

NO. 158P23

THIRTEENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

MAURICE DEVALLE)	
)	
Petitioner/Appellee)	
v.)	<u>From Columbus County</u>
)	No. 20 CVS 1273
N.C. SHERIFF’S EDUCATION)	No. COA 22-256
AND TRAINING STANDARDS)	
COMMISSION)	
)	
Respondent/Appellant)	

**RESPONSE TO PETITION FOR
DISCRETIONARY REVIEW
BY APPELLEE DEVALLE**

I. INTRODUCTION

The Courts below have adjudicated this occupational licensing case and concluded that the Appellant Sheriffs' Commission violated the Administrative Procedure Act and erred in denying Petitioner Devalle a justice officer certification. Five judges have explained how the Sheriffs' Commission erred in multiple ways through the application of its "good moral character" rule.

The Honorable Melissa Owens Lassiter was the trial judge; her decision was reported at 2020 WL 11420701. The Honorable James G. Bell was the presiding Superior Court Judge; his decision was reported at 2021 WL 111321326. The Honorable Judges Tyson, Murphy and Wood heard the case for the Court of Appeals; the appellate decision was reported at 2023 WL 3470876. The trial judge, the Superior Court and the Court of Appeals all unanimously concluded that Petitioner Devalle is presently of good moral character and the Commission erred in denying his certification.

There is nothing in this simple routine case that warrants this Court's discretionary review jurisdiction because the applicable good

moral character law was properly applied by both Courts below. This Court's body of good moral character law is settled and does not need revisiting.

The Court of Appeals found that the Commission erred and violated the Administrative Procedure Act in three material ways: 1) the Commission's action was unsupported by substantial evidence; 2) the Commission's decision was arbitrary and capricious; and 3) the Commission did not abide by its own good moral character standard. Slip op. at 11-12; 24.

The Court of Appeals did not specifically address Judge Bell's Conclusion that the Commission violated its own regulation, 12 NCAC 10B.0201, which required the Commission to conduct its own independent investigation of whether or not Devalle *presently* has good moral character. Conclusions of Law 6 and 7. This is also a serious and prejudicial violation, which constitutes a fourth basis to overturn the Commission decision because it was an error of law found by the Superior Court in violation of N.C.G.S. 150B-5(b)(4).

II. SUMMARY OF REASONS WHY THE PETITION SHOULD BE DENIED

1. The Commission's Petition fails to establish any basis for discretionary review under G.S. 7A-31. There is nothing remarkable by the straightforward decision below that warrants discretionary review.
2. The Statement of Facts set forth in the Petition contains assertions that were not found as facts below, but rather represent the Commission's view of the evidence. The facts as found below should serve as the facts of this case. The Statement of the Case in the Petition for Discretionary Review does not include all necessary findings; therefore, a more complete Statement of the Case is hereafter set forth.
3. *The Commission's own findings and conclusions directly support the conclusions reached by all five reviewing judges.* Conclusion of Law 24 (R. p.19) 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. 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."

4. The Commission asserts that discretionary review is warranted because "this decision appears *likely* to be in conflict with decisions of this Court." Petition at 12 (emphasis added). The Commission thereafter fails to show any actual conflict or any likely conflict *with any case*. The Court of Appeals below cited

and applied the Court's precedent in good moral character cases. The Court of Appeals cited and directly followed this Court's long history of decisional law good addressing moral character principles including but not limited to *In Re Rogers*, 297 N.C. 48 (1979); *In Re Applicants for License*, 191 N.C. 235 (1926); *In Re Willis*, 288 N.C. 1 (1975); and *In Re Dillingham*, 188 N.C. 162 (1924). The Petition cites no other substantive good moral character cases from this Court. Thus, the Court of Appeals did not overlook any pertinent authority of this Court.

5. The Court of Appeals referenced a previous decision of the Commission in *Royall v. N.C. Sheriff's Education and Training Standards Commission*, 09 DOJ 5859 (Final Agency decision of Sheriffs' Commission's; 5 January 2011). Now the Commission complains of reliance upon *its own precedent*.

III. STATEMENT OF CASE

This 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. (R.p. 75) The Commission denied Devalle's application for certification indefinitely based upon its determination that Devalle lacks good moral character to serve as a Deputy Sheriff. (R. p 20; 75)

The issue is whether Petitioner Devalle was correctly adjudged by two Columbus County Sheriffs, Administrative Law Judge Melissa

Lassiter, Superior Court Judge James Bell, and Judges Tyson, Murphy and Wood of the Court of Appeals to *presently* be of good moral character.

A. Procedural History & Background

Administrative Law Judge Lassiter tried the case and ruled that Devalle was presently a person of good moral character. (R. p. 44) Judge Lassiter found that:

“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.” (R.p. 44; Para. 27).

The case was then heard by the Sheriff’s Commission and it overruled Judge Lassiter, concluding that Devalle does not possess good moral character, therefore indefinitely denying his certification. (R. pp. 20-21)

Devalle sought judicial review and appealed to Superior Court and the Honorable James Gregory Bell issued a comprehensive 13-page decision, finding and concluding that Devalle is *rehabilitated and is presently a person of good moral character*. (R.pp. 83, 86)

Judge Bell adopted *all of the Commission's 81 findings of fact* (R.p. 80) and then made 17 additional Findings of Fact (Paragraphs 26-43) and 14 conclusions of law. (R. pp.83-86)

The Court of Appeals affirmed Judge Bell's decision in its entirety. Slip op. at 24.

B. Judge Lassiter's Hearing of the Case and Key Findings

Judge Lassiter made 70 Findings of Fact and 28 Conclusions of Law. 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. (R. p. 43)

Judge Lassiter included a section in her decision denominated “Respondent’s Investigation.” (R.p. 31-33). The evidence and Judge Lassiter’s findings reveal that there was *no* independent investigation conducted by the Commission. *Id.* This violated the law in 12 NCAC 10B.0201. Judge Bell affirmed Judge Lassiter’s conclusions of law regarding this failure.

C. The Commission Decision and Key Findings

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.

Commission Finding 81 (R. p. 18) effectively found that Petitioner has rehabilitated and rebuilt his law enforcement career.

In Commission Conclusion of Law 24, (R. p. 19), 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 decision also included a section in its decision denominated as "Respondent's Investigation." (R.p.7-9.) There is no discernible difference between the Commission's findings of fact regarding its own investigation and Judge Lassiter's findings. See R. pp. 31-33, ¶¶ 10-27; R pp 7-9, ¶¶ 10-27. Both decisions found as a fact that the Respondent agency never conducted an independent investigation,

interviewing no witnesses with knowledge of Devalle's character either before or after 2016.

IV. STATEMENT OF FACTS

The facts of this case are accurately stated and summarized in the Findings of Facts by Judge Bell, who incorporated all 81 Findings of Fact by the Commission. (R. pp. 80-83)

Devalle was hired as a Columbus County Deputy Sheriff by the Columbus County Sheriff in 2017. (R.p. 80) Devalle had previously been certified as a police officer under the other Commission, the N.C. Criminal Justice Education and Training Standards Commission when he was employed by the N.C. State Highway Patrol. When he became a Deputy Sheriff, he had to apply for certification by the Sheriffs' Commission.

Devalle had served with the Highway Patrol for 19 years (1998-2017) and had earned the rank of Sergeant. In all those years up until termination, he only had one warning. (R.p. 80) However, Devalle was dismissed from the Patrol based on an investigation that concluded that during the year 2016, Devalle had violated Patrol rules. (R. pp. 10-13).

The Commission repeats the same errors by asserting allegations from 2016 with the Highway Patrol as if those were all the relevant facts.

The Sheriff testified that “Everybody in the east end of the County recommended him [Devalle]. The principal, school board members, the parents, the students.” The Sheriff testified that Devalle has good moral character to serve as an SRO. A school board member, Randy Coleman, called the Sheriff and was “constantly bragging on what he’s [Devalle has] done” The Sheriff testified that Devalle has performed “above and beyond”; and that Devalle is “important” to his agency. (R.p. 81; see also R. p. 14) Given the importance of the school resource officer position, the Sheriff must place someone in that position upon which he has a special trust and confidence. The Sheriff has that special trust and confidence in Devalle. (T. pp. 32-33) (R.p. 81) If Devalle was unable to serve as a Deputy Sheriff, it would negatively impact the Sheriff’s agency. Based on Devalle’s service as a Deputy Sheriff, the Sheriff has no hesitation as to Petitioner’s truthfulness. (T. p. 38) (R.p. 81)

Jeremiah Johnson is the principal at East Columbus High School where Devalle was assigned as the school resource officer and also served

as an assistant football coach and track coach. (R. p. 14). Johnson has had the opportunity to watch Devalle perform those duties “every day” that school is in session. (T. p. 233) Principal Johnson testified that 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.”

Principal Johnson explained that Devalle has helped to support students with limited resources: “He’s bought shoes for kids. He has given them their lunch. He has given them their food.” (R.p. 81; see also R. p. 14). When questioned specifically about Devalle’s moral character, Principal Johnson testified that he had “no doubt” that Devalle had the character to serve as a school resource officer and stated that he would not have allowed Devalle to serve in that capacity nor in the capacity of an athletic coach if he had any concerns about Devalle’s moral character. (R. p. 14).

Judge Bell found that the Sheriff and Principal Johnson established that Devalle has rehabilitated and rebuilt his character as a Deputy Sheriff, and as school resource officer and coach at East Columbus High School. Judge Bell found that for 2½ years, Devalle's service as a Deputy Sheriff has been nothing but exemplary both of that service and of Devalle's character while engaging in that service. (R.p. 83) Number 81 of the *Commission's* findings found virtually the same: "Petitioner presented significant evidence demonstrating that Petitioner has rehabilitated and rebuilt his career since 2016..." (R.p. 15)

Judge Bell adopted the Commission's Conclusions of Law, 1 through 24. (R.p. 83) Judge Bell reversed the Commission based on the Commission's errors of law.

V. PETITIONER DEVALLE'S POSITION AND RESPONSE

All of the five judges below correctly applied settled good moral character law from this Court. The Commission erred by failing to decide this case based on the *present* moral character of Devalle, failing to recognize the rehabilitation found, acting arbitrarily, and by failing to conduct an investigation as required by law.

The United States Supreme Court instructs that moral character assessment in occupational licensing cases must be at the “*present*” time of the application. *Schwartz v. Board of Bar Examiners*, 353 U.S. 232, 246 (1957) (pertinent time for the assessment of moral character is “his *present* good moral character.” (Emphasis added). Thus, the Commission below plainly erred in not recognizing this basic principle.

The Commission misinterpreted the good moral character rule inconsistent with North Carolina law – and inconsistent with the Commission’s own interpretation of good moral character in *Jeff Royall v. N.C. Sheriffs Education and Training Standards Commission* and its findings in this case. (R.p. 14- 15). The *rehabilitation* principle is a core principle in the body of good moral character law, which the Commission erroneously failed to apply. (R.p.85).

A. THE COURT OF APPEALS CORRECTLY INTERPRETED THE GOOD MORAL CHARACTER RULE

The Commission’s errors of law appear in its interpretation of the good moral character rule and the rule requiring that the Commission conduct an investigation. There are two regulations at issue in this case,

the Commission's good moral character rule (12 NCAC 10B .0301(a)(9) and the rule requiring an agency investigation of the actual charge (12 NCAC 10B.0201). (R. p. 75)

1. The Good Moral Character Rule Is Used As Grounds For Suspension or Revocation In The Most Severe Cases As Demonstrated by Precedent

The text of the Commission's rule does not provide a definition, criteria or defined elements. The United States Supreme Court has described the term "good moral character" as being "unusually ambiguous:"

The term "good moral character" . . . by itself, is 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*

Konigsberg v. State, 353 U.S. 252, 262-63 (1957). *Emphasis supplied.*

The good moral character rule is a slippery slope of ill-defined loose verbiage without definitive standards or criteria. The good moral character requirement has eluded useful definition and has been described as possessing "shadowy rather than precise bounds." *Schware*

v. Board of Bar Examiners, 353 U.S. 232, 249 (1957) (Frankfurter, J., concurring).

Many cases are in accord with the reasoning of the Court of Appeals. See, e.g. *DeCotis v. N.C. Crim. Justice Educ. & Training Stds. Comm.*, 10 DOJ 07779, 2011 NC OAH LEXIS 195, (Dec. 22, 2011, Gray, ALJ presiding, p. 19) (agreeing that actions against law enforcement officers' certification based on the moral conduct rule should only be taken in the most severe cases); *Mims v. NC Sheriff Educ. & Training Stds. Comm.*, 02 DOJ 1263, 2003 N.C. OAH LEXIS 20 (June 3, 2003) (Gray, ALJ presiding at pp 9-10) (also concluding that actions against an officer's certification based on the moral conduct rule should only be taken in the most severe cases); *Royall v. N.C. Sheriffs' Education and Training Standards Commission*, 09 DOJ 5859, 2010 NC OAH LEXIS 236 (Jul 28, 2010; May, ALJ presiding, p. 9) (recommending against revocation where petitioner's evidence of good character outweighed the misconduct at issue); *Campbell v. N.C. Criminal Justice Education and Training Standards Commission*, 21 DOJ 03747, 2022 WL 290410, 2022

NC OAH LEXIS 307) (June 30, 2022; Byrne, ALJ presiding, pp 10-11)(citing *Royall* and *Mims*).

2. The Courts Below Correctly Held That Good Moral Character Should Be Judged at the Time of The Certification Decision.

In *Schwartz*, the U.S. Supreme Court stressed that the pertinent time for the assessment of moral character is the *present*. 353 U.S. at 246. Furthermore, “A fundamental precept of our system ... is that men can be rehabilitated. ‘Rehabilitation’ ... is a ‘state of mind’ and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved ‘reformation and regeneration.’” *March v. Committee of Bar Examiners*, 67 Cal.2d 718, 732 63 Cal. Rptr. 399, 433 P.2d 191 (1967). In *Application of Matthews*, 462 A.2d 165, 176 (N.J. Supreme Court 1983), the Court explained:

[A] fundamental rule in bar admission cases is that evidence of reform and rehabilitation is relevant to the assessment of an applicant's moral character. Rehabilitation is pertinent because the Court is interested in an applicant's present fitness to practice law. Where evidence convincingly demonstrates reform and rehabilitation, it can overcome the adverse inference of unfitness arising from past misconduct and, if persuasive, present fitness may be found.

The *Commission* also acknowledges the relevance of restoration of character in its Final Agency Decision:

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 Respondent should consider in determining whether Petitioner possesses the good moral character required of a justice officer.

R. p. 15, Commission Finding of Fact 81.

Judicial and Sheriff's Commission cases reserve good moral character violations for clear and severe misconduct, apply the rehabilitation principle and assess character at the *present* time.

VI. CONCLUSION

There is no legitimate basis for this Court to exercise its discretionary review jurisdiction and hear this case. Wherefore, the Petition for Discretionary Review should be denied.

/s/ J. Michael McGuinness
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IX. CERTIFICATE OF SERVICE

I hereby certify that I have served this Response on Ms. Kirstin J. Greene, Counsel for the Appellant Sheriff's Commission, P.O. Box 629, Raleigh, N.C. 27602 via email to kgreene@ncdoj.gov this 29th day of June, 2023.

/s/ J. Michael McGuinness