petitioner contact Patrol troopers or his superiors and tell them that he was not at his duty station and that he needed coverage.

c. Petitioner admitted that on occasion he drove home for lunch and stayed at home for extended periods of time while he was on-duty. Petitioner admitted that on multiple occasions, he returned to his residence before the end of his shift and remained there for the remainder of his shift. Petitioner also admitted that he signed on as on-duty and stayed home for his entire shift on some days. Petitioner admitted that when he was on-duty at his residence he should have been in Wayne County. Petitioner admitted this was a violation of Patrol policy.

16. Petitioner admitted that time spent at his residence was nonetheless time he claimed hours worked for the Patrol. Petitioner received compensation for his alleged working hours. The State was deprived of the services for which it subsequently paid Petitioner based upon his false assertions, and Wayne County was deprived of his Patrol services. This amounts to injury to the public.

17. Accordingly, substantial evidence presented at hearing support the Probable Cause Committee’s finding that Petitioner committed the crime of “Willfully Failing to Discharge Duties” in violation of North Carolina General Statute § 14-230.

Maintain Good Moral Character

18. Pursuant to 12 NCAC 10B .0204(b)(2), Respondent “shall revoke, deny, or suspend the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer: “fails to meet or maintain any of the employment or certification standards required by 12 NCAC 10B .0300.” One of these minimum standards of employment is that the applicant be of good moral character pursuant to 12 NCAC 10B. 0301(a)(8).

19. Good moral character has been defined as “honesty, fairness, and respect for the rights of others and for the laws of the state and nation.” *In re Willis*, 288 N.C. 1, 10, 215 S.E.2d 771, 779 (1975), *appeal dismissed*, 423 U.S. 976, 96 S. Ct. 389, 46 L. Ed. 2d 300 (1975).

20. In this case, Petitioner was dishonest and untruthful when he reported he was performing his duties as a Patrol sergeant assigned to Wayne County, when in fact he was at home in Wake County on numerous occasions. He did not respect the rights of those members of the public of Wayne County who are entitled to law enforcement protection – rights which he was sworn to protect. He failed to uphold the laws of this State as a Patrol officer while remaining at his home while on-duty for the Patrol.

21. In addition, Petitioner submitted false time and mileage sheets, thereby defrauding the State, and falsely claiming to have been actively serving members of the community. Petitioner’s untruthfulness in such actions demonstrate a lack of good moral character at that time.

22. Generally, isolated instances of conduct are insufficient to properly conclude that someone lacks good moral character. *In Re Rogers*, 297 N.C. 48, 59, 253 S.E. 2d 912, 919 (1979).

23. In Petitioner’s case, the aforementioned conduct did not occur one time, but occurred multiple times over the course of weeks or months in 2016, even after being cautioned about such conduct by his superiors. Moreover, Petitioner’s profound lack of candor and truthfulness while testifying under oath at this contested case demonstrated that truthfulness is still a challenge for Petitioner.

24. Nonetheless, Sheriff Greene and Principal Johnson established that Petitioner has rehabilitated and rebuilt his character, since being fired by the Patrol, and as a deputy sheriff, and as school resource officer and coach at East Columbus High School. For two and a half years, Petitioner’s service as a deputy sheriff has been nothing but exemplary both of that service and of Petitioner’s character while engaging in that service. Both Sheriff Greene and Principal Johnson, who have supervised and worked with Petitioner since 2017, opined not only was Petitioner of good moral character, but that his absence would actually be harmful to the students of East Columbus High School and to the Sheriff’s force, and would make the school less safe. Such testimony was credible, honest, and believable. Even given Petitioner’s cross-examination testimony at hearing, the totality of the evidence rebutted the finding by the Probable Cause Committee that Petitioner lacks the good moral character required of a justice officer and showed that Petitioner has rehabilitated his character since 2017.

25. 12 NCAC 10B .0205 provides:

When the Commission suspends, revokes, or denies the certification of a justice officer, the period of sanction shall be:

- (3) for an indefinite period, but continuing so long as the stated deficiency, infraction, or impairment continues to exist, where the cause of sanction is: . . .
 - (b) failure to meet or maintain the minimum standards of employment or certification;
 - . . .
 - (d) commission or conviction of offenses as specified in 12 NCAC 10B .0204(d)(2) . . .

The Commission may either reduce or suspend the periods of sanction where revocation, denial or suspension of certification is based upon the Subparagraphs set out in 12 NCAC 10B .0204(d) or substitute a period of probation in lieu of revocation, suspension or denial following an administrative hearing. This authority to reduce or suspend the period of sanction may be utilized by the Commission when extenuating circumstances brought out at the administrative hearing warrant such a reduction or suspension.

26. The sanction for the charges as issue here, under 12 NCAC 10B .0205(3)(b) and (d), continues for so long as the stated deficiency exists. As held in *In re Dillingham*, 188 N.C. 162, 124 S.E.130 (1924), when one seeks to establish a restoration of a character, the question becomes one of “time and growth.”

27. The credible and persuasive testimonies by Sheriff Greene and Principal Johnson demonstrated that Petitioner has restored his character so that he now possesses the good moral character required to continue certification as a deputy sheriff.

28. Based upon the foregoing Findings of Fact and Conclusions of Law, extenuating circumstances exist for the Commission to exercise its discretion under 12 NCAC 10B .0205 and reduce the sanction required under 12 NCAC 10B .0205(3).

PROPOSAL FOR DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby proposes that Respondent **DENY** Petitioner’s justice officer certification indefinitely based on the commission of the Class B Misdemeanor offense of “Willfully Failing to Discharge Duties” in violation of N.C. Gen. Stat. § 14-230. Extenuating circumstances exist to justify the Commission exercising its discretion and reducing the sanction in this case under 12 NCAC 10B .0205.

NOTICE

The **North Carolina Sheriffs' Education and Training Standards Commission** will make the Final Decision in this contested case. As the Final Decision maker, that agency is required to give each party an opportunity to file exceptions to this proposal for decision, to submit proposed findings of fact, and to present oral and written arguments to the agency pursuant to N.C. Gen. Stat. § 150B-40(e).

The undersigned hereby orders that agency to serve a copy of its Final Decision in this case on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6700.

This the 3rd day of June, 2020.



Melissa Owens Lassiter
Administrative Law Judge

CERTIFICATE OF SERVICE

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service:

Jennifer J Knox
The Law Firm of Jennifer Knox, PC
jenknox74@gmail.com
Attorney For Petitioner

Ryan Frank Haigh
North Carolina Department of Justice
rhaigh@ncdoj.gov
Attorney For Respondent

Benjamin Zellinger
North Carolina Department of Justice
bzellinger@ncdoj.gov
Attorney For Respondent

This the 3rd day of June, 2020.



Jerrod Godwin
Administrative Law Judge Assistant
N.C. Office of Administrative Hearings
1711 New Hope Church Road
Raleigh, NC 27609-6285
Phone: 919-431-3000

STATE OF NORTH CAROLINA
COUNTY OF COLUMBUS

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
20 CVS 1273

MAURICE DEVALLE,
Petitioner,

v.

NC SHERIFFS' EDUCATION
AND TRAINING STANDARDS
COMMISSION,
Respondent.

2021 JAN 22 A 11:03
COLUMBUS CO. C.J.C.
88

MOTION TO DISMISS &
RESPONSE TO PETITION FOR
JUDICIAL REVIEW

NOW COMES the Respondent, the North Carolina Sheriff's Education and Training Standards Commission, by and through its attorneys, Joshua H. Stein, Attorney General and Ryan F. Haigh, Special Deputy Attorney General, and hereby responds in defense and in answer to the Petitioner's Request for Judicial Review.

STATEMENT OF THE CASE

Petitioner is currently an applicant for deputy sheriff certification through the Columbus County Sheriff's Office.

Respondent previously certified Petitioner through the Cabarrus County Sheriff's Office as a telecommunicator from 1996 to 1998, as a detention officer from September 1996 to October 1996, and as a deputy sheriff from September 1996 to May 1998. The North Carolina Criminal Justice Education and Training Standards Commission previously certified Petitioner through the N.C. Department of Public Safety/N.C. State Highway Patrol (hereinafter "the Patrol") from November 25, 1998 through April 24, 2017.

In November 2016, a local news station reported to the Patrol that Petitioner spent various days at his residence in Wake County, North Carolina while he was supposed to be working at his duty station in Wayne County, North Carolina. Petitioner became the subject of an internal investigation at the Patrol. On or about April 24, 2017, the Patrol terminated Petitioner from employment for substantiated untruthfulness, neglect of duty, and insubordination in violation of the Patrol's policies, and for violating the Patrol's policy on residency. (Resp. Exh. 1, p. 9; T1 p. 62)

Petitioner began employment with the Columbus County Sheriff's Office on or about August 2017 and he applied for certification as a deputy sheriff. Probable cause was found to deny his certification by Respondent. (Resp. Exh. 2) Respondent's Probable Cause Committee found probable cause to deny Petitioner certification based on: (a) Petitioner's commission of the misdemeanor of willfully failing to discharge his duties, in violation of North Carolina General Statute § 14-230, and (b) Petitioner's failure to maintain the minimum employment standards required by Respondent in that Petitioner lacked the good moral character required of all justice officers. (Resp. Exh. 2)

Petitioner contested Respondents' findings in the Office of Administrative Hearings. Both parties received proper notice of hearing and an administrative hearing was held on December 3-4, 2019 before the Honorable Melissa Owens Lassiter, Administrative Law Judge. On June 3, 2020, Judge Lassiter filed her

Proposal for Decision with the Office of Administrative Hearings, concluding that a preponderance of the evidence supported the conclusion that Petitioner committed the Class B Misdemeanor of "Willfully Failing to Discharge Duties" in violation of N.C. Gen. Stat. Section 14-230. Judge Lassiter found a violation that supported a denial of Petitioner's license, noted that the Commission may, due to alleged extenuating circumstances exercise its discretion to impose a lesser sanction. (Proposed Final Agency Decision)

Judge Lassiter found that Petitioner was dishonest and untruthful and that he defrauded the State. Judge Lassiter also held that:

[a]t the hearing, Petitioner's testimony exhibited a lack of candor and sincerity during cross-examination by Respondent's counsel. During Respondent's questions, Petitioner was evasive and feigned a lack of memory or confusion in response to Respondent's questions about Petitioner's conduct with the Patrol in 2016. Petitioner remained evasive and elusive even after having his recollection refreshed with his prior statements. In contrast, Petitioner readily recollected circumstances from this period, when questioned by his own counsel, without having to review any materials.

(Proposed Final Agency Decision, p. 11) Judge Lassiter nonetheless incongruously held that Petitioner had rehabilitated his moral character since 2017. (Proposed Agency Decision, pp. 15-16)

On September 17, 2020, Petitioner's case came on before the full Commission for a Final Agency Decision, and Respondent concluded that Petitioner's certification should be indefinitely denied pursuant to Petitioner's lack of good moral character. The Commission also found that Petitioner's certification should be denied for five

years, and that this sanction would be suspended for five years, pursuant to Petitioner's commission of the Class B Misdemeanor of "Willfully Failing to Discharge Duties." On or about November 9, 2020, Respondent sent its Final Agency Decision to counsel for Petitioner via email. (Final Agency Decision) On December 9, 2020, Petitioner served the Commission with a Petition for Judicial Review.

STATEMENT OF FACTS

Petitioner was formerly a Sergeant with the Patrol. During 2015 and 2016 while Petitioner was a trooper, Patrol policy was that a trooper must live within 20 miles of his or her duty station. (FOF 62) Petitioner's duty station with the Patrol was Wayne County, North Carolina. (FOF 30) On February 15, 2015, Respondent requested to reside in Johnston County at 400 Hillside Drive. (FOF 63, Resp. Exh. 13) This residence was within the 20 mile requirement. This was approved. (FOF 63) Petitioner admitted during the internal affairs investigation that he never stayed, resided, or parked his patrol car at this residence. (FOF 66) Petitioner thereby submitted a falsified official document in the course of his duties with regard to his residency status. (FOF 67)

In fact, Petitioner resided on Blue Ridge Road, in Southern Wake County. (FOF 64) Petitioner's residence was approximately 35 miles from the county line of Wayne County and approximately 44 miles from Troop C, District 2, District Office, in violation of Patrol policy at that time. (FOF 31, 65) Petitioner admitted that he violated Patrol policy in this regard.

The State Highway Patrol Policy Manual, Directive H.1, paragraph XV provides that:

Members shall report for duty at the time and place required by assignment or orders and shall be capable of performing their duties. They shall be properly equipped and cognizant of information required for the proper performance of duty so that they can immediately perform their duties.

(Resp. Exh. 10; FOF 28) Pursuant to this rule, in November, 2016, Highway Patrol protocol required troopers not to call in as being on-duty until they reached their duty station. (FOF 29) In early 2016, Petitioner met with Captain Holmes, Lieutenant Finney and First Sergeant Gerald Burton (hereinafter "Burton") to ensure that Petitioner understood that "he was to be where he was supposed to be and doing what he was supposed to be doing." (FOF 34) Later that day, Burton, Petitioner's direct supervisor, followed up with Petitioner and emphasized that this meant that Petitioner should be in Wayne County when he was supposed to be working. (FOF 35) Petitioner later admitted to Internal Affairs for the Patrol that he understood he was supposed to be in Wayne County when working. (FOF 36) At no time was Petitioner granted permission while assigned to Wayne County to work from home while on-duty. (FOF 38) Petitioner never requested to do so. (FOF 39)

On Friday, November 11, 2016, at approximately 2:53 P.M., Petitioner signed into the Highway Patrol CAD system as being on-duty. (FOF 41) Petitioner was at home in Wake County and not dressed for work when he signed on as being on-duty at his duty station – Wayne County. Captain Christopher Morton (hereinafter

"Morton"), upon orders from superiors, went to Petitioner's residence at approximately 7:00 P.M., and found Petitioner still present and out of uniform. (FOF 42) Petitioner acknowledged that the system was still showing him as on-duty. Petitioner alleged that he had attempted to sign off for the first time around 5:00 P.M., over two hours after he had claimed to be on-duty at his duty station. (FOF 42) Petitioner admitted that during this two hour period he was lying in bed and showering, and had not been engaged in work-related activity. (FOF 45) Petitioner admitted that he had been at his residence, out of uniform, the whole day. (FOF 45) Petitioner, however, never called anyone on the Patrol for coverage or notified anyone that he was ill. (FOF 45) Petitioner did actually sign-off without issue at approximately 7:35 P.M., immediately after Morton left his residence in Wake County. (FOF 44)

Petitioner refused Morton's request to have Petitioner come to Patrol Headquarters, and stated that he wasn't leaving his home. (FOF 43) He instead questioned Morton's leadership style and the legacy he was leaving at the Patrol. (FOF 43) Morton was a superior in Petitioner's chain of command at the time. (FOF 32)

Petitioner signed in to work eight days between September 22, 2016, and October 6, 2016. (FOF 47) Petitioner claimed 767 miles driven during that period on his Weekly Reports of Daily Activity. (Resp. Exh. 16) The Patrol fuel logs which keep track of vehicle mileage demonstrated that Petitioner had only driven 292 miles

during that period. (FOF 47) If Petitioner had merely driven to the Wayne County line from his residence in Wake County on eight days, it would have required a minimum of 560 miles. (FOF 47) Having driven a total of 292 miles, Petitioner could have made it to the Wayne County line and back only three times during these eight working days. (FOF 47) Petitioner was not present at his duty station in Wayne County during this period at times when he claimed that he was present and on-duty. (FOF 48) At no time did Petitioner contact Patrol troopers or superiors and let them know that he was not at his duty station and that he needed coverage. (FOF 49)

Petitioner falsified his timekeeping for these dates as it was impossible for him to spend the time he claimed he was on patrol in light of his location in Wake County and the mileage on his vehicle. (FOF 68)

Petitioner admitted that on occasion he drove home for lunch and stayed at home for extended periods of time. (FOF 50) Petitioner admitted that on multiple occasions he returned to his residence prior to the end of his shift and remained there for the remainder of his shift. (FOF 50) Petitioner admitted that he signed on as on-duty and stayed home for his entire shift. (FOF 50) Petitioner admitted that when he was on-duty at his residence he should have been in Wayne County. (FOF 51) Petitioner admitted this was a violation of Patrol policy. (FOF 51) Petitioner admitted that time spent at his residence was nonetheless time that he claimed hours worked with the Patrol. (FOF 52)

Despite these hours spent at home while on-duty, Petitioner did not modify his time sheets accordingly by deducting this time from hours worked. (FOF 68) Petitioner attempted to justify these circumstances by stating that a “very, very small percentage” of his job duties involved being on patrol. (FOF 54) However, Petitioner filled out weekly reports of daily activity and claimed that approximately 40% of his time was spent on patrol in Wayne County. (FOF 54) Additionally, for the period of eight days reviewed between September 22, 2016, and October 6, 2016, in which Petitioner was allegedly spending time on administrative duties, Petitioner only sent two emails - one of which was for fantasy football. (FOF 56)

Petitioner was responsible for overseeing troopers that were his junior as part of his responsibilities as a supervisor. (FOF 58, 59) The public was injured by Petitioner’s conduct. The State paid Petitioner to perform duties in Wayne County when Petitioner was not in Wayne County, and accordingly could not perform those duties. Wayne County was deprived of his services. (FOF 60) The public paid Petitioner for work that he did not fulfill. (FOF 60) Petitioner was also unable to provide training and support to troopers under his command in light of his absence from Wayne County. (FOF 60) Petitioner’s conduct also created an inherent lack of trust and dispersion of the reputation of the Patrol, which is also a public injury. (FOF 60)

The Patrol dismissed Petitioner after it was determined that he violated the Patrol's policies with regard to truthfulness, neglect of duty, insubordination, and violation of rules establishing residence policies. (FOF 9)

At Petitioner's Administrative Hearing of December 3-4, 2019, Petitioner elicited testimony from Columbus County Sheriff Steadman Greene ("Greene"), who hired Petitioner as a school resource officer after his termination from the Patrol. (FOF 69) Greene expressed that Petitioner has good moral character and that he believes Petitioner to be truthful. (FOF 70, 71) Petitioner also elicited the testimony of Principal Jeremiah Johnson ("Johnson") from East Columbus High School, where Petitioner serves as a school resource officer. (FOF 72) Johnson testified that Petitioner was an "awesome man" and that he was not aware of Petitioner committing any act that would cause him to doubt Petitioner's capacity to be truthful. (FOF 73)

Petitioner testified under oath on December 3, 2019, after the period which Greene and Johnson used to make their credibility determinations of Petitioner. (FOF 80) Petitioner's conduct while testifying demonstrated a lack of candor and veracity with regard to his statements. (FOF 80) In fact, the record demonstrates that Petitioner feigned lack of memory, or confusion when Respondent sought answers to questions about 2016, even after his recollection was refreshed with his prior statements. (FOF 80) In contrast, Petitioner readily recollected circumstances from this period when questioned by his own counsel without having to review any materials. (FOF 80)

Transcripts of Petitioner's statements to Patrol Internal Affairs on November 15, 2016, November 18, 2016, and March 27, 2017, corroborate testimony regarding Petitioner's former admissions. (Resp. Exhs. 32-36) They also provide substantial statements of Petitioner made closer in time to the events in question, shedding light on facts that Petitioner allegedly no longer recalls.

MOTION TO DISMISS

As shown in the Standard of Review below, there are six specific and unique bases of claims that Petitioner may raise. Petitioner fails to identify which subdivision of N.C. Gen. Stat. §150B-51(b) he is using as a basis for his claim. This has frustrated Respondent's ability to appropriately respond. More importantly, the Petition is not sufficiently explicit to allow for effective judicial review of Respondent's proceedings. Our Court of Appeals has held that the Petitioner must explicitly state his challenges to the decisions or procedures of the agency decision. In this context, "[e]xplicit" is defined in this context as 'characterized by full clear expression: being without vagueness or ambiguity: leaving nothing implied.'" Gray v. Orange County Health Dept., 119 N.C. App. 62, 70, 457 S.E.2d 892, 898 (1995) (quoting Vann v. N.C. State Bar, 79 N.C. App. 173, 173-74, 339 S.E.2d 97, 98 (1986)). Petitioner has failed to provide this Court with a Petition free of ambiguity with regard to his claim. The Petition must therefore be dismissed.

STANDARD OF REVIEW

N.C. Gen. Stat. § 150B-49 requires that Petitioner apply to this Court to present additional evidence, and if the Court is satisfied that the evidence is material to the issues, is not merely cumulative, and could not reasonably have been presented at the administrative hearing, the Court may remand the case so that additional evidence can be taken. Petitioner has not applied to this Court to present additional evidence. Consequently, Petitioner may not present additional evidence to the Court. This Court's determination is therefore limited to the record and evidence presented before the Commission.

The standard of review for a petition for judicial review is set forth in N.C. Gen. Stat. § 150B-51 as follows:

(b) The court reviewing a final decision may affirm the decision or remand the case for further proceedings. It may also reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional provisions;
- (2) In excess of the statutory authority or jurisdiction of the agency or administrative law judge;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Unsupported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31 in view of the entire record as submitted; or

(6) Arbitrary, capricious, or an abuse of discretion.

(c) In reviewing a final decision in a contested case, the court shall determine whether the petitioner is entitled to the relief sought in the petition based upon its review of the final decision and the official record. With regard to asserted errors pursuant to subdivisions (1) through (4) of subsection (b) of this section, the court shall conduct its review of the final decision using the *de novo* standard of review. With regard to asserted errors pursuant to subdivisions (5) and (6) of subsection (b) of this section, the court shall conduct its review of the final decision using the whole record standard of review.

N.C. Gen. Stat. § 150B-51.

When the assigned error contends that the agency violated §§ 150B-51(b)(1), (2), (3), or (4), the court engages in *de novo* review. N.C. Dep't of Env't and Nat. Res. v. Carroll, 358 N.C. 649, 659, 599 S.E.2d 888, 895 (2004). "Under the *de novo* standard of review, the trial court consider[s] the matter anew[] and freely substitutes its own judgment for the agency's." Id. at 660, 599 S.E.2d at 895 (2004) (internal quotation marks omitted).

With respect to §§ 150B-51(b)(5) or (6), on the other hand, the reviewing court applies the "whole record test." Id. (quoting Meads v. N.C. Dep't of Agric., 349 N.C. 656, 663, 509 S.E.2d 165, 170 (1998)). Under the whole record test, this Court is not free to reach its own conclusions on the merits. The "whole record" test is not a tool of judicial intrusion and this Court is not permitted to replace the agency's judgment with its own, even though the court might rationally justify reaching a different conclusion. Floyd v. N.C. Dep't of Com., 99 N.C. App. 125, 392 S.E.2d 660 (1990). Moreover, the mere existence of conflicting evidence does not permit the reviewing

court to weigh the evidence and substitute its determination for that of the administrative agency. Daily v. N.C. State Bd. of Dental Exam'rs, 60 N.C. App. 441, 299 S.E.2d 473, rev'd on other grounds, 309 N.C. 710, 309 S.E.2d 219 (1983). Therefore, under the whole record test, as long as the facts found below are supported by the record, they are not to be disturbed on appeal, even if Petitioner's version of the facts could have been supported as well. Carroll, 358 N.C. at 659, 599 S.E.2d at 895 (2004).

If, after the whole record has been reviewed, substantial competent evidence is found which would support the agency ruling, this Court must uphold the ruling. Daily v. N.C. State Bd. of Dental Exam'rs, 60 N.C. App. 441, 444, 299 S.E.2d 473, 476 (1983); Sav. & Loan Ass'n v. Sav. & Loan Comm'n, 43 N.C. App. 493, 497-498, 259 S.E.2d 373, 376 (1979). Substantial evidence is relevant evidence a reasonable mind might accept as adequate to support a conclusion." Carroll, 358 N.C. at 660, 599 S.E.2d at 895 (2004) (internal quotation marks and citations omitted).

ARGUMENT

Petitioner spends about one paragraph of his Petition reviewing evidence related to Petitioner's moral character, which is the bulk of the Petition given its paltry nature. In light of Petitioner's failure to identify the basis for his claim, Respondent makes the assumption that Petitioner is claiming that the Agency's findings with regard to Petitioner's lack of truthfulness and related lack of good moral character were not supported by substantial evidence.

The rule articulating the requirement that law enforcement officers must be of good moral character is contained in N.C. Gen. Stat. §§ 17E-17(c) and 12 NCAC 10B.0301(a)(8), whereby Respondent requires that:

Every Justice Officer employed or certified in North Carolina shall be of good moral character as defined in: In re Willis, 288 N.C. 1, 215 S.E.2d 771 (1975), appeal dismissed 423 U.S. 976 (1975); State v. Harris, 216 N.C. 746, 6 S.E.2d 854 (1940); In re Legg, 325 N.C. 658, 386 S.E.2d 174 (1989); In re Applicants for License, 143 N.C. 1, 55 S.E. 635 (1906); In re Dillingham, 188 N.C. 162, 124 S.E. 130 (1924); State v. Benbow, 309 N.C. 538, 308 S.E.2d 647 (1983); and later court decisions that cite these cases as authority[.]

Id.

Good moral character requires “honesty, fairness, and respect for the rights of others and for the laws of the state and nations.” In re Willis, 288 N.C. 1, 215 S.E.2d 771, 776-77 (1975) (citing Konigsberg v. State, 353 U.S. 252, 262-63, 1 L. Ed. 2d 810, 819 (1957)) The fundamental attributes of good moral character include maturity and professional discipline. In re Legg, 325 N.C. 658, 386 S.E.2d 184 (1989) Good character is not just the absence of bad character, but it means that a person conducts him or herself with upright character. In re Applicants for License, 143 N.C. 1, 55 S.E. 635 (1906).

‘(Good moral character) is something more than the absence of bad character. It is the good name which the applicant has acquired, or should have acquired, through association with his fellows. It means that he must have conducted himself as a man of upright character ordinarily would, should or does. Such character expresses itself, not in negatives nor in following the line of least resistance, but quite often in the will to do the unpleasant thing, if it is right, and the resolve not to do the pleasant thing, if it is wrong.’ Character thus encompasses both

a person's past behavior and the opinion of members of his community arising from it.

In re Rogers, 297 N.C. 48, 58, 253 S.E.2d 912, 918 (1979)

Pursuant to 12 NCAC 10B .0205(3)(b), Respondent was required to suspend the certification of Petitioner for an indefinite period for failure to maintain the minimum standards of employment in light of his lack of good moral character. Even a cursory review of the record and evidence demonstrate that the Commission's decision was based upon substantial evidence.

I. RESPONDENT'S FINAL AGENCY DECISION IS SUPPORTED BY SUBSTANTIAL EVIDENCE.

Petitioner engaged in repeated premeditated dishonest conduct. Petitioner redoubled the frauds he perpetrated by lying about them while under oath.

A. Substantial Evidence was Presented that Petitioner was Dishonest and Untruthful When he Worked for the Patrol.

i. Petitioner knowingly filed a false residency form.

Petitioner was required to live within 20 miles of his duty station as part of Patrol regulations. (Resp. Exh. 8, p.1, lns. 19-23, 37) However, Petitioner actually lived 43 miles away in Wake County, in violation of this policy. (T1 pp. 52, 96, 150; Resp. Exh. 21) On or about January 7, 2015, Petitioner filed a residency form claiming that he resided on 400 Hillside Drive, Smithfield, NC 27577. (Resp. Exh. 13) Petitioner admitted that this was in fact another trooper's address, and that he had never even been to that address. (Resp. Exh. 33, pp. 3, 17)

ii. Petitioner falsely checked in as being on active duty when he was not.

The Patrol has a policy that a Trooper is not to clock in as being on-duty until he or she is in his or her duty station. (T1 p. 216 lns. 1-4) As previously stated, Petitioner resided in Raleigh, approximately 43 miles from the Wayne County line, which was his duty station. Petitioner admitted that he falsely reported as being on-duty when he was at home 43 miles away, and not at his duty station. (T1 pp. 215, 216 lns. 1-4; Resp. Exh. 4 p. 343) Petitioner admitted he knew this was wrong, and that he should have been in Wayne County before reporting in as being on-duty. (T1 p. 213) Petitioner admitted that he never got permission to violate Patrol policy in this way from his supervisors in Wayne County. (T1 p. 217)

Petitioner admitted that there were times when he signed on as being on-duty in Wayne County, but stayed home in Wake County for his entire shift. (T1 p. 212-13, 215; Resp. Exh. 33, p. 19; Resp. Exh. 4, p. 340) Petitioner admitted that he knew he was not allowed to go home for lunch because he lived out of his duty station. (T1 p. 162) Petitioner admitted that nonetheless, on occasion, he would drive the 43 miles home for lunch and stay there for the remainder of his shift. (T1 p. 209; Resp. Exh. 33 p. 12) Petitioner admitted that other times he would come home before the end of his shift and stay there. Petitioner admitted that he would nonetheless claim the hours he was at home as hours worked on his time sheets. (T1 p. 218)

It was Morton's understanding that the news media had been monitoring Petitioner's residence and had reported that his car was still in the driveway when he was clocked in as being on-duty. (T1 p. 119) On Friday, November 11, 2016,

Petitioner signed in as being on-duty at 2:53 P.M. (Resp. Exh. 38; T1 p. 97) At 7:00 P.M. Captain Morton arrived at Petitioner's home, four hours into Petitioner's shift. (T1 p. 96) Morton found Petitioner in a T-shirt and shorts. (T1 p. 105) When Morton asked if he was on-duty, Petitioner stated he was off-duty, but he believed CAD was showing him as on-duty. (T1 p. 106) Petitioner admitted he had not left the house all day. Petitioner alleged that he was sick. Petitioner was not scheduled to work until 5:00 P.M., but despite this fact and allegedly feeling sick, he signed in two hours early. (Resp. Exh. 4, p. 378; Resp. Exh. 16) Petitioner signed off immediately after he was discovered by Morton without difficulty. (T1 p. 104) Petitioner never notified anyone at the Patrol that he was not available or that he was sick. (Resp. Exh. 4, p. 383)

Petitioner admitted that preventive patrolling was part of his duties, and that he could not fulfill that duty from his home. (Resp. Exh. 4, p. 410) Petitioner admitted that there were times during Hurricane Matthew when he reported as being on-duty when he actually remained at his home in Wake County. (Resp. Exh. 4, p. 412) In an attempt to justify his conduct, petitioner alleged, under oath, on April 9, 2019, that Patrol policy is that he can check in as on-duty anywhere in the State, as that is his jurisdiction. (Resp. Exh. 4, p. 365) This statement was patently false.

iii. Petitioner falsified timesheets and payroll with the Patrol.

A trooper also has to fill out a weekly report of daily activity as to their hours worked, mileage, and how many of their hours worked were actually spent on patrol. (See Resp. Exh. 16) The patrol also keeps track of vehicle mileage via fuel logs. (See

Resp. Exh. 20) Major James Wingo compared these documents and made a table. (Resp. Exh. 21) These records demonstrate that between September 22, 2016 and October 6, 2016, Petitioner claimed to have worked eight days. Petitioner also claimed mileage of 767 miles during this period. The Patrol fuel logs show that only 292 miles were put on Petitioner's vehicle during this period. (T1 pp. 147-150; Resp. Exh. 21) Given that Petitioner resided in Wake County, 43.9 from the Wayne County district office, Petitioner needed to drive 87.8 miles round trip each day he worked. The Wayne County line, the closest point at which Petitioner could legitimately report as being on-duty was 35 miles away from his home. Even assuming that Petitioner drove only to the county line and stayed there all shift, he could have only accomplished this, round trip, four times based upon the fuel mileage on his vehicle. Accordingly, he couldn't possibly have been properly on-duty working for eight days as he claimed. (T1 p. 151) Petitioner nonetheless claimed all the hours on Beacon payroll. (See Resp. Exh. 17)

The Patrol keeps tabs of when a trooper signs on ("10-41") and signs off on a CAD report. (See Resp. Exh. 15) Troopers also do timekeeping in Beacon Payroll system to record hours worked, pay and leave, which is reflected on their pay stubs. (T1 p. 139; See Resp. Exh. 17) Sirena Jones (hereinafter "Jones") the individual who served as the investigator for the commission in this matter, reviewed these documents and records of the Patrol, including Petitioner's own admissions. (T1 pp. 49-53; Resp. Exh. 1) Jones determined that between September 26, 2016, and

October 14, 2016, Petitioner claimed more hours on Beacon than he actually reported as being on-duty and working five times. (Resp. Exh. 1)

B. Petitioner's Character Witnesses failed to Establish that his Dishonesty and Propensity to Defraud his Employer had been Rehabilitated.

Steadman Jody Greene testified that Petitioner had the good moral character to serve as a school resource officer. (T1 p. 31) Greene stated that he did not have any hesitation as to Petitioner's "ability to tell the truth." (T1 p. 38) However, Greene admitted he did not know what previously happened at the Patrol that resulted in Petitioner's firing, and did not endeavor to find out. (T1 p. 36-37) Greene failed to provide any examples of Petitioner's conduct which related to his alleged rehabilitation as it applies to truthfulness and honesty. (See generally T1 pp. 29-39)

Jeremiah Johnson testified that he was not aware of any act that would cause him to doubt Petitioner's "capacity to be truthful." (T1 p. 234) However, Johnson failed to provide any examples of Petitioner's conduct which related to his alleged rehabilitation as it applies to truthfulness and honesty.

Johnson and Greene testified that Petitioner has the "ability to tell the truth" or the "capacity to be truthful." This is not what is at issue. The issue is whether Petitioner has been rehabilitated to such a degree that he WILL tell the truth, not only when it's easy, but when it's difficult. Petitioner's conduct at the hearing shows that this is not the case.

C. Substantial Evidence was Presented that Petitioner Continued to be Dishonest and Untruthful, and Therefore not Rehabilitated.

Both Judge Lassiter and the Commission found:

Petitioner's conduct while testifying demonstrated a lack of candor and veracity with regard to his statements. In fact, the record demonstrates that Petitioner feigned lack of memory, or confusion when Respondent sought answers to questions about 2016, even after his recollection was refreshed with his prior statements. In contrast, Petitioner readily recollected circumstances from this period when questioned by his own counsel without having to review any materials. This demonstrates a profound lack of candor and truthfulness on the part of Petitioner.

(FOF 80)

During direct examination, Petitioner routinely feigned a lack of recollection of facts related to his case because they happened four years ago. (See, e.g., T1 pp. 187, 198, 201) Moreover, even when Petitioner's recollection was refreshed by providing him with his former statements in writing, Petitioner nonetheless said that he could not remember these matters. (See, e.g., T1 pp. 189, 193, 209)

A review of the evidence and testimony demonstrates the falsity of Defendant's assertions while testifying under oath on December 3, 2019. As provided above, Petitioner routinely used the excuse that he couldn't remember events from four years back. This assertion is not credible. Petitioner lost his job based upon the events that he was asked to recall. These are not the type of memories that fade away. This is particularly true when a person has been utilizing those memories to challenge the repercussions of those events in the interim. The events at issue occurred in late 2016. Petitioner was interviewed regarding these events by Patrol internal affairs on November 15, 2016 and March 24, 2017. (See Resp. Exhs. 32-36) The Patrol did not terminate Petitioner based upon these events until April 24, 2017.

After termination, Petitioner filed a grievance with the Patrol which involved Petitioner making statements about these events on June 6, 2017. (See Resp. Exh. 1, p. 26) Petitioner was involved in mediation with the Patrol about these events up through February 2018. (See Resp. Exh. 1, p. 26) In late 2018 or early 2019, Petitioner attended a probable cause hearing involving these facts. (T1 p. 266) In early 2019, the Commission found probable cause to deny Petitioner's justice officer certification, and Petitioner appealed shortly thereafter, challenging the events and findings presented. (See Resp. Exh. 2) Petitioner then testified under oath about these events on April 9, 2019. (Resp. Exh. 4 pp. 354-434) Petitioner engaged regular, repeated activities which compelled him to recall, review and discuss the events of late 2016. By this point, these life-changing events that Petitioner had had to revisit and regurgitate over four years would have had to have been burned into his brain.

Some of the clearest falsehoods regarding his recollection are elucidated by comparing his sworn testimony on April 9, 2019, to his testimony on December 3, 2019. Prior to Petitioner being caught at home when he was supposed to be working in his duty station, Petitioner's superiors, Captain Holmes and Burton made it clear that he needed to be in Wayne County when he was on-duty. (T1 p. 207). Petitioner made statements verifying this information to internal affairs on November 15, 2016. (T1 p. 208) On April 9, 2019, Petitioner testified under oath that he recalled being told "[b]e where you're supposed to be when you're supposed to be there, doing what you're supposed to be doing." (Resp. Exh. 4, p. 359) In contrast, at the hearing of

December 3, 2019, Petitioner was asked about a meeting he had with Captain Holmes and Burton. Petitioner responded “[s]ir, it’s been approximately four years. I do not recall what he –what he stated to me at that meeting.” (T1 p. 187) Petitioner was then shown his former statement in writing, but claimed that his recollection could not be refreshed. (T1 p. 189)

On April 9, 2019, Petitioner testified under oath that he logged into the CAD system as being on-duty at 3 P.M. on November 11, 2016, and that he did this through the use of his personal MDC. (Resp. Exh. 4 pp. 375, 385) When Petitioner was asked under oath on December 3, 2019, whether he logged himself in, he testified that he did not know. (T1 p. 198) Again, after being presented with his former statement, Petitioner still asserted that he did not know the answer. (T1 p. 199)

On April 9, 2019, Petitioner testified under oath that there were days when he logged in as being on-duty but he stayed at home. (Resp. Exh. 4, p. 340) When Petitioner was asked under oath on December 3, 2019 whether this occurred, Petitioner indicated he didn’t remember. (T1 p. 211) Again, after being presented with his former statement, Petitioner still asserted that he did not know the answer. (T1 pp. 211-212)

On April 9, 2019, Petitioner admitted that face to face communication was important with troopers that he supervised. (Resp. Exh. 4, pp. 412, 421) Petitioner admitted that part of these duties involved riding with troopers that he supervised. (Resp. Exh. 4, p. 423) While under oath on December 3, 2019, Petitioner asserted

that his duties did not involve training or assisting troopers and that he was able to complete all his duties from home. (T1 pp. 221-223) Burton refuted these statements, and testified that various duties can only be completed, in person, in the duty station, such as reviewing video, evidence, meeting with complainants, and meeting with your troopers. (T2 p. 322)

On April 9, 2019, Petitioner admitted that pursuant to his required responsibilities as a supervisor, 40% of his time was supposed to involve supervision of troopers and only 35% of his time was to be used for administrative duties. (Resp. Exh. 4, p. 417) Similarly, Major Holmes testified that “a huge part” of Petitioner’s job was “being with the men out there” in the field. (Resp. Exh. 3, p. 13) In contrast, on December 3, 2019, Petitioner attempted to justify his claiming of hours worked while he was at home, stating that only “very, very small percentage” of his job duties involved being on patrol or in the field with troopers. (T1 p. 222) Additionally, a review of his own entries on his weekly report of daily activities show that he claimed that he was actually in Wayne County, on patrol, around 30% of the time. (See Resp. Exh. 16)

Further, somehow Petitioner had no problem recalling events from the same period, or events going back 19 years, when his own counsel inquired about them. (See T1 pp. 248-254). In contrast to Petitioner, five Patrol officers, who had no personal stake in the matter, and who testified about the events in question, had very

little difficulty recollecting what occurred or having their recollection refreshed when needed. (See generally, T1 pp. 83-182; T2 pp. 316-357)

Finally, on December 3, 2019, Petitioner testified that he was “truthful the entire time with the Highway Patrol.” (T1 p. 264) To this day, Petitioner cannot be truthful about what he did, even when his falsehoods are presented in front of him in black and white, as provided above. “[Good moral character] is something more than the absence of bad character. [. . .] It means that [Petitioner] must have conducted himself as a man of upright character ordinarily would, should or does. Such character expresses itself, not in negatives nor in following the line of least resistance, but quite often in the will to do the unpleasant thing, if it is right, and the resolve not to do the pleasant thing, if it is wrong.” See In re Rogers, 297 N.C. 48, 58, 253 S.E.2d 912, 918 (1979) . Here, despite being under oath, Petitioner did the easy and pleasant thing in an attempt to cast himself in a positive light. He flatly denied being untruthful, and feigned that he couldn’t recall events that negatively affected his case. The right thing – the hard thing – would have been to acknowledge his prior dishonesty in order to move forward and possibly be found to have been rehabilitated at some future time. Instead, Petitioner made false statements under oath. His own conduct demonstrates that his character has not been rehabilitated.

II. RESPONDENT'S FINAL AGENCY DECISION IS NOT ARBITRARY AND CAPRICIOUS AND IS NOT AN ABUSE OF DISCRETION.

The Petition does not seem to allege that the Commission's decision was arbitrary and capricious or an abuse of discretion. The following is provided in an abundance of caution. While the court reviewing an agency decision may reverse or modify that decision if it is "arbitrary or capricious," the court, however, has no authority to overturn "decisions within agency discretion when that discretion is exercised in good faith and in accordance with law." [citation omitted]. Lewis v. N.C. Dep't of Hum. Res., 92 N.C. App. 737, 740, 375 S.E.2d 712, 714 (1989). All procedural requirements, established pursuant to the North Carolina Administrative Code, as applicable to the Commission, were followed, as were all procedural requirements of the Administrative Procedures Act under N.C. Gen. Stat. Chapter 150B. Petitioner has been afforded every opportunity to present his explanation to the Commission.

An agency decision is arbitrary and capricious when it is "whimsical because it indicates a lack of fair and careful consideration; when it fails to indicate any course of reasoning in the exercise of judgment . . . or when it imposes or omits procedural requirements that result in manifest unfairness under the circumstances within the letter of statutory requirements." State ex rel Comm'r of Ins. v. N.C. Rate Bureau, 300 N.C. 381, 269 S.E.2d 547 (1980).

In light of the facts developed in this matter, Respondents' actions were clearly not arbitrary and capricious. As stated above, Respondent followed all procedural

requirements of the North Carolina Administrative Code as well as, the Administrative Procedures Act under N.C. Gen. Stat. Chapter 150B. The Petitioner was afforded every opportunity to present his explanation to the Respondent, including at a contested case hearing and before Respondent's full Commission. Respondent's decision to revoke Petitioner's justice officer certification was based on the evidence in the record, and no evidence has been submitted, and none exists, to prove that Respondent acted "whimsically," or abused its discretion in deciding Petitioner's case. Accordingly, Petitioner's allegations that Respondent acted arbitrarily, capriciously and/or abused its discretion are without merit and should be denied.

CONCLUSION

For the reasons stated above, the Findings and Conclusions of Respondent are supported by substantial evidence and are not arbitrary, capricious or involve an abuse of discretion. The Petition for Judicial Review should be dismissed or alternatively, should be denied. Accordingly, Respondent Commission's Final Agency Decision should be affirmed.

Respectfully submitted this 15th day of January, 2021.

JOSHUA H. STEIN
Attorney General

A handwritten signature in black ink, appearing to read "Ryan F. Haigh", is written over a horizontal line.

Ryan F. Haigh
Special Deputy Attorney General
N.C. Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602
Telephone: (919) 716-6572
N.C. State Bar No.: 43456
rhaigh@ncdoj.gov
ATTORNEY FOR THE RESPONDENT

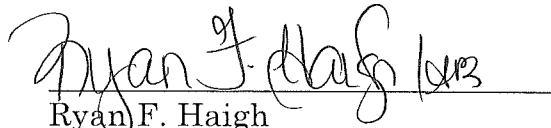
CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the foregoing MOTION TO DISMISS & RESPONSE TO PETITION FOR JUDICIAL REVIEW has been duly served upon Respondent by depositing a copy of same in the United States Mail, first-class, postage prepaid, addressed as follows:

Jennifer Knox
Attorney for the Petitioner
4600 Marriott Drive, Suite 200
Raleigh, NC 27612
Jennifer@jenniferknoxlaw.com

This the 15th day of January, 2021.

JOSHUA H. STEIN
Attorney General

A handwritten signature in dark ink, appearing to read "Ryan F. Haigh", is written over a horizontal line.

Ryan F. Haigh
Special Deputy Attorney General
N.C. Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602
Telephone: (919) 716-6572
N.C. State Bar No.: 43456
rhaigh@ncdoj.gov
ATTORNEY FOR THE RESPONDENT

STATE OF NORTH CAROLINA
COUNTY OF COLUMBUS

GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

NO. 20 CVS 1273

Maurice Devalle
Petitioner

v.

North Carolina Sheriffs' Education And
Training Standards Commission
Respondent

FILED
2021 NOV 22 P 2:25
COLUMBUS CO NC
BY *SS*

ORDER ON JUDICIAL REVIEW

1. This administrative law occupational licensing case arose from the denial of Petitioner Maurice Devalle's application for certification by the N.C. Sheriffs Education and Training Standards Commission (hereafter the "Commission") as a Columbus County Deputy Sheriff.
2. Petitioner Devalle petitioned for judicial review pursuant to N.C.G.S. 150B-43, 51. The parties are properly before the Court and the Court has subject matter jurisdiction. Petitioner is entitled to judicial review of the adverse Final Agency Decision below. A Superior Court has jurisdiction on a Petition for Judicial Review to reverse a police certification Commission pursuant to N.C.G.S. 150B-51. See *Scroggs v. N.C. Criminal Justice Education and Training Standards Commission*, 101 N.C. App. 699, 400 S.E.2d 742 (1991).
3. There are two regulations in issue in this case, including the Commission's good moral character rule (13 NCAC 10B .0301(a)(8) and the rule requiring an agency investigation of the actual charge (12 NCAC 10B.0201).
4. The undersigned has applied the standard of review from N.C.G.S. 150B-51 and decisional law including *N.C.D.E.N.R. v. Carroll*, 358 N.C. 649, 599 S.E.2d 888 (2004).

Procedural Background

5. The Commission denied Petitioner's application for certification indefinitely based upon its determination that Petitioner lacks the requisite good moral character to serve as a Deputy Sheriff. Petitioner challenges the Final Agency Decision of the

Commission, arguing that the Commission erred as a matter of law in its interpretation and application of its good moral character rule.

6. The undersigned Superior Court Judge heard this matter on October 29, 2021, in the Columbus County Superior Court. Respondent Commission was represented by Special Deputy Attorney General Ameshia Cooper. Petitioner was represented by Attorneys J. Michael McGuinness and William C. Gore, Jr.
7. Respondent filed a Motion to Dismiss and Response to the Petition, which was twenty-seven-pages long, including substantial argument addressing the good moral character issues before the Court.
8. Petitioner Devalle submitted a notebook of key record excerpts and copies of statutory law and case authorities Respondent also presented a notebook of authorities. The undersigned also heard arguments of counsel addressing both the Motion to Dismiss and the Petition for Judicial Review.
9. The undersigned has reviewed and considered the entire record, authorities and arguments submitted in this case.

Issues for Superior Court Determination

1. Whether the Petition for Judicial Review must be dismissed?
2. Was the Final Agency Decision below affected by an error of law? Did the Commission below err as a matter of law in its interpretation and application of its good moral character rule?
3. Whether Petitioner is rehabilitated from his actions while serving with the Highway Patrol in 2016?
4. Whether Petitioner s *presently* a person of good moral character?
5. Whether the Coimmissdion failed to properly investigate the charge of an alleged lack of good moral character?

Respondent's Motion to Dismiss

10. Respondent filed a motion to dismiss the Petition along with a Response to the Petition. Respondent essentially argues that Petitioner's Petition for Judicial Review is not sufficiently specific and detailed. See Respondent's Motion to Dismiss and Response to the Petition for Judicial Review at 10. Respondent

devotes one paragraph in less than one page to its motion to dismiss.

11. The Petition for Judicial Review is a three-page document and pled many enumerated arguments, points, legal authority, evidence and a stated exception. The Petition made clear that Petitioner "was seeking judicial review of the Final Agency Decision, filed on November 8, 2020, by the North Carolina Sheriff's Education and Training Standards Commission..." The Petition specifically addressed the Commission's good moral character rule including by specific citation to the rule (12 NCAC 10B .0301(a)(8)).
12. The Petition further pled and made arguments including but not limited to the fact that Petitioner has exhausted all administrative remedies. The Petition properly and accurately recounted the underlying administrative and adjudicative history of the case. The Petition stated its exception to the Final Agency Decision and then argued regarding the good moral character issue before the Commission. The Petition cited further regulatory authority, statutory authority and even Supreme Court precedent addressing good moral character in occupational licensing cases. The Petition further pled summaries of the evidence supporting Petitioner's position as pled in the Petition.
13. The Petition further specifically pled the relief sought including to reverse the portion of the Final Agency Decision and for Petitioner to qualify for certification.
14. The undersigned finds and concludes that the Petition is adequate and sufficient to constitute a valid Petition for Judicial Review. The Petition afforded clear notice of the purpose and nature of the of the Petition and key underlying facts and made sufficient and appropriate reference to other documents to afford Respondent detailed notice of the Petition. The Petition was a full and clear expression of Petitioner's position seeking judicial review under Chapter 150B.
15. In Respondent's Motion to Dismiss and Response to the Petition for Judicial Review, Respondent submitted a detailed response and made extensive arguments in response to the Petition challenging the good moral character determination made by the Respondent Commission below. In its Response and Motion, Respondent argued principles of good moral character law and cited cases interpreting good moral character requirements in occupational licensing cases.
16. Respondent was in no way blindsided by a lack of notice or detail. Both in its Response to the Petition and as reflected in Respondent's argument before the Court, Respondent was aware of Petitioner's exception, claims and even the legal theory underlying Petitioner's Petition.

17. Wherefore, after careful consideration of Respondent's position, arguments and authorities, the undersigned DENIES Respondent's Motion to Dismiss.

The Administrative Record and Hearings Below

18. The administrative law hearing below was held on December 3 and 4, 2019 before the Honorable Melissa Owens Lassiter. The 394-page transcript shows the testimony of various witnesses and the admission of exhibits.
19. On June 3, 2020, Judge Lassiter issued a lengthy Proposal for Decision, where she demonstrated a detailed review and analysis of the evidence and issues of law. Judge Lassiter made 70 Findings of Fact and 28 Conclusions of Law. Among other findings, Judge Lassiter found:

27. The credible and persuasive testimonies by Sheriff Greene and Principal Johnson demonstrated that Petitioner has restored his character so that he now possesses the good moral character required to continue certification as a deputy sheriff.

Judge Lassiter concluded, at Conclusion of Law 24:

Sheriff Greene and Principal Johnson established that Petitioner has rehabilitated and rebuilt his character, since being fired by the Patrol, and as a deputy sheriff, and as school resource officer and coach at East Columbus High School. For two and a half years, Petitioner's service as a deputy sheriff has been nothing but exemplary both of that service and of Petitioner's character while engaging in that service. Both Sheriff Greene and Principal Johnson, who have supervised and worked with Petitioner since 2017, opined not only was Petitioner of good moral character, but that his absence would actually be harmful to the students of East Columbus High School and to the Sheriff's force, and would make the school less safe. Such testimony was credible, honest, and believable. Even given Petitioner's cross-examination testimony at hearing, the totality of the evidence rebutted the finding by the Probable Cause Committee that Petitioner lacks the good moral character required of a justice officer and showed that Petitioner has rehabilitated his character since 2017.

The Commission Decision Under Judicial Review

20. The Sheriffs' Commission issued a Final Agency Decision, executed by the Commission Chairman on October 6, 2020. The Commission Decision contained

81 Findings of Fact and 28 Conclusions of Law. The Commission found a violation of the offense of failing to discharge duties of office and imposed a 5-year denial of certification but suspended that sanction for five years on the condition that Petitioner not violate any law (other than infractions) of this state or any federal law or any rules of the Sheriffs' Commission or the N.C. Criminal Justice Education and training Standards Commission. However, as to the charge of an alleged lack of good moral character, the Commission found a violation of the rule and ordered that Petitioner's certification be denied indefinitely. However, the Commission found:

81. During his case in chief, Petitioner presented significant evidence demonstrating that Petitioner has rehabilitated and rebuilt his career since 2016 and 2017 while working as a school resource officer at East Columbus High School. Such evidence showed that Petitioner has exhibited highly favorable traits, including but not limited to helping, teaching, and serving as positive role models for students at East Columbus High School not only as a school resource officer, but as a coach in two sports. Sheriff Greene and Principal Johnson opined that Petitioner's absence from their respective entities would have a negative impact on their workplaces. The scope and magnitude of Petitioner's character traits, as witnessed by Sheriff Greene and Principal Johnson, qualify as extenuating circumstances which the Respondent should consider in determining whether Petitioner possesses the good moral character required of a justice officer.

21. Commission Finding 81 is a highly relevant Commission finding, as the Commission found that Petitioner has rehabilitated and rebuilt his law enforcement career.

In Commission Conclusion of Law 24, the Commission concluded:

Sheriff Greene and Principal Johnson testified that Petitioner has rehabilitated and rebuilt his character since being fired by the Patrol, and as a deputy sheriff, and as school resource officer and coach at East Columbus High School. Greene and Johnson testified that for two and a half years, Petitioner's service as a Deputy Sheriff has been nothing but exemplary both of that service and of Petitioner's character while engaging in that service. Such testimony was credible, honest, and believable.

The Commission Good Moral Character Rule

22. The Commission has a rule, in 12 NCAC 10B .0301(a) (8), which provides that an applicant “be of good moral character.” The Commission’s good moral character rule does not provide a definition or defined elements, other than citing to some cases. This approach to defining a regulatory standard essentially requires a deputy sheriff to apprehend case authorities in order to understand what conduct that the rule may prohibit.
23. The U.S. Supreme Court and many lower Courts – and the Commission itself – also have recognized how the good moral character rule is “unusually ambiguous.” *Konigsberg v. State*, 353 U.S. 252, 262-63 (1957).
24. In *Jeffrey Royall v. N.C. Sheriffs’ Education and Training Standards Commission*, 09 DOJ 5859, the Commission adjudicated a good moral character case and issued its Final Agency Decision. There, the Commission explained its interpretation of its good moral character rule. This Court finds that the good moral character principles within the Conclusions of Law within *Royall* represent an accurate summary of the law and this Court adopts those principles.

Findings of Fact

25. The undersigned adopts the 81 Findings of Fact by the Commission.
26. The undersigned makes the following additional findings of fact, based upon the substantial evidence of record.
27. Petitioner Maurice Devalle was hired as a Columbus County Deputy Sheriff by the Columbus County Sheriff in 2017. Petitioner was certified as a police officer under the other Commission, but when becoming a Deputy Sheriff, he had to apply for certification by the Sheriffs’ Commission.
28. Petitioner had served with the Highway Patrol for 19 years, from 1998 until 2017, and had earned the rank of Sergeant. In all those years up until termination, it appears that he had only had one warning.
29. The testimony of Sheriff Greene and Principal Johnson demonstrated that Petitioner has very good moral character. There was no evidence to refute the testimony of Sheriff Green or Principal Johnson.
30. Sheriff Greene testified that “Everybody in the east end of the County recommended him [Devalle]. The principal, school board members, the parents,

the students.” Sheriff Greene testified that Devalle has good moral character to serve as an SRO. A school board member, Randy Coleman, has called the Sheriff and was “constantly bragging on what he’s done, the drug arrests he has made...” Sheriff Greene testified that Petitioner Devalle has performed “above and beyond”; and that Devalle is “important” to his agency.

31. Principal Jeremiah Johnson testified: he is the principal at East Columbus High School, where Petitioner was an SRO and also was an assistant football coach and track coach. Principal Johnson has testified how Devalle was dedicated to the school and the students. “He’s almost my right-hand man.” He testified that Devalle is “awesome.” He is “great.” In 13 years as a principal working with SROs, Devalle is “the best so far.” He has a “bond with the kids.” Principal Johnson testified that he has “trust and confidence in his judgment.” Devalle does not lack character.” Principal Johnson explained how Devalle has helped with needy kids: “He’s bought shoes for kids. He has given them their lunch. He has given them their food.”
32. Devalle was terminated by the Highway Patrol back in 2016. The Commission merely relied upon that Patrol investigation long ago – which did not investigate Devalle’s good moral character at the time of his application for certification.
33. The record also shows that Petitioner was commended for his professionalism by Superior Court Judge Doug Sasser. T247.
34. The credible and persuasive testimonies by Sheriff Greene and Principal Johnson demonstrated that Petitioner has restored his character so that he now possesses the good moral character required to continue to be certified as a deputy sheriff.
35. When Sheriff Greene hired Petitioner, he was aware that Petitioner had been dismissed from the Patrol as Petitioner had told him. Sheriff Greene is satisfied that Petitioner has good moral character. Given the importance of the school resource officer position, Greene must place someone in that position upon which he has a special trust and confidence. Sheriff Green has that special trust and confidence in Petitioner. T. pp. 32-33. Sheriff Greene hired Petitioner based upon the principal, school board members, parents and students all recommending him and not based upon the past. T. p. 31. Sheriff Greene is satisfied that Petitioner had performed his duties “above and beyond.” T. p. 34. If Petitioner was unable to serve as a deputy, it would negatively impact Sheriff’s Greene’s police agency. Based on Petitioner’s service as a deputy sheriff, Sheriff Greene has no hesitation as to Petitioner’s truthfulness or ability to tell the truth. T. p. 38.

36. Jeremiah Johnson is the principal at East Columbus High School in Lake Waccamaw, North Carolina. T. p. 233. Johnson knows Petitioner in two capacities: as the school resource officer at East Columbus High School and as an assistant football coach and track coach at that school. Petitioner has served, and continues to serve, in those capacities since 2017. T. p. 233. Johnson has had the opportunity to watch Petitioner perform those duties "every day" that school is in session. T. p. 233. Johnson described Petitioner, in performing his duties as a school resource officer, as "dedicated to the school, dedicated to the students, dedicated to the staff. He comes to school - comes to work every day, is there to serve and protect. He's part of my administrative team. He's almost my right-hand man." T. p. 234.
37. When asked whether he had had an opportunity to form an opinion as to Petitioner's character, Johnson said, "He is an awesome person. He is an awesome man. And I'm not just saying that for me. I'm saying that for my kids at my school." T. p. 234. When asked whether Petitioner had ever committed any act that would cause Johnson to doubt Petitioner's capacity to be truthful, Johnson answered, "No." T. p. 234.
38. Mr. Johnson has no doubt, based on what he's observed from Petitioner, that Petitioner does not lack the character necessary to serve as a school resource officer at Johnson's high school. T. p. 239. Johnson would not have permitted Petitioner to serve as an assistant football coach and track coach, in addition to serving as a school resource officer, if he had any doubts about Petitioner's character. T. p. 235.
39. Mr. Johnson opined that if Petitioner was no longer able to serve East Columbus as a school resource officer, the lack of Petitioner's presence would make the school less safe. T. p. 236.
40. Johnson also spoke of the strong professional bond that exists between himself as principal and Petitioner as the school resource officer. T. p. 236. Johnson thinks that Petitioner is the best school resource officer he has ever worked with and as a school administrator, Johnson has trained many SROs. T. p. 239. He opined that interaction with the students would suffer tremendously if Petitioner was not at East Columbus High. "... These kids, they look up to him." T. p. 239. Johnson explained how Petitioner has helped other students such as buying shoes for kids, bought lunch for kids, and given them food. "You know, we all - he's where he - he's where he belongs." T. p. 240.
41. No one from the Respondent ever contacted Johnson regarding Petitioner's performance of his duties as a school resource officer, his character, or anything else. T. p. 238.

42. Respondent failed to present any evidence at the hearing regarding Petitioner's performance of his duties as a Columbus County Deputy Sheriff. Respondent failed to present any evidence concerning any activities involving Petitioner that took place more recently than 2016. T. p. 56. While four witnesses from the Patrol testified regarding Petitioner's dismissal from the Patrol, none of those witnesses possessed any first-hand knowledge of how Petitioner has conducted himself in terms of truthfulness or conformance with policies while employed as a deputy sheriff in Columbus County. T. pp. 168-169. None of those witnesses opined that Petitioner lacked good moral character, either generally, or to serve as a deputy sheriff in this State.
43. Sheriff Greene and Principal Johnson established that Petitioner has rehabilitated and rebuilt his character as a deputy sheriff, and as school resource officer and coach at East Columbus High School. For two and a half years, Petitioner's service as a deputy sheriff has been nothing but exemplary both of that service and of Petitioner's character while engaging in that service. Both Sheriff Greene and Principal Johnson, who have supervised and worked with Petitioner since 2017, opined not only was Petitioner of good moral character, but that his absence would actually be harmful to the students at East Columbus High School and to the Sheriff's Office, and would make the school less safe. Such testimony was credible, honest, and believable. Even given Petitioner's cross-examination testimony at the hearing, the totality of the evidence rebutted the finding by the Probable Cause Committee that Petitioner lacks the good moral character required of a justice officer and showed that Petitioner has rehabilitated his character since 2017.

Conclusions of Law

1. The undersigned adopts the Commission's Conclusions of Law 1 through 24.
2. Conclusion of Law 24 in the Commission order provides: "Sheriff Green and Principal Johnson testified that Petitioner has rehabilitated and rebuilt his character since being fired by the Patrol, and as a deputy sheriff, and as school resource officer and coach at East Columbus High School. Green and Johnson testified that for two and a half years, Petitioner's service as a deputy sheriff has been nothing but exemplary both of that service and of Petitioner's character while engaging in that service. Such testimony was credible, honest, and believable."
3. The Undersigned rejects and reverses the Commission's Conclusions of Law 25 and 28 as those are inconsistent with the applicable law of good moral character and the evidence found in Finding of Fact 81 and otherwise.

4. It was error of law by the Commission to conclude that Petitioner lacks sufficient good moral character to serve as a Deputy Sheriff now.
5. The undersigned interprets Respondent's good moral character rule and concludes as a matter of law that Petitioner has good moral character sufficient to currently be certified as a Deputy Sheriff. The evidence demonstrates that Petitioner's moral character is rehabilitated and restored through some five years of rehabilitation with time and growth, and Petitioner successfully resumed his law enforcement career.
6. The Commission below was required to investigate the alleged charge against Petitioner. 12 NCAC 10B.0201 provides:
 - (a) If any criminal justice agency, school, authorized representative acting on behalf of either, or individual is reported to be or suspected of being in violation of any of these Rules, the Commission may take action to correct the violation and to ensure that similar violations do not occur.
 - (b) Before taking action against an agency, school, or individual for a violation, the Division *shall investigate* the alleged violation and, when required by the Director, shall present a report of its findings to the Probable Cause Committee of the Commission. (Emphasis added)
7. The Commission failed to comply with this regulation, which was prejudicial to Petitioner. A reasonable investigation, as required by this regulation, would have likely discovered substantial evidence of Petitioner's present good moral character. Thus, the violation of this regulation was prejudicial to Petitioner. The testimony of Sheriff Greene and Principal Johnson are examples of highly relevant and current good moral character evidence.
8. During his case in chief, Petitioner presented significant evidence demonstrating that Petitioner has rehabilitated and rebuilt his career since 2016 and 2017 while working as a school resource officer at East Columbus High School. Such evidence demonstrated that Petitioner has exhibited highly favorable traits, including but not limited to helping, teaching, and serving as positive role models for students at East Columbus High School, not only as a school resource officer, but as a coach in two sports. Sheriff Greene and Principal Johnson opined that Petitioner's absence from their respective entities would have a negative impact on their workplaces.
9. The good moral character principle in North Carolina police certification cases

continues to be described by Administrative Law Judges and the Sheriffs' Commission as "vague" and that it contains a "lack of consistent and clear meaning" and a lack of "standards or criteria." See, e.g., Final Agency Decision of Sheriffs' Commission in *Jeffrey Royall v. N.C. Sheriffs Education and Training Standards Commission* (09 DOJ 5859; January 11, 2011) and cases cited therein. The United States Supreme Court has characterized the good moral character rule as "unusually ambiguous." See *Royall* and other cases quoting *Konigsberg v. State*, 353 U.S. 252, 262-63 (1957). The Sheriffs' Commission has suggested that the law of good moral character requires that the misconduct in question be "severe" and "clear." E.g., *Jeffrey Royall v. N.C. Sheriffs Education and Training Standards Commission*.

10. There is no known North Carolina or other case exactly on point finding a lack of good moral character on these or similar facts. In fact, to the contrary, as demonstrated in *Evington v. N.C. Criminal Justice Education Standards Commission*, 09 DOJ 3070, 2009 WL 4912691 (Gray, ALJ, there are a number of examples of cases where egregious misconduct did not prompt good moral character charges or any occupational licensing punishment.
11. The principle of *restoration* or rehabilitation of good moral character is widely recognized. See, e.g., *Marcum v. N.C. Criminal Justice Commission*, 2016 WL 6830998 (Lassiter, ALJ); *Rodney Bland v. Criminal Justice Education and Training Standards Commission*, 2013 WL 8116063, 12 DOJ 03839 (Overby, ALJ); *Kevin King v. N.C. Sheriffs' Education and Training Standards Commission*, 2012 WL 928115, 11 DOJ 11631 (Overby, ALJ).
12. In *Knox v. N.C. Sheriff's Education and Training Standards Commission*, 11 DOJ 04831, 2014 WL 10794970 (November 19, 2014), Administrative Law Judge May provided a detailed explanation of the law of good moral character as applied to deputy sheriffs. Judge May explained in pertinent part:
 4. Moral character is a vague and broad concept. E.g. *Jeffrey Royall v. N.C. Sheriffs' Education and Training Standards Commission*, 09 DOJ 5859; *Jonathan Mims v. North Carolina Sheriff's Education and Training Standards Commission*, 02 DOJ 1263, 2003 WL 22146102 at page 11-12 (Gray, ALJ) and cases cited therein. See *Mims* at page 11.
 5. The United States Supreme Court has described the term "good moral character" as being "unusually ambiguous." In *Konigsberg v. State*, 353 U.S. 252, 262-63 (1957), the Court explained: The term good moral character ... is by itself ... *unusually ambiguous*. It can be defined in an almost unlimited number of ways for any definition will necessarily

reflect the attitudes, experiences, and prejudices of the definer. Such a vague qualification, which is easily adapted to fit personal views and predilections, *can be a dangerous instrument* for arbitrary and discriminatory denial ... (emphasis added).

6. Police administrators, officers and others have considerable differences of opinion as to what constitutes good moral character. *Royall* at page 13; *Mims, supra.* at page 12,...

7. While having good moral character is an ideal objective for everyone to enjoy, the lack of consistent and clear meaning of that term within the Respondent's rule, and the lack of clear enforcement standards or criteria for application of the rule, renders enforcement actions problematic and difficult. *Royall, supra* at page 14; *Mims, supra.* at page 12, Conclusion of Law 4.

8. Because of these concerns about the flexibility and vagueness of the good moral character rule, any suspension or revocation of an officer's law enforcement certification based on an allegation of a lack of good moral character should be reserved for clear and severe cases of misconduct. *Royall, supra* at 14, *Mims, supra.* at page 12 and 13.

13. In *Evington v. N.C. Criminal Justice Education Standards Commission*, 09 DOJ 3070, 2009 WL 4912691 (Gray, ALJ), Judge Gray catalogs a dozen cases of serious misconduct in which officers received suspensions or reduced pay but retained both their certifications and their jobs.

14. Under a correct interpretation of the good moral character rule, Petitioner presently has *good moral character* sufficient for certification as a Deputy Sheriff. Petitioner's application for certification shall be granted.

Conclusion

15. Conclusion of Law 24 in the Commission Final Agency Decision sums up this case, and provides:

"Sheriff Greene and Principal Johnson testified that Petitioner has rehabilitated and rebuilt his character since being fired by the Patrol, and as a deputy sheriff, and as school resource officer and coach at East Columbus High School. Green and Johnson testified that for two and a half years, Petitioner's service as a deputy sheriff has been nothing but

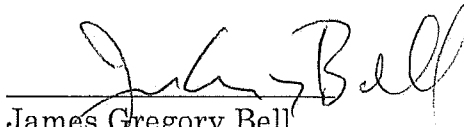
exemplary both of that service and of Petitioner's character while engaging in that service. Such testimony was credible, honest, and believable."

ORDER

The Petition is GRANTED. Petitioner Maurice Devalle *presently* has good moral character to serve as a Deputy Sheriff and the Commission Final Agency Decision, with findings and conclusions to the contrary, is REVERSED.

NOW THEREFORE it is ORDERED ADJUDGED AND DECREED that the N.C. Sheriff's Education and Training Standards Commission shall issue Petitioner Maurice Devalle his law enforcement certification, which is retroactively effective to the time of his submitted application for certification.

This 22 day of November 2021.


James Gregory Bell
Superior Court Judge Presiding

NORTH CAROLINA
COUNTY OF COLUMBUS

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 20 CVS 1273

MAURICE DEVALLE,

Petitioner,

v.

NORTH CAROLINA SHERIFFS'
EDUCATION AND TRAINING
STANDARDS COMMISSION,

Respondent.

FILED
2021 DEC 21 P 4:03
COLUMBUS CO., N.C.
BY *[Signature]*

NOTICE OF APPEAL

NOW COMES Respondent, North Carolina Sheriffs' Education and Training Standards Commission, by and through counsel, Joshua H. Stein, North Carolina Attorney General, and Ameshia A. Cooper, Special Deputy Attorney General, pursuant to N.C. General Statute §§ 150B-42 and 7A-27, and gives Notice of Appeal to the North Carolina Court of Appeals from the Order and Judgement entered by the Honorable James Gregory Bell in the Superior Court of Columbus County, filed November 22, 2021.

Respectfully submitted, this the 20th day of December, 2021.

JOSHUA H. STEIN
North Carolina Attorney General

Ameshia A. Cooper
Ameshia A. Cooper
Special Deputy Attorney General
N.C. State Bar No. 45949
Email: acooper@ncdoj.gov

N.C. Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602-0629
Telephone: (919) 716-6590

CERTIFICATE OF SERVICE

This is to certify that the foregoing document was this day served upon the following by electronic mail and by depositing same in the United States mail, postage prepaid, and addressed as follows:

J. Michael McGuinness
The McGuinness Law Firm
PO Box 952
Elizabethtown, NC 28337

William C. Gore, Jr.
750 Pleasant Plains Church Rd.
Whiteville, NC 28472

This the 20th day of December, 2021.


Ameshia A. Cooper
Special Deputy Attorney General

TRANSCRIPT DESIGNATION

Pursuant to Rules 7(b) and 9(c) of the North Carolina Rules of Appellate Procedure, the Respondent-Appellant will cause verbatim transcripts of the entire proceeding in this case to be filed electronically and served upon Petitioner-Appellee's counsel once a docket number is assigned to this appeal:

1. The entire 29 October 2021 hearing before the Honorable James Gregory Bell. This transcript was taken by Sherri Sealey, court reporter, consisting of 55 pages, numbered 1-55, bound in one volume.

2. The entire 3 October 2019 Office of Administrative Hearings proceeding. This transcript was taken by Wanda Constantino, certified transcriptionist, consisting of 281 pages, numbered 1-281, bound in one volume.

3. The entire 4 October 2019 Office of Administrative Hearings proceeding. This transcript was taken by Wanda Constantino, certified transcriptionist, consisting of 113 pages, numbered 282-394, bound in one volume.

STATE OF NORTH CAROLINA
COUNTY OF COLUMBUS

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

NO.: 20 CVS 1273

MAURICE DEVALLE

Plaintiff(s),

v.

NC SHERIFFS' ETS COMMISSION

Defendant(s).

**Appellate Division
Transcript Contract**

(N.C. R. App. P. 7)

Requestor Information

Name: Ameshia A. Cooper

Phone Number: 919-716-6590

E-mail Address: acooper@ncdoj.gov

Address: P.O. Box 629

Raleigh, NC 27602

Firm/Agency: NC Department of Justice

State Bar No.: 45949

Attorney For: Defendant NC SHERIFFS'

ETS COMMISSION

Transcriptionist Information

Name: Sherri Anchors Sealey

Phone Number: 910-734-4535

E-mail Address: saasbs@aol.com

Address: 500 North Elm Street Box 18

Lumberton, NC 28358

Proceedings to Be Transcribed

Date	Location (County and Courtroom)	Judge Presiding	Description
10/29/21	Columbus County	James Gregory Bell	PJR Hearing

☐ Additional proceedings are identified on page(s) _____.

Agreement

This constitutes an agreement between the requestor and the transcriptionist for a transcript of the proceedings identified in the "Proceedings to Be Transcribed" section, above.

1. The transcriptionist's fee for the transcript is \$ 7.00 per page. (*Required Entry*)
The estimated length of the transcript is 45 pages. (*Optional Entry*)
Accordingly, the estimated total cost of the transcript is \$ 315.00. (*Optional Entry*)
2. The requestor agrees to pay the transcriptionist's per-page rate for the transcript with a refundable deposit of \$ 315.00 to be paid to the transcriptionist upon execution of this contract. (*Insert "0" if no deposit is required.*)
3. The requestor agrees to provide the transcriptionist with the contact information, including the e-mail address, of each party to the appeal.
4. The transcriptionist agrees to produce and deliver the transcript in accordance with the North Carolina Rules of Appellate Procedure and standards set by the North Carolina Administrative Office of the Courts.
5. The transcriptionist agrees to give the requestor an invoice for the transcript as soon as practicable.
6. The transcriptionist agrees to deliver the transcript to the requestor and to each person or entity that the requestor has identified as a party to the appeal.
7. The transcriptionist agrees to deliver the transcript in a text-born, fully-searchable, unsecured PDF file.
8. The transcriptionist agrees that the requestor may reproduce the transcript, prepare derivative works from the transcript, distribute copies of the transcript, and display the transcript publicly.
9. The transcriptionist agrees that the requestor may terminate this contract at any time prior to the delivery of the transcript. The requestor agrees that if this contract is terminated, the requestor will pay the transcriptionist for all of the work that the transcriptionist has completed at the time of the termination.
10. The requestor and the transcriptionist may agree by addendum to additional terms, but those additional terms do not supersede these terms.

Requestor's Signature: <u>Amesha J. Cooper</u>	Date: <u>1/7/22</u>
Transcriptionist's Signature: <u>[Signature]</u>	Date: <u>1/7/2022</u>

Service of Form Required

Rule 7 of the North Carolina Rules of Appellate Procedure requires the requestor to serve a completed copy of this form on each party and on the transcriptionist. The requestor's certificate of service may be added to the end of this form as an attachment.

CERTIFICATE OF SERVICE

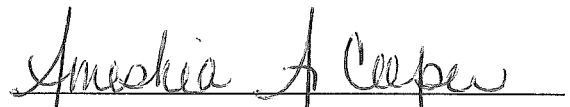
I certify that today, I caused the above document to be served on each party and on the transcriptionist by United States mail, first class prepaid, and by e-mail, addressed to:

J. Michael McGuinness
The McGuinness Law Firm
PO Box 953
Elizabethtown, NC 28337

William C. Gore
750 Pleasant Plains Church Road
Whiteville, NC 28472

Sherri Anchors Sealey
612 Marlboro Avenue
Red Springs, NC 28377

This the 7th day of January, 2022.

A handwritten signature in cursive script, reading "Ameshia A. Cooper", written over a horizontal line.

Ameshia A. Cooper
Special Deputy Attorney General
N.C. State Bar No. 45949
acooper@ncdoj.gov
North Carolina Department of Justice
P.O. Box 629
Raleigh, NC 27602
919-716-6590

STATE OF NORTH CAROLINA
COLUMBUS COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

NO.: 20 CVS 1273

MAURICE DEVALLE

Plaintiff(s),

v.

NC SHERIFFS' ETS COMMISSION

Defendant(s).

**Appellate Division
Transcript Documentation**

(N.C. R. App. P. 7)

Part 1. Transcripts for the Appeal

The undersigned party has ordered a transcript of the trial tribunal proceedings identified below for this appeal. *(Please list transcripts ordered both before and after notice of appeal.)*

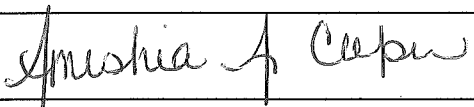
Date	Location (County and Courtroom)	Judge Presiding	Description
10/29/21	Columbus County	James Gregory Bell	PJR Hearing
10/3/19	Raleigh, OAH Office	Melissa Lassiter	OAH proceedings
10/4/19	Raleigh, OAH Office	Melissa Lassiter	OAH proceedings

☐ Additional proceedings are identified on page(s) _____.

Part 2. Issues on Appeal

Complete this section if only a part of the trial tribunal proceedings are being transcribed for the appeal.

The undersigned party intends to raise the following issues on appeal:

Name: Ameshia A. Cooper	
Attorney For: Defendant, NC Sheriffs' Education Training and Standards Commission	
Signature: 	Date: 1/7/22

Service of Pre-Notice of Appeal Transcripts Required

If a party ordered a transcript before notice of appeal and intends to designate that transcript as part of the record on appeal, then that party must electronically serve a copy of the transcript on all other parties during the record-settlement process.

Service of Form Required

Rule 7 of the North Carolina Rules of Appellate Procedure requires a completed copy of this form to be served on each party. A certificate of service may be added to the end of this form as an attachment.

CERTIFICATE OF SERVICE

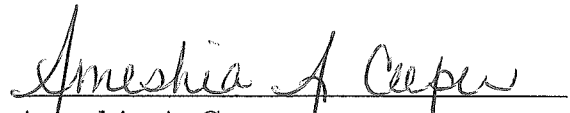
I certify that today, I caused the above document to be served on each party and on the transcriptionist by United States mail, first class prepaid, and by e-mail, addressed to:

J. Michael McGuinness
The McGuinness Law Firm
PO Box 953
Elizabethtown, NC 28337

William C. Gore
750 Pleasant Plains Church Road
Whiteville, NC 28472

Sherri Anchors Sealey
612 Marlboro Avenue
Red Springs, NC 28377

This the 7th day of January, 2022.

A handwritten signature in cursive script, reading "Ameshia A. Cooper", written over a horizontal line.

Ameshia A. Cooper
Special Deputy Attorney General
N.C. State Bar No. 45949
acooper@ncdoj.gov
North Carolina Department of Justice
P.O. Box 629
Raleigh, NC 27602
919-716-6590

STATEMENT OF RULE 9(d)(2) SUBMISSION

Under Appellate Rule 9(d)(2), the record on appeal includes certain exhibits, memoranda, and other documents that are not included in the printed record on appeal. Under Appellate Rule 12(c), one copy of these documents is being filed electronically with the Court along with the printed record on appeal.

PROPOSED ISSUE ON APPEAL

Pursuant to Rules 10 and 9(a)(2) of the North Carolina Rules of Appellate Procedure, Defendant-Appellant intends to present the following proposed issue on appeal:

1. Did the superior court err when it granted Plaintiff's Petition for Judicial Review?

IDENTIFICATION OF COUNSEL

For Petitioner-Appellee:

J. Michael McGuinness
The McGuinness Law Firm
P.O. Box 952
Elizabethtown, NC 28337
jmichael@mcguinnesslaw.com
910-862-7087

For Respondent-Appellant:

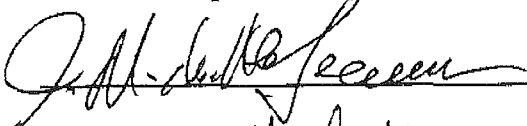
Ameshia Cooper Chester
Special Deputy Attorney General
N.C. State Bar No. 45949
acooper@ncdoj.gov

North Carolina Department of Justice
P.O. Box 629
Raleigh, NC 27602-0629
(919) 716-6590

STIPULATION OF SETTLEMENT OF RECORD ON APPEAL


Counsel stipulate as follows:

1. The Respondent-Appellant timely served a proposed record on appeal on 4 February 2022.
2. The parties stipulate that the proposed record on appeal to be filed with the Clerk of the Court of Appeals consists of:
 - a. the printed record on appeal, encompassing pages 1 through 101,
 - b. the transcripts described in the Transcript Designation, and
 - c. the rule 9(d)(2) documentary exhibits, numbered "Doc. Ex. 1" through "Doc. Ex. 999."
3. The record on appeal was timely settled by agreement of the parties on 15 March 2022.


Date signed: March 14, 2022

J. Michael McGuinness

Counsel for Appellee


Date signed: March 15, 2022

Ameshia Cooper Chester

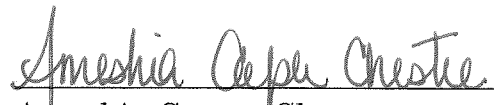
Counsel for Appellant

CERTIFICATE OF SERVICE

I certify that today, I caused the above document to be served on each party by United States mail, first class prepaid, and by e-mail, addressed to:

J. Michael McGuinness
The McGuinness Law Firm
P.O. Box 952
Elizabethtown, NC 28337
jmichaelmcguinness@mcguinnesslaw.com
910-862-7087

This the 24th day of March, 2022.



Ameshia Cooper Chester
Special Deputy Attorney General
N.C. State Bar No. 45949
acooper@ncdoj.gov
North Carolina Department of Justice
P.O. Box 629
Raleigh, NC 27602
919-716-6590

Attorney for Respondent-Appellant