

NO. COA 22-256

THIRTEENTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

MAURICE DEVALLE,)	
)	
Petitioner-Appellee)	
)	<u>From Columbus County</u>
v.)	No. 20 CVS 1273
)	
N.C. SHERIFF’S EDUCATION)	
AND TRAINING STANDARDS)	
COMMISSION,)	
)	
Respondent-Appellant)	

**BRIEF OF AMICUS CURIAE
NORTH CAROLINA FRATERNAL
ORDER OF POLICE IN SUPPORT OF
PETITIONER-APPELLEE MAURICE DEVALLE**

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**BRIEF OF AMICUS CURIAE NORTH CAROLINA
FRATERNAL ORDER OF POLICE IN SUPPORT OF
PETITIONER-APPELLEE MAURICE DEVALLE**

INTEREST OF FOP AS AMICUS CURIAE

The North Carolina State Lodge of the Fraternal Order of Police (“NCFOP”) is a voluntary non-profit association of thousands of North Carolina law enforcement officers. Since 1915, the national Fraternal Order of Police (“FOP”) organization has served as the voice of the American law enforcement community in a broad spectrum of matters before courts and in other forums throughout the United States. The

NCFOP appears before appellate courts in cases of special significance to the policing community. Nationally, the FOP has more than 365,000 members, including over 6,100 members within North Carolina.

The NCFOP has been active throughout North Carolina since 1953, promoting enhanced public safety and protection of the law enforcement profession. The NCFOP's advocacy includes but is not limited to research, education, and lobbying. The NCFOP has appeared in other cases as *amicus curiae*, selectively participating in litigation as *amicus curiae* when especially significant law enforcement interests are at stake, as in this case.

This case is one of considerable importance to the NCFOP and to law enforcement officers throughout the state, as it presents this Court with an opportunity to reaffirm and more fully define the important principle of rehabilitation and restoration of good moral character in North Carolina law enforcement officer certification cases.

The NCFOP is vitally concerned with this issue, as the decision made below by the North Carolina Sheriffs' Education and Training Standards Commission ("the Commission") violates these important standards. As such, if the Superior Court's decision is overturned and the Commission's decision allowed to stand, it will directly impact law enforcement personnel, including NCFOP members and their families, and other public employees throughout North Carolina.

STATEMENT OF FACTS

For purposes of this amicus brief, the NCFOP adopts the Statement of Facts from Petitioner-Appellee Maurice Devalle's principal brief.

SUMMARY OF THE ARGUMENT

The Commission's decision in this case undermines and, indeed, ignores the important and firmly rooted principle of rehabilitation and restoration of good moral character in North Carolina law enforcement certification cases. Indeed, where a law enforcement officer has presented substantial evidence that he or she has rehabilitated and restored their good moral character, the Commission is not at liberty to ignore such evidence. Further, where such a compelling showing is made of the officer's current good moral character, denial or suspension of that officer's justice officer certification should be lifted. Finally, the Commission's rejection of the presiding judge's cross-examination findings is a red herring, intended to mask the Commission's failure to contend with the critical principle of rehabilitation of good moral character under North Carolina law.

ARGUMENT

THE COMMISSION IMPROPERLY IGNORED THE IMPORTANT AND WELL-ESTABLISHED PRINCIPLE OF REHABILITATION OF GOOD MORAL CHARACTER WHEN IT DENIED APPELLEE DEVALLE'S JUSTICE OFFICER CERTIFICATION BASED EXCLUSIVELY UPON ITS REVIEW OF HIS PRIOR CONDUCT WHILE EMPLOYED BY THE HIGHWAY PATROL.

"The principle of *restoration* or rehabilitation of good moral character is

widely recognized.” R. at 85. “That a man may turn from evil and rehabilitate his character is universally recognized; and the record here leads irresistibly to the conclusion that this petitioner has really turned from a life of law violation to one of upright living.” *Marcantonio v. U.S.*, 185 F.2d 934, 938 (4th Cir. 1950).

Our Administrative Code reiterates and, indeed, codifies this principle, as it states that suspension or denial of the justice officer certification shall be only for **“so long as the stated deficiency, infraction, or impairment continues to exist.”** 12 NCAC 10B.0205(3) (emphasis added). Implicit and inherent in that precise wording is the acknowledgment – commonplace in the nation’s jurisprudence¹ – that where a law enforcement officer has rehabilitated and restored their good moral character such that the impairment no longer exists, suspension of the officer’s

¹ There are hundreds of cases in other legal contexts in which courts apply the standard of allowing for a showing of rehabilitation or restoration of good moral character for reinstatement, including, by way of example, attorney bar admissions and immigration. *See, e.g., In re Clark*, 2020 N.C. App. LEXIS 547, 272 N.C. App. 577, 845 S.E.2d 205 (2020); *In re Braverman*, 549 F.2d 913, 915 (4th Cir. 1976) (“Regarding Braverman's moral character, the state court panel found that ‘the impressive and unchallenged evidence presented by the petitioner of his present good character clearly established his eligibility for reinstatement on this score.’”); *In re G.L.S.*, 292 Md. 378, 439 A.2d 1107, 1108 (1981) (“Because we find convincing evidence of the applicant's full and complete rehabilitation and of his present good moral character, we shall order his admission.”); *In re Dreier*, 258 F.2d 68, 69 (3d Cir. 1958) (admitting an attorney who had criminal convictions but was later reinstated to the bar and showed evidence of “subsequent rehabilitation and present good moral character”); *Marcantonio*, 185 F.2d at 936 (“The record in the case shows unquestionably that defendant has reformed since his last conviction and has been a man of good moral character.”).

justice officer certification should be lifted. As such, substantive judicial acknowledgement of this key tenet that endorses reinstatement upon the rehabilitation and restoration of good moral character is of paramount importance, not just in this case, but in our state's overall jurisprudence.

The Superior Court below correctly held that the Commission erred in denying Appellee Devalle's justice officer certification. R. at 83-87. The Commission's most critical error was in ignoring the substantial and compelling rehabilitation of good moral character evidence presented by Appellee Devalle. When a law enforcement officer rehabilitates and restores their good moral character, that evidence must be considered. *See Russell v. N.C. Crim. Justice Educ. and Training Stds. Comm'n*, 2022 N.C. ENV LEXIS 9, at *19-23, 24-25, 21 DOJ 03252, Concl. of Law, ¶¶ 26-32, 36 (Feb. 14, 2022).

In *Marcum v. N.C. Criminal Justice Comm'n*, an officer with the Wilson Police Department engaged in an ongoing sexual relationship, while married, entailing various sex acts performed on at least ten occasions that occurred while on duty in his home, in her home, in his patrol car, and on the hood of his patrol car, as well as while off duty at the Wilson Community College training academy. 2016 NC OAH LEXIS 151, at *2-3, 6, 15 DOJ 07702 (Oct. 19, 2016). At the hearing before the presiding Administrative Law Judge ("ALJ"), Officer Marcum presented evidence that he had rehabilitated his good moral character. *Id.* at *7-21, ¶¶ 23-58.

In finding that the totality of the credible evidence presented demonstrated that Officer Marcum had indeed rehabilitated his good moral character, the ALJ held:

10. Since terminating his relationship with Ms. Thompson, Petitioner has successfully and completely rehabilitated and rebuilt his life and his career. The substantial evidence presented at hearing demonstrated that Petitioner possesses and exhibits highly favorable traits, including but not limited to a history of helping others, teaching, promoting law enforcement and other education, supporting community service programs and long term police service. The scope and magnitude of Petitioner's character traits substantially outweighs Petitioner's lapse in judgment in his personal behaviors at issue. Further, Petitioner's resumption of a broad range of very positive conduct demonstrates that Petitioner is rehabilitated from his previous lapse of judgement.

11. The substantial evidence presented at hearing proved that Petitioner is now a person of good moral character, as required by 12 NCAC 09A .0204(b)(2), who has been a dedicated professional law enforcement officer in North Carolina for many years. Petitioner is morally fit to continue to serve as a law enforcement officer in North Carolina.

Id. at *27-28. As the petitioner did in *Marcum*, Appellee Devalle has also presented substantial and compelling evidence that he is now a person of good moral character.

See, e.g., R. at 14-15, ¶¶ 69-77, 81; 37-39, ¶¶ 58-66, 70; 78-79, ¶¶ 19-21; 80-83, ¶¶ 29-31, 33-40, 43.

Where evidence is presented that an officer or deputy has rehabilitated their good moral character, the Commission is not at liberty to ignore such evidence. Indeed, only where such evidence has *not* been presented can the Commission reasonably conclude that a petitioning officer has not met their burden. *See, e.g.*, *Bland v. Crim. Justice Comm'n*, 2013 NC OAH LEXIS 18, at *10, 12 DOJ 03839,

Finding of Fact, ¶ 23 (Jan. 13, 2013) (upholding denial of certification where the petitioner “did not appear at the hearing and therefore did not present any evidence showing his moral character had been restored.”); *King v. N.C. Sheriffs’ Educ. and Training Stds. Comm’n*, 2012 NC OAH LEXIS 10, at *15, 11 DOJ 11631, Concl. of Law, ¶ 20 (Feb. 28, 2012) (upholding revocation of certification where the petitioner “presented no evidence tending to show his good moral character has been restored since that date.”); *In re Clark*, 2020 N.C. App. LEXIS 547, at *6-7 (upholding recommendation to deny reinstatement to State Bar because while the “witnesses were able to testify to the great work that he had done before his convictions, there was very little that the witnesses said about his actions after his disbarment.”).

Here, however, not only did Appellee Devalle present such evidence of rehabilitation of good moral character – discussed above and at length in the decisions of both the ALJ and the Superior Court judge, as well as in Appellee Devalle’s Response brief – but the Commission *itself* actually concluded that Appellee Devalle had rehabilitated and restored his good moral character:

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.

R. at 19, ¶ 24.² As such, where the Commission itself concluded as a matter of law that Appellee Devalle's "impairment" under the Administrative Code no longer exists because his good moral character has been successfully rehabilitated and restored, its decision not to issue his justice officer certification was undoubtedly arbitrary and capricious. *See* 12 NCAC 10B.0205(3).

Further problematic, by only relying upon evidence from years prior at the Highway Patrol, the Commission failed to consider Appellee Devalle's present good moral character.³ R. at 81, ¶ 32. That is the standard. *See, e.g., Schware v. Bd. of Bar Exam'rs of N.M.*, 353 U.S. 232, 246, 77 S. Ct. 752 (1957) (the relevant time for

² Even had the Commission not reached its conclusion of law that Appellee Devalle had rehabilitated his good moral character, which it did (as discussed above), the *only* evidence presented on this issue was from Appellee Devalle. *See* R. at 14-15, ¶¶ 69-77, 81; 37-39, ¶¶ 58-66, 70; 78-79, ¶¶ 19-21; 80-83, ¶¶ 29-31, 33-40, 43. Indeed, the Commission presented *no* evidence whatsoever the Appellee Devalle had not rehabilitated or otherwise restored his good moral character. *See* R. at 15, ¶¶ 78-79; 38, ¶¶ 67-68; 81-83, ¶¶ 32, 41-42. Rather, the Commission's *entire* basis for initially denying his certification and then upholding that denial was its review of his prior actions at the Highway Patrol. R. at 81, ¶ 32. Thus, even if the Commission had not concluded that Appellee Devalle had credibly rehabilitated his good moral character (R. at 15, ¶ 24), because the *only* evidence available in the record on this issue supports Appellee Devalle's rehabilitation, the denial of his certification was nevertheless clear error.

³ Additionally, in so acting, the Commission *ipso facto* also violated its duty to investigate the alleged charge against Appellee Devalle. *See* 12 NCAC 10B.0201. While a detailed discussion of that clear error on the part of the Commission is outside the scope of this amicus brief, it is well-covered in both the Superior Court's Order (R. at 84, ¶¶ 6-7) and Appellee Devalle's Response Brief (pp. 38-42).

assessing moral character is the present); *In re Moore*, 301 N.C. 634, 640, 272 S.E.2d 826, 830 (1981) (“In the present case we find that Moore through his application and evidence in support thereof made out a prima facie showing of his *present* good moral character.”) (emphasis added); *Russell*, 2022 N.C. ENV LEXIS 9, at *10, 21-22, 21 DOJ 03252, Concl. of Law, ¶¶ 3, 26(n), 26(t) (containing references to his present or current character). Moreover, this temporal standard makes good sense because were the petitioner’s *current* good moral character not the operative consideration for the Commission and reviewing courts, it follows that there would be no such body of rehabilitation and restoration of good moral character precedent.

Finally, it bears noting that the Commission appears to be seeking to avoid the consequences of its inadequate final decision that ignored longstanding rehabilitation precedent by cherry-picking one of the ALJ’s Findings of Fact that Appellee Devalle’s “testimony exhibited a lack of candor and sincerity during cross-examination.” R. at 39, ¶ 69 (adopted by the Commission at R. at 15, ¶ 80). Indeed, while this appears to be somewhat of an afterthought, as the Commission’s Conclusions of Law are laser-focused on the prior misconduct that occurred long before Appellee Devalle’s rehabilitation occurred (R. at 16-19, ¶¶1-24), the Commission passingly referenced Appellee Devalle’s purported “profound lack of candor and truthfulness while testifying under oath in this contested case.” R. at 19-

20, ¶ 25.⁴ The Court should summarily reject the Commission’s disingenuous post hoc rationale because both the Notice of Probable Cause to Deny Certification (which, of course, necessarily preceded the testimony in question and so, could not have taken it into account) and the Commission’s Conclusions of Law clearly centered upon Appellee Devalle’s prior allegations of misconduct while with the Highway Patrol that preceded the substantial evidence of rehabilitation. Moreover and critically, the ALJ – who is the ultimate judge of credibility and character in proffered testimony – concluded that “[e]ven 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

⁴ Somewhat ironically – given the subject posture of the Commission’s questioning of Appellee Devalle’s character for truthfulness – in concluding that Appellee Devalle’s conduct before the ALJ constituted an additional ground supporting its denial of his certification, the Commission overstated the ALJ’s finding of a “lack of candor and sincerity” at cross-examination. Indeed, the ALJ did not find a “profound” lack of candor, nor did she find a lack of “truthfulness,” as stated by the Commission. Rather, these seemingly deliberately provocative descriptors were generated instead by the Commission. *Compare* R. at 29, ¶ 69 *with* R. at 16, ¶ 25.

Furthermore, the Commission, of course, was not actually in the courtroom so as to possibly support reaching any such stronger stated character conclusions itself. *See King*, 2012 NC OAH LEXIS 10, at *11, 11 DOJ 11631, Concl. of Law, ¶ 7 (“Much of Respondent’s contentions and post hearing arguments and submissions are based on speculation and conjecture, based upon facts not in evidence, based upon witnesses not present in the courtroom and based on evidence not tested by examination and cross-examination.”).

officer and showed that Petitioner has rehabilitated his character since 2017.” R. at 43, ¶ 24. In short, the cross-examination finding – overstated as it was by the Commission and rejected by two experienced judges – is a red herring intended to mask the Commission’s abject failure to contend with the critical principle of rehabilitation of good moral character under North Carolina law.

CONCLUSION

The ability to rehabilitate one’s good moral character is neither a novel concept nor a new doctrine. It has long been the law of the land in this state. And yet, the Commission ignored it, the implications of which are understandably significant for the law enforcement community. Because it ignored Appellee Devalle’s extensive evidence of the rehabilitation and restoration of his good moral character, the Commission’s decision was appropriately overruled by the Superior Court below. As such, the NCFOP respectfully prays that this Court affirm.

Respectfully submitted, this the 29th day of August, 2022.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 28(j) of the Rules of Appellate Procedure, counsel for Amicus Curiae certifies that the foregoing brief, which is prepared using a proportional font, is fewer than 3,750 words (excluding cover, indexes, tables of authorities, certificates of service, this certificate of compliance and appendixes) as reported by the word-processing software.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing *AMICUS CURIAE*
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