

NO.

THIRTEENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

\*\*\*\*\*

MAURICE DEVALLE, )  
Petitioner-Appellee )

v. )

NORTH CAROLINA SHERIFFS' )  
EDUCATION AND TRAINING )  
STANDARDS COMMISSION, )  
Respondent-Appellant )

From Columbus County

No. 20 CVS 1273

No. COA22-256

\*\*\*\*\*

PETITION FOR DISCRETIONARY REVIEW

\*\*\*\*\*

## **TABLE OF CONTENTS**

TABLE OF CASES AND AUTHORITIES .....	ii
STATEMENT OF THE CASE.....	2
STATEMENT OF THE FACTS.....	3
REASONS WHY CERTIFICATION SHOULD ISSUE.....	12
ISSUE TO BE BRIEFED.....	20
CONCLUSION.....	20
CERTIFICATE OF SERVICE.....	21

## TABLE OF CASES AND AUTHORITIES

### CASES

<i>Devalle v. N.C. Sheriffs' Educ. &amp; Training Standards Comm'n</i> , No. COA22-256, 2023 N.C. App. LEXIS 270 (N.C. Ct. App. May 16, 2023) .....	15, 16
<i>In re Applicants for License</i> , 143 N.C. 1, 55 S.E. 635 (1906) .....	17
<i>In re Applicants for License</i> , 191 N.C. 235, 131 S.E. 661 (1906) .....	13
<i>In re Dillingham</i> , 188 N.C. 162, 124 S.E. 130 (1924) .....	13, 17
<i>In re Legg</i> , 325 N.C. 658, 386 S.E.2d 174 (1989).....	17
<i>In re Willis</i> , 288 N.C. 1, 215 S.E.2d 771 (1975) .....	12, 13, 17, 19
<i>Lewis v. N.C. Dep't of Hum. Res.</i> , 92 N.C. App. 737, 375 S.E.2d 712 (1989) .....	16
<i>Rector v. N.C. Sheriffs' Educ. &amp; Training Standards Comm'n</i> , 103 N.C. App. 527, 406 S.E.2d 613 (1991).....	14, 16
<i>State v. Benbow</i> , 309 N.C. 538, 308 S.E.2d 647 (1983) .....	17
<i>State v. Harris</i> , 216 N.C. 746, 6 S.E.2d 854 (1940) .....	17

### STATUTES

N.C. Gen. Stat. § 7A-31 .....	1
N.C. Gen. Stat. § 7A-31(c) .....	12
N.C. Gen. Stat. § 7A-31(c)(1) .....	2
N.C. Gen. Stat. § 7A-31(c)(2) .....	2
N.C. Gen. Stat. § 7A-31(c)(3) .....	2
N.C. Gen. Stat. § 14-230 .....	9

N.C. Gen. Stat. § 17E-1 .....	19
N.C. Gen. Stat. § 17E-4 .....	18, 19
N.C. Gen. Stat. § 150B-51(b) .....	11

## **REGULATIONS**

12 NCAC 09B .0101 (12).....	17
12 NCAC 10B .0201(b).....	8, 11, 14
12 NCAC 10B .0301(12).....	17, 18
12 NCAC 10B .0502 .....	9

## **OTHER AUTHORITY**

The State Highway Patrol Policy Manual, Directive H.1 .....	4
---	---

NO.

THIRTEENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

\*\*\*\*\*

MAURICE DEVALLE,	)	
Petitioner-Appellee,	)	
	)	<u>From Columbus County</u>
v.	)	No. 20 CVS 1273
	)	No. COA22-256
NORTH CAROLINA SHERIFFS'	)	
EDUCATION AND TRAINING	)	
STANDARDS COMMISSION,	)	
Respondent-Appellant.	)	
	)	

\*\*\*\*\*

PETITION FOR DISCRETIONARY REVIEW

\*\*\*\*\*

**TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE  
JUSTICES OF THE SUPREME COURT OF NORTH  
CAROLINA**

NOW COMES Appellant, North Carolina Sheriffs' Education and Training Standards Commission and respectfully petitions this Court, pursuant to N.C. Gen. Stat. § 7A-31, to certify this cause for discretionary review of the 16 May 2023 opinion filed in this case in the North Carolina Court of Appeals. Review by this Court is appropriate because the subject matter of this appeal has significant public interest, the appeal

involves legal principles of major significance, and the decision below conflicts with decisions of this Court. N.C. Gen. Stat. § 7A-31(c)(1)-(3).

### **STATEMENT OF THE CASE**

On 29 January 2019, the North Carolina Sheriffs' Education and Training Standards Commission ("the Commission") sent notice to Maurice Devalle ("Devalle") stating the Probable Cause Committee ("the committee") found probable cause existed to believe Petitioner's justice officer certification should be denied for willful failure to discharge his duties and no longer possessing the good moral character required of all justice officers. (R p. 6) Devalle requested an administrative hearing on the committee's determination to deny his justice officer certification. (Doc. Ex. p. 5)

On 3 and 4 December 2019, an administrative hearing was held before Administrative Law Judge (ALJ) Melissa Owens Lassiter. (R p. 5) On 3 June 2020, ALJ Lassiter filed her Proposal for Decision in which she concluded 1) substantial evidence supported the committee's finding that Devalle committed the crime of "Willfully Failing to Discharge Duties" and 2) while Devalle was dishonest and untruthful, Devalle had rehabilitated his character. (R pp. 42, 43) ALJ Lassiter recommended Devalle's justice officer certification be indefinitely denied, but that extenuating circumstances justified the Commission exercising its discretion and reducing the sanction. (R p. 44)

On 6 October 2020, the Commission issued its Final Agency Decision (FAD) ordering Devalle's justice officer certification be denied indefinitely pursuant to his lack of good moral character and, additionally, denying Devalle's justice officer certification for five (5) years for the commission of the criminal offense of "Willfully Failing to Discharge Duties." <sup>1</sup> (R p. 20)

On 8 December 2020, Devalle filed a Petition for Judicial Review (PJR) in Columbus County Superior Court. (R p. 25) The Commission moved to dismiss the PJR on 22 January 2021, and a hearing was held on 29 October 2021, before the Honorable James G. Bell. (R pp. 47, 76) Following the hearing, Judge Bell issued an order granting Devalle's PJR. (R p. 87)

Appellant filed a Notice of Appeal on 21 December 2021. (R p. 88) The Record of Appeal was filed on 24 March 2022. After the filing of the briefs, oral arguments were heard on 2 November 2022. The Court of Appeals' Opinion was filed on 16 May 2023.

### **STATEMENT OF THE FACTS**

Appellee Devalle was employed as a sergeant by the North Carolina State Highway Patrol ("the Patrol") from 25 November 1998 through 24 April 2017. (R p. 7) In November of 2016, a local news station reported to the Patrol that Devalle spent various days at his home in Wake County

---

<sup>1</sup> The latter sanction, not at issue in this action, was suspended for five (5) years on the condition Petitioner not violate any laws. (R p. 20)

when he was supposed to be working at his duty station in Wayne County. (R p. 7) The Patrol conducted an Internal Affairs (“IA”) investigation into the report. (R p. 7) During 2015 and 2016, Patrol policy was that a trooper must live within 20 miles of his duty station. (R p. 13) Devalle’s duty station, for purposes of the Patrol, was Wayne County. (R p. 13) On 15 February 2015, Devalle made a request to reside in Johnston County at 400 Hillside Drive. (R p.13; Doc. Ex. p. 768) This residence was within the 20 mile requirement and was approved by the Patrol. (R p. 13) Devalle admitted during the IA investigation that he never stayed, resided, or parked his patrol car at this residence. (R p. 13) In fact, Devalle actually resided on Blue Ridge Road, in Wake County, approximately 43 miles from his duty station. (R pp. 10, 13)

Pursuant to The State Highway Patrol Policy Manual, Directive H.1, Paragraph XV, in November 2016, Patrol protocol required troopers not to call in as being on-duty until they reached their duty station. (R pp. 9-10; Doc. Ex. p. 756) On Friday, 11 November 2016, at approximately 2:53 P.M., Devalle signed into the Patrol’s computerized automatic dispatch system (“CAD”) as being on-duty. (R p. 11) Upon orders from superiors, Captain Christopher Morton (“Morton”) went to Devalle’s Wake County residence at 7:00 P.M., and found him there, wearing shorts and a t-shirt. (R p. 11) During Morton’s exchange with Devalle at that



time, Devalle alleged he had attempted to sign off at approximately 5:00 P.M., and acknowledged the CAD showed him as being on-duty. (R p. 11) Devalle also admitted that since the time he had signed in as being on-duty, he showered and laid in bed and had not engaged in any work related activities or left the residence. (R p. 11) During the exchange, Morton ordered Devalle to go to Patrol Headquarters. (R p. 11) Devalle refused Morton's request, stated he was not leaving his home, and questioned Morton's leadership and legacy with the Patrol. (R p. 11) Additionally, Devalle never notified his superiors or anyone else on the Patrol he was ill. (R p. 11)

Between 22 September 2016 and 6 October 2016, Devalle signed in to work a total of eight days (R p. 11) and claimed to have driven 767 miles on his Weekly Reports of Daily Activity. (Doc. Ex. pp. 772-801) The Patrol fuel logs, which track Patrol vehicle mileage, indicated Devalle had only driven 292 miles during that period. (R p. 12) Devalle falsified his timesheet for these dates as it was impossible for him to have been on duty during the times he claimed, in light of his home's location in Wake County and the mileage on his vehicle. (R p. 13)

Additionally, Devalle admitted that on occasion he drove home for lunch and stayed at home for extended periods of time. (R p. 12) Devalle 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. (R p. 12) Devalle admitted that he signed on as on-duty and stayed home for his entire shift. (R p. 12) Devalle admitted that on the occasions where he was signed in as on-duty and at his residence, he should have been in Wayne County and that by staying home, he was in violation of Patrol policy. (R p. 12) Devalle also admitted that he claimed the time he spent at home as time worked. (R p. 12)

At all times relevant to this matter, Devalle was responsible for overseeing more junior troopers as part of his responsibility as a supervisor. (R pp. 12-13) The public was injured by Devalle's conduct. (R p. 13) The State paid Devalle to perform duties in Wayne County during periods of time when he was not in Wayne County and, therefore, deprived Wayne County of his services. (R p. 13) Devalle also failed to provide training and support to the troopers under his command in light of his absence. (R p. 13) Devalle's conduct also created an inherent lack of trust and dispersion of the reputation of the Patrol, which is also a public injury. (R p. 13)

On 24 April 2017, following the internal investigation, the Patrol terminated Devalle's employment for substantiated untruthfulness, neglect of duty and insubordination in violation of the Patrol's policies, including the policy on residency. (R p. 7; Doc. Ex. pp. 132-147)

Devalle applied for justice officer certification with the Commission through the Columbus County Sheriff's Office in August 2017. (R p. 6) Following a hearing before the Commission's Probable Cause Committee, Devalle was notified the committee had found probable cause to deny his justice officer certification. (Doc. Ex. pp. 148-150) In opposition to the Committee's finding, Devalle requested a petition for a contested case hearing in the Office of Administrative Hearings ("OAH"). (Doc. Ex. p. 5)

At Devalle's OAH hearing on 3 and 4 December 2019, evidence pertaining to the contents and conclusions of the Patrol's IA investigation was admitted. (R pp. 7-13) Additionally, then Columbus County Sheriff, Steadman Jody Greene ("Sheriff Greene"), and Jeremiah Johnson ("Johnson"), Principal of East Columbus High School in Lake Waccamaw, North Carolina, testified on Petitioner's behalf. (R pp. 14-15) Sheriff Greene testified he was satisfied Devalle had good moral character and had no hesitation about his ability to tell the truth. (R p. 14) Johnson testified he had no doubts about Devalle's character. (R p. 14)

Devalle testified under oath at his OAH hearing on 3 December 2019. His conduct while testifying demonstrated a lack of candor and veracity with regard to his statements. (R p. 15) Specifically, Devalle feigned lack of memory or confusion when the Commission's counsel sought answers to questions about Devalle's actions in 2016 while

employed by the Patrol. (R p. 15) This occurred even after his recollection was refreshed by his prior statements. (R p. 15) However, Devalle readily recollected circumstances from this period when questioned by his own counsel without having to review any materials. (R p. 15)

Transcripts of Devalle's statements to the Patrol during the IA investigation on 15 November 2016, 18 November 2016 and 27 March 2017, corroborate his former admissions. (Doc. Ex. pp. 813-942) These transcripts also provide substantial statements of Devalle made close in time to the events in question and shed light on facts Devalle claimed to no longer recall.

On 3 June 2020, ALJ Lassiter filed her Proposal for Decision. ALJ Lassiter found, pursuant to 12 NCAC 10B .0201(b), the Commission's employee, Sirena Jones (hereinafter "Jones"), conducted an investigation into Devalle's rule violations which included reading the Patrol's IA file, drafting a summary of said file, reviewing Devalle's applicant/officer profile and the Patrol's Report of Separation (Form F-5B). (R p. 31, Doc Ex. pp. 132-134) ALJ Lassiter found that Devalle knew and understood he was to be within his assigned duty station, Wayne County, when he was working, and was never granted permission to work from home, in

Wake County, by his direct supervisor. (R p. 34, T2<sup>2</sup> pp. 319-321) The Proposed decision went on to find that Devalle claimed to have worked hours for the Patrol when he was in fact at his residence. (R p. 36) ALJ Lassiter determined substantial evidence presented at the OAH hearing supported the Committee's finding that Devalle committed the crime of Willfully Failing to Discharge Duties in violation of N.C. Gen. Stat. § 14-230 and Devalle defrauded the State and falsely claimed to have been actively serving the community which demonstrated a lack of good moral character at the time. (R pp. 42-43) However, the ALJ went on to conclude that the testimonies of Sheriff Greene and Johnson established Devalle had rehabilitated his character and proposed the Commission deny Devalle's certification but exercise the discretion granted under 12 NCAC 10B .0502 and give him a sanction less than denial. (R pp. 43-44)

At the Commission's regularly scheduled meeting on 17 September 2020, Devalle's matter was presented for FAD. (R p. 5) After considering the evidence and arguments of counsel, the Commission issued its FAD on 6 October 2020. (R pp. 5-22) Like ALJ Lassiter, the Commission found Devalle committed the crime of Willful Failure to Discharge Duties. (R p.

---

<sup>2</sup> References to the transcripts are as follows:

"T1": Transcript of administrative hearing held on 3 December 2019.

"T2": Transcript of administrative hearing held on 4 December 2019.

"T3": Transcript of PJR hearing held on 29 October 2021.

19) However, the Commission found Devalle's profound lack of candor and truthfulness while testifying under oath demonstrated that truthfulness was still a challenge for him and, despite the testimonies of Sheriff Greene and Johnson, Devalle did not possess the requisite moral character required for certification as a deputy sheriff. (R pp. 19-20) As a result, the Commission indefinitely denied Devalle's certification. (R p. 20)

On 8 December 2020, Devalle filed a PJR in Columbus County appealing the Commission's FAD. (R pp. 25-27) The Commission filed a Motion to Dismiss and Response on 22 January 2021 and a hearing on the pleadings was held on 22 October 2022. (R pp. 47, 76)

After denying the Commission's Motion to Dismiss, the Superior Court found that the PJR was adequate and sufficient to constitute a valid Petition for Judicial Review and afforded the Commission with detailed notice of the petition. (R p. 77) The Superior Court went on to adopt the Commission's Findings of Fact ("FOF") and make additional findings pertaining to Devalle's work history and positive testimony about his character by Sheriff Greene and Johnson. (R p. 80) Contrary to the Commission's FAD, the Superior Court found Devalle had restored his character such that he now possesses the good moral character for certification as a deputy sheriff. (R p. 81) Ultimately, the Superior Court

concluded the Commission's investigation into Devalle's rule violations did not comply with 12 NCAC 10B .0201(b) and ordered that Devalle presently had the good moral character to serve as a deputy sheriff and reversed the findings and conclusions in the Commission's FAD to the contrary. (R pp. 84, 87) Pursuant to the Superior Court's order, the Commission was required to issue certification to Devalle retroactively, effective the date he submitted his application. (R p. 87)

The Commission appealed the Superior Court's ruling to the Court of Appeals arguing Devalle's Petition for Judicial Review failed to provide sufficient notice to the Commission of his exceptions to its final agency decision. The Commission also argued no grounds exists, under N.C. Gen. Stat. § 150B-51(b), to support the trial court's reversal of its final agency decision. The Court of Appeals affirmed the trial court's order holding that Devalle's Petition for Judicial Review provided sufficient notice to the Commission and the Commission's decision to deny Devalle's certification for lack of good moral character was arbitrary and capricious.

## **REASONS WHY CERTIFICATION SHOULD BE ISSUED**

### **I. The Court of Appeals' Holding that the Commission's Decision to Deny Devalle's Certification for Lack of Good Moral Character was Arbitrary and Capricious Warrants Discretionary Review.**

This Court should certify the Court of Appeals' decision for discretionary review because the subject matter of this appeal has significant public interest, this case involves legal principles of major significance to the jurisprudence of this State, and the decision of the Court of Appeals appears likely to be in conflict with decisions of this Court. N.C. Gen. Stat. § 7A-31(c).

#### **A. Discretionary review is warranted because this decision appears likely to be in conflict with decisions of this Court.**

The United States Supreme Court has recognized the term "good moral character," at a minimum, 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, 10, 215 S.E.2d 771, 776-77 (1975) (citing *Konigsberg v. State Bar of California*, 353 U.S. 252, 262-63, 1 L. Ed. 2d 810 (1957)). It is not the words themselves, but the "long usage and the case law surrounding that usage" that have given the term definition. *In re Willis*, 288 N.C. at 11, 215 S.E.2d at 777. Instances of denial of professional certification have "involved instances of misconduct clearly inconsistent with the standards" of the profession. *Id.*



This Court engaged in an extensive discussion about good moral character in *In re Willis*, citing examples from several other cases to illustrate these concepts. Specifically, the Supreme Court in *In re Dillingham*, 188 N.C. 162, 124 S.E. 130 (1924), and *In re Applicants for License*, 191 N.C. 235, 131 S.E. 661 (1906), defined some of the parameters of good moral character.

This Court has held “misrepresentations and evasive or misleading responses...are inconsistent with...truthfulness and candor.” *In re Willis*. However, in its decision, the Court of Appeals disregarded the Commission’s finding that Devalle’s testimony lacked candor and sincerity. (COA22-256 p. 22) Specifically, the Commission found,

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 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.

(R p. 15)

In the Devalle decision, the Court of Appeals erred by ruling inconsistently with this Court’s long established standard for interpreting good moral character. The Court of Appeals held that the Commission’s decision

that Devalle lacked good moral character was unsupported by substantial evidence, despite the Commission's finding that Devalle's testimony lacked candor and sincerity.

The Court of Appeals' decision is flawed as the record contains abundant evidence supporting the Commission's conclusion and decision. Additionally, the Court of Appeals concluded the Commission failed to satisfy the statutory requirement to investigate Devalle's current moral character, which is also inconsistent with the record. COA22-256 p. 16. *Also see*, 12 NCAC 10B .0201(b).

Further, the Court of Appeals held the Commission "relied solely on Mr. Devalle's conduct in 2016 which led to his termination of employment from the Highway State Patrol." COA22-256 p. 16. While this is not accurate, this Court has not established any precedent that defines when an applicant's alleged current character is outweighed by his past when determining lack of good moral character. (*See R pp. 19-20*)

The Court of Appeals has previously held that administrative agency decisions may not be reversed as arbitrary or capricious unless they are "patently in bad faith," or "whimsical" in the sense that "they indicate a lack of fair and careful consideration" or fail to indicate "any course of reasoning and the exercise of judgment." *Rector v. N.C. Sheriffs' Educ. & Training Standards Comm'n*, 103 N.C. App. 527, 406 S.E.2d 613 (1991). Here the Court of Appeals violated this guidance when it cherry-picked a twelve year old final agency

decision, which was not subject to any judicial review, to apply to the case at bar. This application was flawed and sets a dangerous precedent for any profession in North Carolina that requires an applicant to possess good moral character.

Specifically, the Court of Appeals held the Commission's decision was arbitrary and capricious because it failed to apply the same rationale it used in a 2011 final agency decision that lacks relevance to this matter. *Devalle v. N.C. Sheriffs' Educ. & Training Standards Comm'n*, No. COA22-256, 2023 N.C. App. LEXIS 270, at \*15 (N.C. Ct. App. May 16, 2023), citing *Royall v. N.C. Sheriffs' Educ. And Training Standards Comm'n.*, Final Agency Decision, 09 DOJ 5859 (5 January 2011). The Court of Appeals concluded Devalle and the petitioner from the 2011 final agency decision (Royall) were "similarly situated individuals." *Id.*

However, Devalle's matter is easily distinguished from Royall. The employee in Royall released confidential, law enforcement intelligence to the public contrary to his office policy. *Id.* This infraction does not amount to moral turpitude. On the other hand, Devalle was untruthful on several occasions, defrauded the State, and neglected the duties he had sworn to uphold. (R p. 19) The 2011 final agency decision cited by the Court of Appeals is thus of little consequence to the interpretation of the Commission's good moral character rule.

Additionally, the Court of Appeals use of this singular final agency decision from 2011 arguably threatens the operations of every occupational licensing board that requires good moral character, which is not found anywhere in this Court's precedent. Specifically, the Court of Appeals could now require that only in cases of "clear and severe cases of misconduct" can "serve as the basis for a lack of good moral character." *Devalle v. N.C. Sheriffs' Educ. & Training Standards Comm'n*, No. COA22-256, 2023 N.C. App. LEXIS 270, at \*27 (N.C. Ct. App. May 16, 2023). The Court of Appeals panel's arguable creation of this standard is inconsistent with this Court's precedent.

The Court of Appeals also did not find the Commission's decision was made in bad faith, whimsical, lacked fair and careful consideration, or failed to indicate reasoning and the exercise of judgment. *See Rector*, 103 N.C. App. 527, 406 S.E.2d 613 (1991). Without making such a conclusion, the Court of Appeals lacked authority to overturn the Commission's final agency decision to deny Devalle's certification. *See Lewis v. N.C. Dep't of Hum. Res.*, 92 N.C. App. 737, 740, 375 S.E.2d 712, 714 (1989).

The Court of Appeals' departure from existing good moral character jurisprudence displays how the opinion below was in conflict with this Court's precedent.

**B. Discretionary review is warranted because this matter involves legal principles of major significance to the jurisprudence of the State.**

Review is also warranted because the Court of Appeals' holding involves legal principles of major significance to the jurisprudence of this state.

Much of the existing good moral character jurisprudence of North Carolina has arisen in the context of admission to practice of law. *In re Legg*, 325 N.C. 658, 386 S.E.2d 174 (1989); *In re Willis*, 288 N.C. 1, 215 S.E.2d 771 (1975), appeal dismissed 423 U.S. 976 (1975); *In re Dillingham*, 188 N.C. 162, 124 S.E. 130 (1924); *In re Applicants for License* 143 N.C. 1, 55 S.E. 635 (1906). However, these precedents have been applied beyond bar applicants and have been utilized to evaluate the character and fitness requirements of other professions. *See State v. Harris*, 216 N.C. 746, 6 S.E.2d 854 (1940); *State v. Benbow*, 309 N.C. 538, 308 S.E.2d 647 (1983); *see also* 12 NCAC 10B .0301(12) (minimum standards for justice officers); 12 NCAC 09B .0101 (12) (minimum standards for law enforcement officers).

Similarly, depending on interpretation, this Court of Appeals' decision could have a far reaching, adverse impact on the interpretation of character and fitness requirements of other certifying bodies of this state. Numerous certifying agencies or licensing boards could be affected by the Court of Appeals' flawed decision in this case depending on its interpretation, including but not limited to The North Carolina Sheriffs' Education and Training

Standards Commission, the North Carolina Criminal Justice Education and Training Standards Commission, the North Carolina Board of Law Examiners, the North Carolina Real Estate Commission, the North Carolina Board of Certified Public Accountants, and the North Carolina Private Protective Services Board.

**C. Discretionary review is warranted because the subject matter of the appeal has significant public interest.**

The Court of Appeals' holding the Commission's final agency decision was arbitrary and capricious warrants review because it concerns an issue of significant public interest. The Court of Appeals' decision improperly restricts the Commission's authority to enforce the minimum standards established for justice offices, who are tasked with protecting and serving the citizens of North Carolina. N.C. Gen. Stat. § 17E-4.

The Commission requires every justice officer employed or certified in North Carolina be of good moral character. 12 NCAC 10B .0301(12). This requirement not only protects the noble profession of law enforcement, but also is essential to public trust and confidence in law enforcement officers. The deputy sheriff has been held by the Supreme Court of this State to hold an office of special trust and confidence, acting in the name of and with powers coterminous with his principal, the elected sheriff. The offices of sheriff and

deputy sheriff are therefore of special concern to the public health, safety, welfare and morals of the people of this State. N.C. Gen. Stat. § 17E-1.

When a justice officer engages in a course of conduct or behaves in a manner inconsistent with honesty and integrity, the Commission is empowered by statute to protect the public from such behavior. N.C. Gen. Stat. § 17E-4. In this case, Devalle was untruthful by submitting false timesheets to reflect time he did not work, collecting money from the State of North Carolina for the hours he did not work, and failed to discharge the duties he took an oath to faithfully perform. The Commission has a solemn obligation to protect the public by denying and or revoking such a justice officer's certification. (R p. 19)

As keepers of the peace and enforcers of the law, the public has a strong interest in the integrity of and confidence instilled in law enforcement officers of this State. The Commission's duty to regulate and take appropriate action against law enforcement officers who have demonstrated a lack of good moral character is of significant interest to the public. "Dereliction of duty and an indifferent attitude toward one's obligations... are certainly character traits undeserving of public confidence." *In re Willis*, 288 N.C. 1, 215 S.E.2d 771 (1975). The general public and society at large have a right to be policed by honest officers due to the nature and duties of the profession. Law enforcement officers have a plethora of duties which affect a person's liberty interest and

therefore require that officer, amongst other attributes, be honest, fair, have sound judgement, have integrity – to be of good moral character.

### **ISSUE TO BE BRIEFED**

If the Court allows the petition, the Commission will present the following issue:

1. Did the Court of Appeals err by affirming the trial court's ruling to overturn the Commission final agency decision to deny Devalle's certification for lack of good moral character?

### **CONCLUSION**

The Commission respectfully requests that this Court grant the Petition for Discretionary Review.

Electronically submitted this the 20<sup>th</sup> day of June, 2023.

JOSHUA H. STEIN  
ATTORNEY GENERAL

Electronically Submitted  
Kirstin J. Greene  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602  
State Bar No. 52156  
Phone: (919) 716-6401  
[kgreene@ncdoj.gov](mailto:kgreene@ncdoj.gov)



### **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing petition upon Petitioner-Appellee via e-mail to his below-listed attorney pursuant to N.C. R. App. P. 26(c), which allows service of a document by e-mail if it has been electronically filed with a North Carolina appellate court:

J. Michael McGuinness  
[jmichael@mcguinnesslaw.com](mailto:jmichael@mcguinnesslaw.com)

Electronically submitted this the 20th day of June, 2023.

Electronically Submitted  
Kirstin J. Greene  
Assistant Attorney General

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-256

Filed 16 May 2023

Columbus County, No. 20 CVS 1273

MAURICE DEVALLE, Petitioner,

v.

NORTH CAROLINA SHERIFFS' EDUCATION AND TRAINING STANDARDS  
COMMISSION, Respondent.

Appeal by Respondent from order entered 22 November 2021 by Judge James  
Gregory Bell in Columbus County Superior Court. Heard in the Court of Appeals 2  
November 2022.

*The McGuinness Law Firm, by J. Michael McGuinness, for petitioner-appellee.*

*North Carolina Fraternal Order of Police, Amicus Curiae Brief, by Norris A.  
Adams, II, for petitioner-appellee.*

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Ameshia  
Cooper Chester, for respondent-appellant.*

MURPHY, Judge.

Where the North Carolina Sheriffs' Education and Training Standards  
Commission revoked Petitioner's justice officer certification for lack of good moral  
character based on his conduct in 2016, the Commission could not deny Petitioner's  
certification indefinitely where the only recent evidence to support the denial was his  
demeanor on cross examination during the contested-case hearing and Petitioner  
presented sufficient evidence that he rehabilitated his character. We affirm the trial

court's order on judicial review reversing the Commission's final agency decision and ordering that it issue Petitioner his justice officer certification retroactive to the date of application.

### **BACKGROUND**

Petitioner Maurice Devalle served with the North Carolina State Highway Patrol for nineteen years. Respondent North Carolina Sheriffs' Education and Training Standards Commission ("the Commission") had certified Mr. Devalle as a justice officer during that time, since November 1998. Prior to April 2017, Mr. Devalle received only one disciplinary action by the Highway Patrol in the form of a written warning.

The Highway Patrol received a tip in November 2016 that Mr. Devalle was at his residence in Wake County while he was supposed to be on duty in Wayne County. The Highway Patrol conducted an internal investigation following the tip. The Highway Patrol learned Mr. Devalle had falsely reported he resided within the mandated-20-mile radius of his duty station in Wayne County, when he in fact lived 44 miles away, in Wake County. On 11 November 2016, Highway Patrol personnel traveled to Mr. Devalle's Wake County home while he was scheduled to be on duty and found him there dressed in plain clothing. Mr. Devalle admitted that, on occasion, he would drive home for lunch and then stay home "for extended periods of time while he was on-duty . . . ." Mr. Devalle acknowledged he knew this conduct violated Highway Patrol Policy.

On 24 April 2017, the Highway Patrol terminated Mr. Devalle's employment and, four days later, notified the Commission of Mr. Devalle's termination and the above conduct. The Commission revoked Mr. Devalle's justice officer certification as a result of the report effective 24 April 2017.<sup>1</sup>

In August 2017, Mr. Devalle began working as a school resource officer for East Columbus County High School and applied that same month once again for justice officer certification with the Commission through the Columbus County Sheriffs' Office. On 29 January 2019,<sup>2</sup> the Commission notified Mr. Devalle that it had reviewed his application for certification and denied his certification indefinitely. The notification indicated to Mr. Devalle his denial was due to him "[n]o longer possessing the good moral character required of all justice officers."<sup>3</sup>

On 20 March 2019, Mr. Devalle filed a request for a contested case hearing in the Office of Administrative Hearings. On 3 December 2019, Mr. Devalle's case came on for hearing before administrative law judge Melissa Owens Lassiter. The Commission only presented evidence of the 2016 conduct that led to Mr. Devalle's termination. Mr. Devalle presented two witnesses at the hearing, the Sheriff of Columbus County and school principal of East Columbus County High School, his

---

<sup>1</sup> Mr. Devalle's termination from the Highway Patrol and initial loss of certification in April 2017 are not at issue in this appeal.

<sup>2</sup> Mr. Devalle remained employed at East Columbus County High during this period.

<sup>3</sup> The Commission also denied Mr. Devalle's certification for the Class B misdemeanor of "Willfully Failing to Discharge Duties," but suspended the denial. This ground is not at issue on appeal.

superiors, where Mr. Devalle was employed as a school resource officer. Both individuals testified in depth to the effect that Mr. Devalle currently had good moral character. The administrative law judge found:

68. . . . . [The Commission] failed to present any evidence concerning any activities involving [Mr. Devalle] that took place more recently than 2016. While four witnesses from the [Highway] Patrol testified regarding [Mr. Devalle's] dismissal from the Patrol, none of those witnesses possessed any first-hand knowledge of how [Mr. Devalle] has conducted himself in terms of truthfulness or conformance with policies while [presently] employed as a deputy sheriff in Columbus County. None of those witnesses opined that [Mr. Devalle] lacked good moral character, either generally, or to serve as a deputy sheriff in this State.

(Transcript citations omitted). By proposal for decision filed 3 June 2020, the administrative law judge recommended a conclusion that the evidence at the hearing “rebutted the finding by [the Commission] that Petitioner lacks the good moral character required of a justice officer.” The administrative law judge recommended this was a result of the testimony by Mr. Devalle’s superiors establishing that Mr. Devalle “has rehabilitated his character since 2017.”

By final agency decision signed 6 October 2020,<sup>4</sup> the Commission rejected the administrative law judge’s proposal and concluded instead that the evidence before the administrative law judge showed Mr. Devalle “currently does not possess the good

---

<sup>4</sup> Alan Cloninger, Chairman, North Carolina Sheriffs’ Education and Training Standards Commission.

moral character required to continue certification as a deputy sheriff.” The Commission accepted and found the testimony of Mr. Devalle’s present character to be credible and believable. The Commission found, however, that Mr. Devalle lacked candor and truthfulness while testifying on cross examination at the contested case hearing, and therefore concluded he lacked the good moral character required for justice officer certification. The Commission denied Mr. Devalle’s certification indefinitely as a result.<sup>5</sup>

On 3 December 2020, Mr. Devalle filed a petition for judicial review of the Commission’s final agency decision in Columbus County Superior Court. The Commission filed a motion to dismiss and brief in opposition.

On 22 November 2021, the trial court concluded the record established that Mr. Devalle “*presently* has good moral character to serve as a Deputy Sheriff,” and reversed the Commission’s final agency decision. The trial court ordered the Commission to grant Mr. Devalle’s application for certification effective and retroactive to August 2017. The Commission appeals.

### **ANALYSIS**

The Commission advances several arguments on appeal challenging the trial court’s reversal of its final agency decision. The Commission first argues the trial

---

<sup>5</sup> The Commission denied the certification indefinitely based upon Mr. Devalle’s “lack of good moral character.” The Commission denied Mr. Devalle’s certification for a suspended sanction of five years for the commission of the Class B offense of willful failure to discharge duties.

*Opinion of the Court*

court erroneously concluded Mr. Devalle's petition for judicial review provided sufficient notice to the Commission of Mr. Devalle's exceptions to its final agency decision. The Commission also argues no grounds support the trial court's reversal of its final agency decision under the provisions of N.C.G.S. § 150B-51(b). We disagree, and affirm the trial court's order.

"Any person who is aggrieved by the final decision in a contested case, and who has exhausted all administrative remedies . . . , is entitled to judicial review of the decision . . . ." N.C.G.S. § 150B-43 (2021). On petition for judicial review from a final administrative agency decision, the trial court sits as an appellate court reviewing the administrative agency. *See Rector v. N.C. Sheriff's Educ. & Training Standards Com.*, 103 N.C. App. 527, 532 (1991) (citing *Thompson v. Wake Cnty. Bd. of Educ.*, 292 N.C. 406, 410 (1977)).

The North Carolina Administrative Procedure Act defines the scope of a Superior Court's review over a final agency decision. *See* N.C.G.S. § 150B-51 (2021). Subsection (b) provides:

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;

*Opinion of the Court*

- (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.

N.C.G.S. § 150B-51(b) (2021).

Errors asserted under subdivisions (1) through (4) of subsection (b) are reviewed *de novo*. N.C.G.S. § 150B-51(c) (2021). “Under the *de novo* standard of review, the trial court considers the matter anew and freely substitutes its own judgment for the agency’s.” *N.C. Dep’t of Env’t and Nat. Res. v. Carroll*, 358 N.C. 649, 660 (2004) (quotation marks omitted). In contrast, errors asserted under subdivisions (5) and (6) are reviewed “using the whole record standard of review.” N.C.G.S. § 150B-51(c) (2021).

Under the whole record standard of review, the trial court reviews the whole record to ensure “the administrative agency’s decision is supported by substantial evidence.” *Rector*, 103 N.C. App. at 532. The question before the trial court was whether there was “substantial evidence to support a finding” essential to the agency’s determination. *In re Rogers*, 297 N.C. 48, 65-66 (1979). “Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to



support a conclusion and ‘is more than a scintilla or a permissible inference.’” *Rector*, 103 N.C. App. at 532 (marks omitted).

“When this Court reviews an appeal from the [S]uperior [C]ourt reversing the decision of an administrative agency, our standard of review is twofold and is limited to determining: (1) whether the [S]uperior [C]ourt applied the appropriate standard of review and, if so, (2) whether the [S]uperior [C]ourt properly applied this standard.” *McCrann v. N.C. HHS*, 209 N.C. App. 241, 246, *disc. review denied*, 365 N.C. 198 (2011); *see also Powell v. N.C. Crim. Justice Educ. Training Stds. Comm’n.*, 165 N.C. App. 848, 851 (2004) (citation and marks omitted) (“The appellate court examines the trial court’s order regarding an agency decision for error of law.”).

#### **A. Adequacy of Petition for Judicial Review**

We first address the Commission’s argument that Mr. Devalle’s petition for judicial review lacked sufficient notice to the Commission of the specific exceptions Mr. Devalle took to its final agency decision. We conclude the trial court properly denied the Commission’s motion to dismiss Mr. Devalle’s petition for judicial review on this ground.

Section 150B-46 of the North Carolina Administrative Procedure Act governs the contents of a petition for judicial review over an administrative agency’s final decision. N.C.G.S. § 150B-46 (2021). It requires only that “[t]he petition shall explicitly state what exceptions are taken to the decision or procedure and what relief the petitioner seeks.” N.C.G.S. § 150B-46 (2021). “‘Explicit’ 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 (quoting *Vann v. N.C. State Bar*, 79 N.C. App. 173, 173-74 (1986)), *disc. review denied*, 341 N.C. 649 (1995).

Mr. Devalle’s petition for judicial review in this case took exception to the Commission’s finding “that [Mr. Devalle] lacked the good moral character required of every justice officer under 12 NCAC 10B .0303(a)(8).” Mr. Devalle complained that the Commission found the only evidence regarding Mr. Devalle’s current moral character to be “credible, honest, and believable,” but that the Commission nonetheless concluded Mr. Devalle lacked the requisite moral character. Moreover, Mr. Devalle cited our Supreme Court’s decision in *In re Dillingham*, 188 N.C. 162 (1924), and asserted that the sanction of revocation for an indefinite period may continue only “so long as the stated deficiency exists.” Mr. Devalle thus excepted “to particular findings of fact, conclusions of law, or procedures.” *Kingsgrab v. State Bd. of Barber Examiners*, 236 N.C. App. 564, 570 (2014), *disc. review denied*, 368 N.C. 244 (2015). He then prayed that the trial court “[r]everse the portion of the Final Agency Decision that determined that he continues to lack good moral character,” and that the court “[r]einststate [his] justice officer certification[.]” We conclude this filing adequately stated the exceptions Mr. Devalle took to the Commission’s final agency decision—i.e., an erroneous finding of Mr. Devalle’s present lack of good moral character—and that Mr. Devalle was seeking a reversal thereof. *See James v. Wayne*

*County Board of Education*, 15 N.C. App. 531, 533 (1972) (citing *In re Appeal of Harris*, 273 N.C. 20 (1968) (“Our Supreme Court has held that the primary purpose of the statute is to confer the right of review and that the statute should be liberally construed to preserve and effectuate that right.”). Moreover, although the Commission was not required to file a response to the petition for judicial review, *see* N.C.G.S. § 150B-46 (emphasis added) (“Other parties to the proceeding *may* file a response to the petition within 30 days of service.”), the Commission did file a brief in opposition, which was extensive and which addressed the various exceptions raised in Mr. Devalle’s petition for review and argued their inadequacy. We agree with the trial court that the Commission was “in no way blindsided by a lack of notice or detail,” and conclude Mr. Devalle’s petition for review was “sufficiently explicit to have allowed effective judicial review.” *Gray*, 119 N.C. App. at 71 (brackets omitted).

#### **B. N.C.G.S. § 150B-51**

We next address the Commission’s argument the trial court erred in reversing its final agency decision pursuant to N.C.G.S. § 150B-51(b) on the grounds it was unsupported by substantial evidence in view of the entire record and that the Commission erred as a matter of law. The trial court held that, “[u]nder a correct interpretation of the good moral character rule, [Mr. Devalle] presently has good moral character sufficient for certification as a Deputy Sheriff.” The trial court rendered additional findings of fact to the effect that “[t]he credible and persuasive testimonies by Sheriff Greene and Principal Johnson demonstrated that [Mr.

Devalle] has restored his character so that he now possesses the good moral character required to continue to be certified as a deputy sheriff.”

The Commission addresses each of subdivisions N.C.G.S. § 150B-51(b)(3)-(6) and argues that, because the administrative law judge had found Mr. Devalle lacked “candor and sincerity” on cross examination during the contested case hearing, the trial court erred in reversing its final agency decision in that it was not entered upon unlawful procedure (N.C.G.S. § 150B-51(b)(3)) or based upon an error of law (N.C.G.S. § 150B-51(b)(4)), and that it was otherwise supported by substantial evidence (N.C.G.S. § 150B-51(b)(5)) and not arbitrary, capricious, or an abuse of discretion (N.C.G.S. § 150B-51(b)(6)). Mr. Devalle maintains the trial court’s order should be affirmed because the Commission failed to present sufficient evidence that his 2016 conduct amounted to “a severe case” of bad moral character warranting indefinite denial, “particularly in light of the evidence of rehabilitation, and that his *present* character is good.”

Mr. Devalle maintains the Commission erroneously distorted the administrative law judge’s “credibility determinations and [failed] to give deference to her role as the fact-finder and [that] this conduct amounts to arbitrary and capricious decision making on the part of” the Commission.

We agree with the trial court and conclude the Commission did not abide by its own good moral character standard when it denied Mr. Devalle’s justice officer certification indefinitely. The Commission’s decision was arbitrary and capricious,

and its denial was unsupported by substantial evidence. We affirm the trial court's order reversing the Commission's final agency decision.

Chapter 17E of the North Carolina General Statutes, as well as our Administrative Code, grant the Commission the authority to certify, revoke, suspend, or deny justice officer certifications in North Carolina based on certain qualifications, which the Commission is permitted to establish. *See* N.C.G.S. §§ 17E-1, -4 (2021); *see also* Strong's North Carolina Index 4th § 30 (2021) (citing N.C.G.S. §§ 17E-1, -4 (2021) ("The commission was created to deal with the training and educational needs of sheriffs and deputy sheriffs and has the power, among other things, to establish minimum educational and training standards and to certify persons who have met those standards.")). Article 12, Chapter 10B of our Administrative Code provides, in relevant part:

(b) The [Sheriffs' Education and Training Standards] Commission shall revoke, deny, or suspend the certification of a justice officer when the commission finds that the applicant for certification or the certified officer:

....

(2) fails to meet or maintain any of the employment or certification standards required by 12 NCAC 10B .0300[.]

12 NCAC 10B .0204(b)(2) (2021).

Subdivision .0301 provides that "[e]very Justice Officer employed or certified in North Carolina shall":

*Opinion of the Court*

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[.]

12 NCAC 10B .0301(a)(9) (2021). Accordingly, our State's caselaw defines the concept of good moral character. *See* 12 NCAC 10B .0301(a)(9).

The requirement that an applicant maintain good moral character means

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.

*In re Rogers*, 297 N.C. at 58 (quoting *In re Applicants for License*, 191 N.C. 235 (1926)).

“Character thus encompasses both a person’s past behavior and the opinion of members of his community arising from it.” *Id.* Further, “whether a person is of good moral character is seldom subject to proof by reference to one or two incidents.” *Id.* “[W]hen one seeks to establish restoration of a character which has been deservedly forfeited, the question becomes essentially one ‘of time and growth.’” *In re Willis*, 288 N.C. 1, 13, *appeal dismissed*, 423 U.S. 976 (1975) (quoting *In re Dillingham*, 188 N.C. 162 (1924)).

While vague, the “good moral character” standard is not “an unconstitutional standard.” *Id.* at 11. “The right to establish such qualifications rests in the police power—a power by virtue of which a State is authorized to enact laws to preserve the public safety, maintain the public peace and order, and preserve and promote the public health and public morals.” *In re Applicants for License*, 143 N.C. 1, 5 (1906). Nonetheless, “[s]uch a vague qualification, which is easily adapted to fit personal views and predilections, can be a dangerous instrument for arbitrary and discriminatory denial . . . .” *Konigsberg v. State*, 353 U.S. 252, 263 (1957).

In 2011, the Commission, in a different case, issued a final agency decision in which it summarized its operating framework for determinations of lack of good moral character and the appropriate corresponding sanctions. *See Royall v. N.C. Sheriffs’ Educ. And Training Standards Comm’n.*, Final Agency Decision, 09 DOJ 5859 (5 January 2011). The conduct at issue in *Royall* involved the petitioner releasing to the public sensitive information he obtained about ongoing investigations through his service with the Yadkin County Sheriffs’ Office on certain social media websites. The administrative law judge who heard the evidence in the contested case hearing recommended a finding of a lack of good moral character by the petitioner and, as a result, recommended his certification be revoked for four months.

Despite the administrative law judge’s recommendations, the Commission concluded there was no factual or legal basis to support a finding the petitioner

*Opinion of the Court*

presently lacked the requisite good moral character to warrant his revocation. The Commission explained:

6. 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 [Commission's] rule, and the lack of clear enforcement standards or criteria for application of the rule, renders enforcement actions problematic and difficult.

7. 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.*

8. Generally, isolated instances of conduct are insufficient to properly conclude that someone lacks good moral character. . . . The incident alleged in this case is insufficient to rise to the required level of proof to establish that Petitioner Royall lacks good moral character. Under *In Re Rogers*, a single instance of conduct amounting to poor judgment, especially where there is no malice or bad faith, would not ordinarily rise to the high level required to reflect a lack of good moral character.

. . . .

11. The totality of the facts and circumstances surrounding Petitioner Royall's conduct, in light of his exemplary history of good moral character and professionalism in law enforcement, does not warrant any finding that Petitioner Royall lacks good moral character. The substantial evidence of Petitioner's good moral character is clear and compelling. Sheriff Jack Henderson's description of Petitioner Royall is very telling: "He's the kind of guy, if he's cutting a watermelon, he'll give you the best piece." Therefore, the evidence demonstrates that there is no proper basis for revocation or suspension of Petitioner's law enforcement certification.



....

13. The totality of the facts and circumstances surrounding Petitioner Royall's conduct, in light of his otherwise exemplary history of good moral character and professionalism in law enforcement, do not warrant or justify revoking or suspending Petitioner's law enforcement certification. There has been no violation of [the Commission's] good moral character rule.

*Royall v. N.C. Sheriffs' Educ. And Training Standards Comm'n.*, Final Agency Decision, 09 DOJ 5859 (5 January 2011) (emphasis supplied) (citations omitted). It appears the Commission viewed the petitioner's social media activity and postings in *Royall* to constitute "a single instance of conduct."

Here, as the trial court noted, instead of investigating Mr. Devalle's current moral character, the Commission relied solely on Mr. Devalle's conduct in 2016 which led to his termination of employment from the Highway Patrol.

The Commission characterized the testimony concerning Mr. Devalle's present moral character as follows:

21. Despite knowing that [Mr. Devalle] had been working as a deputy sheriff for two and a half years, [the Commission's Probable Cause Committee] did not interview the Columbus County Sheriff or the school principal for whom [Mr. Devalle] served as a school resource officer since August 2017. [The Commission's Probable Cause Committee] had no knowledge of what Mr. Devalle did while working as a school resource officer or how he discharged his duties as a school resource officer.

....

*Opinion of the Court*

54. At hearing, [Mr. Devalle] 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, [Mr. Devalle] completed weekly reports of daily activity claiming approximately 40% of his time was spent on patrol in Wayne County.

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

....

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

70. When Sheriff Greene hired [Mr. Devalle], he was aware that [Mr. Devalle] had been dismissed from the [Highway] Patrol. [Mr. Devalle] had told him. Sheriff Greene is satisfied that [Mr. Devalle] 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 [Mr. Devalle]. He hired [Mr. Devalle] based upon the principal, school board members, parents and students all recommending him and not based upon the past. Sheriff Greene is satisfied that [Mr. Devalle] had performed his duties “above and beyond.” If

*Opinion of the Court*

[Mr. Devalle] was unable to serve as a deputy, it would negatively impact Greene's force.

71. Based on [Mr. Devalle's] service as a deputy sheriff, Sheriff Greene has no hesitation as to [his] truthfulness or ability to tell the truth.

72. Jeremiah Johnson is the principal at East Columbus High School in Lake Waccamaw, North Carolina. Johnson knows [Mr. Devalle] 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. [Mr. Devalle] has served, and continues to serve, in those capacities since 2017. Johnson has had the opportunity to watch [Mr. Devalle] perform those duties "every day" that school is in session. Johnson described [Mr. Devalle], 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."

73. When asked whether he had had an opportunity to form an opinion as to [Mr. Devalle'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." When asked whether [Mr. Devalle] had ever committed any act that would cause Johnson to doubt [his] capacity to be truthful, Johnson answered, "No."

74. Mr. Johnson has no doubt, based on what he's observed from [Mr. Devalle], that [Mr. Devalle] does not lack the character necessary to serve as a school resource officer at Johnson's high school. Johnson would not have permitted [Mr. Devalle] 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 [Mr. Devalle's] character.

75. Mr. Johnson opined that if [Mr. Devalle] was no longer able to serve East Columbus as a school resource officer,

*Opinion of the Court*

the lack of [Mr. Devalle's] presence would make the school less safe.

76. Johnson also spoke of the strong professional bond that exists between himself as principal and [Mr. Devalle] as the school resource officer. Johnson thinks that [Mr. Devalle] is the best school resource officer he has ever worked with and as a school administrator, Johnson has trained many SROs. He opined that interaction with the students would suffer tremendously if [Mr. Devalle] was not at East Columbus High. "These kids, they look up to him." Johnson explained how [Mr. Devalle] has helped other students such as buying shoes for kids, bought lunch for kids, and given them food. . . .

. . . .

79. Neither [the Commission's Probable Cause Committee] nor [the Commission] presented any evidence at hearing regarding [Mr. Devalle's] performance of his duties as a Columbus County deputy sheriff. [The Commission] failed to present any evidence concerning any activities involving [Mr. Devalle] that took place more recently than 2016. While four witnesses from the Patrol testified regarding [Mr. Devalle's] dismissal from the Patrol, none of those witnesses possessed any first-hand knowledge of how [Mr. Devalle] has conducted himself in terms of truthfulness or conformance with policies while employed as a deputy sheriff in Columbus County. None of those witnesses opined that [Mr. Devalle] lacked good moral character, either generally, or to serve as a deputy sheriff in this State.

. . . .

81. During his case in chief, [Mr. Devalle] presented significant evidence demonstrating that [Mr. Devalle] 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 [Mr. Devalle] has exhibited highly favorable traits, including

*Opinion of the Court*

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 [Mr. Devalle's] absence from their respective entities would have a negative impact on their workplaces. The scope and magnitude of [Mr. Devalle's] character traits, as witnessed by Sheriff Greene and Principal Johnson, qualify as extenuating circumstances which the [Commission] should consider in determining whether [Mr. Devalle] possesses the good moral character required of a justice officer.

The Commission further concluded:

24. Sheriff Greene and Principal Johnson testified that [Mr. Devalle] has rehabilitated and rebuilt his character, since being fired by the [Highway] 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, [Mr. Devalle's] service as a deputy sheriff has been nothing but exemplary both of that service and of [Mr. Devalle's] character while engaging in that service. Such testimony was credible, honest, and believable.

Despite the above credible evidence of Mr. Devalle's present moral character, the Commission found that, while testifying on cross examination before the administrative law judge, Mr. Devalle

exhibited a lack of candor and sincerity during cross-examination by [the Commission's] counsel. During [the Commission's] questions, [Mr. Devalle] was evasive and feigned a lack of memory or confusion in response to [the Commission's] questions about [Mr. Devalle's] conduct with the [Highway] Patrol in 2016. [Mr. Devalle] remained evasive and elusive even after having his recollection refreshed with his prior statements. In contrast, [Mr. Devalle] readily recollected circumstances from this period, when questioned by his own counsel, without having to

review any materials.

The Commission therefore concluded that “the most recent demonstration of [Mr. Devalle’s] character was the hearing itself[,]” and denied Mr. Devalle’s certification for a lack of moral character.

We agree with the trial court these findings and conclusions do not conform with the standard the agency applied in *Royall*. By failing to apply the same standard to similarly situated individuals, the record in this case is one “which indicates arbitrary, discriminatory or capricious application of the good moral character standard” by the Commission. *In re Willis*, 288 N.C. at 19.

The administrative law judge who heard the evidence in this case found and concluded the following regarding Mr. Devalle’s conduct at the contested case hearing:

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

70. During his case in chief, [Mr. Devalle] presented significant evidence demonstrating that [he] 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 [Mr.

*Opinion of the Court*

Devalle] 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 [Mr. Devalle's] absence from their respective entities would have a negative impact on their workplaces. The scope and magnitude of [Mr. Devalle's] character traits, as witnessed by Sheriff Greene and Principal Johnson, qualify as extenuating circumstances which the [Commission] should consider in determining whether [Mr. Devalle] possesses the good moral character required of a justice officer.

The administrative law judge concluded that “[e]ven given [Mr. Devalle’s] cross-examination testimony at hearing, the totality of the evidence rebutted the finding by the Probable Cause Committee that [Mr. Devalle] lacks the good moral character required of a justice officer and showed that [Mr. Devalle] has rehabilitated his character since 2017[,]” and that the “credible and persuasive testimonies by Sheriff Greene and Principal Johnson demonstrated that [he] has restored his character so that he now possesses the good moral character required to continue certification as a deputy sheriff.” (Emphasis added).

As the Commission made clear in its statement of the applicable law in *Royall*, it would only be cases of severe conduct that may serve as the basis for a finding of lack of good moral character and, where evidence of rehabilitation is presented, the question becomes one of time and growth. Neither the Commission nor the administrative law judge made a finding in this case that Mr. Devalle’s conduct with the Highway Patrol in 2016 was severe, and the Commission made a finding

concerning rehabilitation. The Commission found Sheriff Greene and Principal Johnson's testimony was "credible, honest, and believable" and that Mr. Devalle had "rehabilitated and rebuilt his character."

In view of the Commission's findings that Mr. Devalle has rehabilitated his moral character since the 2016 conduct and the lack of a finding or substantial evidence that Mr. Devalle's conduct on cross examination was severe, pursuant to the Commission's own standard expounded upon in *Royall*, we agree with the trial court the Commission erred and applied an arbitrary and capricious decision to Mr. Devalle. The evidence and findings fail to show severe misconduct amounting to a lack of good moral character as a matter of law. See *In re Rogers*, 297 N.C. at 58 ("Whether a person is of good moral character is seldom subject to proof by reference to one or two incidents."); *Rector*, 103 N.C. App. at 532 (quotation marks omitted) ("Administrative agency decisions may be reversed as arbitrary or capricious if they are patently in bad faith, or 'whimsical' in the sense that they indicate a lack of fair and careful consideration or fail to indicate any course of reasoning and the exercise of judgment.").<sup>6</sup> We agree there is a lack of substantial record evidence to support the Commission's conclusion Mr. Devalle presently lacks the good moral character

---

<sup>6</sup> In *Royall*, the Commission held "[t]he substantial evidence of [the petitioner's] good moral character [was] clear and compelling" in light of Sheriff Jack Henderson's "very telling" description of the petitioner that "He's the kind of guy, if he's cutting a watermelon, he'll give you the best piece." *Jeffrey Gray Royall v. N.C. Sheriffs' Educ. and Training Standards Comm'n.*, Final Agency Decision, 09 DOJ 5859 (2011).



*Opinion of the Court*

required of justice officers in North Carolina warranting indefinite denial of his certification, *see Rector*, 103 N.C. App. at 532 (quotation marks omitted) (“[T]he whole record rule requires the court, in determining the substantiality of evidence supporting the Board’s decisions, to take into account whatever in the record fairly detracts from the weight of the Board’s evidence.”), and affirm the trial court’s order reversing the Commission’s decision and ordering it issue Mr. Devalle his justice officer certification retroactive to August 2017.

**CONCLUSION**

Mr. Devalle’s petition for judicial review provided adequate notice to the Commission, and the Commission applied a heightened good moral character standard to Mr. Devalle than that which it has previously enumerated when it denied his justice officer certification indefinitely such that its decision was arbitrary and capricious. The Commission’s denial was further unsupported by substantial evidence. We affirm the trial court’s order reversing the Commission’s final agency decision. The Commission’s imposition of the sanction of a five-year denial and suspension thereof for five years for willfully failing to discharge duties was not appealed and is thus binding on the Commission.

**AFFIRMED.**

Judges TYSON and WOOD concur.