

NO. 158PA23

FIFTEENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

MAURICE DEVALLE

)

)

v.

)

From Columbus

)

NORTH CAROLINA SHERIFFS'

)

EDUCATION AND TRAINING

)

STANDARDS COMMISSION

)

NEW BRIEF FOR THE RESPONDENT-APPELLANT

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ISSUE PRESENTED

- I. Did the Court of Appeals err by affirming the trial court's ruling to overturn the Respondent-Appellant's final agency decision denying Devalle's justice officer certification for lack of good moral character?

STATEMENT OF THE CASE

On 29 January 2019, the North Carolina Sheriffs' Education and Training Standards Commission ("Respondent-Appellant" or "Commission") sent notice to Maurice Devalle ("Petitioner-Appellee" or "Devalle") stating that the Commission's Probable Cause Committee had found probable cause that Devalle's justice officer certification should be denied. (R p. 6, FAD FOF 2) Devalle requested an administrative hearing on the committee's determination to deny his justice officer certification.

On 3 and 4 December 2019, an administrative hearing was held before Administrative Law Judge Melissa Owens Lassiter. (R p. 5) On 3 June 2020, Judge Lassiter filed her Proposal for Decision concluding (1) substantial evidence existed supporting the committee's finding that Delvalle committed the crime of Willfully Failing to Discharge Duties in violation of N.C.G.S. §14-230, and (2) while Devalle was dishonest and untruthful, he had rehabilitated his character. (R pp. 42-44) Judge Lassiter recommended Devalle's justice officer certification be indefinitely denied for the commission of the criminal offense of Willfully Failing to Discharge duties, but that extenuating circumstances justified Commission exercising its discretion and reducing the sanction. (R p. 44)

On 6 October 2020, the Commission issued its Final Agency Decision ordering that Devalle's justice officer certification be: (1) denied indefinitely

pursuant to his lack of good moral character, and (2) denied for five (5) years for the commission of the criminal offense of Willfully Failing to Discharge Duties. (R p. 20) The sanction for the commission of the misdemeanor offense was suspended. (R p. 20) In part, the decision to deny Devalle's certification was based on the finding made by the administrative law judge and adopted by the Commission finding that the public was injured by Devalle's conduct. (R p. 13, FAD FOF 60)

On 8 December 2020, Devalle filed a Petition for Judicial Review ("PJR") in Columbus County Superior Court. (R p. 25) The Commission filed a motion to dismiss and response to the PJR on 22 January 2021. (R pp. 47-74) A hearing was held on 29 October 2021, before the Honorable James G. Bell. Following the hearing, Judge Bell issued an order granting the PJR and ordered the Commission to issue certification to Devalle. (R p. 87)

The Commission 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. Devalle v. N.C. Sheriffs' Educ. & Training Stds. Comm'n, 289 N.C. App. 12, 887 S.E.2d 891 (2023). The Court of Appeals held that the trial court properly granted the PJR, held that the Commission's final agency decision was arbitrary and capricious, and specifically held that

the finding that Devalle lacked the good moral character of a justice officer was not supported by substantial evidence.

The Commission filed a Petition for Discretionary Review (“PDR”) with this Court on 20 June 2023 on the following basis: the decision of the Court of Appeals appears likely to be in conflict with decisions of this Court, this matter involves legal principles of major significance to the jurisprudence of the State, and the subject matter of the appeal has significant public interest. Devalle filed a response to the PDR on 29 June 2023. This Court granted the Commission’s PDR on 21 May 2024.

STATEMENT OF THE FACTS

Devalle was employed by the North Carolina State Highway Patrol (“the Patrol”) from 25 November 1998 through 24 April 2017. In November of 2016, a local news station reported to the Patrol that Devalle spent various days at his home in Wake County, North Carolina, when he was supposed to be working at his duty station in Wayne County, North Carolina. (R p. 7, FAD FOF 8)

After conducting an internal investigation into that report, on 24 April 2017, the Patrol terminated Devalle from employment for substantiated untruthfulness, neglect of duty, and insubordination and violation of the Patrol’s policies, and providing the Patrol’s policy on residency. (R p. 7, FAD FOF 9)

Subsequent to his termination from the Patrol, Devalle “applied for deputy sheriff certification through the Columbus County Sheriff's Office where [he] began employment on or about August 2017.” (R p. 6, FAD FOF 4)

Commission staff obtained a copy of the Patrol's internal affairs investigative file, reviewed Devalle's applicant officer profile, and the Patrol's Report of Separation (Form F-5B). (R p. 7, FAD FOF 14) The information compiled by staff, which was provided to the commission's probable cause committee for consideration, is included herein.

Devalle Fails to Fulfill His Sergeant's Duties and Responsibilities Even After Being Warned by his Supervisors

At all times relevant to this matter, in the position of sergeant, Devalle was responsible for supervising and overseeing more junior troopers. (R pp. 12-13, FAD FOF 58-59) Specifically, there was evidence presented that the role of sergeants with the Patrol require their presence at their duty station,

. . .to review video from the troopers' in-car videos . . . to interview people who file complaints and handle evidence at the district office. Sergeants are also required to meet and build rapport with the community by participating in numerous community activities.

(R p. 13, FAD FOF 58) Devalle was not fulfilling these responsibilities while he was at home.

In early 2016, Devalle met with several members of the Patrol's command staff. During that meeting, Devalle was told “to be where he was

supposed to be and doing what he was supposed to be doing.” (R p. 10, FAD FOF 13) During that meeting, Devalle acknowledged to a Patrol captain that he understood what was being told to him. On the same date as that meeting, First Sergeant Burton discussed the meaning of the meeting with Devalle and “emphasized that this meant that [Devalle] should be in Wayne County when he was supposed to be working.” (R p. 10, FAD FOF 35) During the internal investigation of this matter, Devalle admitted that he understood that it was expected that he would be in Wayne County when he was working. (R p. 10, FAD FOF 36) While a previous supervisor had approved for Devalle to work from home, Devalle never asked for permission to work from home when his duty station was assigned to Wayne County. (R p. 10, FAD FOF 37-38)

As there were multiple occasions when Devalle was not at his duty station in Wayne County or performing his duties and responsibilities while at his home. Therefore, the State paid Devalle to perform duties in Wayne County during periods of time when he was not in Wayne County and therefore, he deprived Wayne County of his services. (R p. 13, FAD FOF 60)

Devalle also failed to provide training and support to the troopers under his command in light of his absence. (R p. 13, FAD FOF 60) Petitioner’s conduct also created an inherent lack of trust and dispersion of the reputation of the Patrol, which is also a public injury. (R p. 13, FAD FOF 60)

In order to conceal that he was not at his duty station when expected to be there, Devalle filed false timesheets, false mileage/travel logs, and signed on duty when he wasn't actually working.

Devalle Knowingly Filed a False Residency Form with the Patrol

During 2015 and 2016, the Patrol policy required a trooper to live within 20 miles of his/her duty station. (R p. 13, FAD FOF 62) Devalle's official duty station was the Troop C, District 2 office in Wayne County, North Carolina. (R p. 10, FAD FOF 30-31) On 15 February 2015, Devalle made a request to reside in Johnston County at 400 Hillside Drive. (R p. 13, FAD FOF 63) This residence was within the 20-mile requirement and was approved by the Patrol. (R p. 13, FAD FOF 63)

Devalle admitted during the internal affairs investigation that he never stayed, resided, or parked his patrol car at the residence in Johnston County. (R p. 13, FAD FOF 66) Contrary to the approved residence, Devalle actually resided in southern Wake County, approximately 44 miles from Devalle's duty station. (R pp. 10, 13; FAD FOF 31, 64-65) Therefore, Devalle knowingly provided a false address in order to comply with the residency requirements of the Patrol. At the administrative hearing, Devalle "admitted that he violated the Patrol's policy on residency requirements by living in Wake County." (R p. 10, FAD FOF 31)

Devalle Falsely Reports Being On-Duty on Multiple Occasions

In November 2016, Patrol Policy Manual protocol required troopers to only call in as being on-duty when they were in uniform and on duty at their duty station. (R p. 10, FAD FOF 29)

All Patrol employees were required to remain in their duty station until the time they were supposed to end work period after ending work, they could then travel to their residences in an off-duty travel status.

(R p. 10, FAD FOF 29)

On 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, FAD FOF 42) Upon orders from superiors, Captain Christopher Morton went to Petitioner's Wake County residence at 7:00 P.M. and found Devalle there wearing shorts and a t-shirt. (R p. 11, FAD FOF 42) Devalle told Morton that his daughter had been sick and that he might have a stomach virus. (T1 p. 104) Devalle had not notified his superiors or anyone else on the Patrol that he was ill at that time. (R p. 11, FAD FOF 45)

During Morton's exchange with Devalle, Devalle claimed he had attempted to sign off duty at approximately 5:00 P.M. and acknowledged that the CAD showed him as being on-duty. (R p. 11, FAD FOF 42) Devalle also admitted that since the time he had signed in as being on-duty on that particular day he showered, laid in bed, and had not engaged in any work-

related activities or left the residence. (R p. 11, FAD FOF 45) During the exchange, Morton ordered Devalle to go to Patrol Headquarters. (R p. 11, FAD FOF 43) Devalle refused Morton's request, stated that he was not leaving his home, and questioned Morton's leadership and legacy with the Patrol. (R p. 11, FAD FOF 43)

In addition to the 11 November 2016 date on which Morton found Devalle at home, not working after having signed in to the Patrol's CAD system as on-duty, during the Patrol's internal investigation, Devalle admitted the following concerning times in which he claimed to be on-duty but was not working: (1) on occasion he drove home for lunch and stayed there for extended periods of time; (2) on multiple occasions he returned to his residence prior to the end of his shift and remained there for the remainder of his shift; and (3) he signed on as on-duty in the CAD system and stayed home for his entire shift. (R p. 12, FAD FOF 50).

During the internal investigation, Devalle admitted that on the occasions where he was signed in as on-duty and at his residence, he knew that he should have been in Wayne County. (R p. 12, FAD FOF 51) Devalle also admitted that he claimed the time he spent at home as time worked and his other conduct violated Patrol policy. (R p. 12, FAD FOF 51-53) "Substantial evidence at hearing proved that [Devalle] was not present at his duty station in Wayne County from September 22, 2016 through October 6, 2016 at times

when he claimed that he was present and on-duty.” (R p. 12, FAD FOF 48) On those occasions when Devalle was at home instead of at his duty station as he reported on his time sheets, “[a]t no time did [Devalle] contact Patrol troopers or his superiors and tell them that he was not at his duty station and that he needed coverage.” (R p. 12, FAD FOF 49)

Devalle Submits False Mileage/Travel Logs and Timesheets

Between 22 September 2016 and 6 October 2016, Devalle signed in to work a total of eight days and claimed to have driven 767 miles on his Weekly Reports of Daily Activity. (R p. 11, FAD FOF 46-47) The Patrol fuel logs, which track Patrol vehicle mileage, indicated Devalle had only driven 292 miles during that period. (R p. 11, FAD FOF 47) If Devalle had actually driven to the Wayne County line from his residence in Wake County on the 8 days as he indicated on his timesheet, “it would have required a minimum of 560 miles.” (R p. 47, FAD FOF 47) “Having driven a total of only 292 miles, [Devalle] could have made it to the Wayne County line and back only three times during these eight working days.” (R p . 11, FAD FOF 47) Therefore, Devalle falsified his timesheet and mileage logs 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, FAD FOF 68)

Devalle's Witnesses at the Administrative Hearing of this Matter

At Devalle's administrative hearing on 3-4 December 2019, then sitting Columbus County Sheriff, Steadman Jody Greene, and Jeremiah Johnson, Principal of East Columbus High School in Lake Waccamaw, North Carolina, testified on Devalle's behalf. (R pp. 14-15, FAD FOF 69-77) Sheriff Greene testified that he was satisfied that Devalle had good moral character and had no hesitation about his ability to tell the truth. (R p. 14, FAD FOF 70-71) Johnson testified he also had no doubts about Devalle's character. (R p. 14, FAD FOF 74)

Devalle's Testimony Exhibited Lack of Candor and Sincerity at the Office of Administrative Hearings

Devalle testified under oath at his administrative hearing. The administrative law judge and Commission found that his testimony demonstrated "a lack of candor and sincerity" with regard to his statements. (R p. 15, FAD FOF 80)

At the hearing of this matter, Devalle attempted to justify his action of being away from his duty station by indicating that while he was at his home during the 8 days he signed on-duty between 22 September 2016 and 6 October 2016, he performed work responsibilities including, but not limited to "answering and sending e-mails. . . However, during that period, Patrol records

showed Petitioner only sent two emails – one of which was for fantasy football.”
(R p. 56, FAD FOF 56)

Also at the hearing, Devalle tried to downplay the significance of his actions of being away from his duty station by claiming that a “very, very small percentage” of his job duties involved being on patrol. However, that testimony was contradicted by other evidence admitted at hearing. Devalle “had completed weekly reports of daily activity claiming approximately 40% of his time was spent on patrol in Wayne County.” (R p. 12, FAD FOF 54)

When questioned by his own counsel, Devalle readily recollected circumstances from 2016 without having to review any materials. (R p. 15, FAD FOF 80) However, when questioned by Commission counsel, Devalle responded to questions with, I “don’t recall” or “don’t remember” approximately 14 times during his direct examination testimony which only lasted for approximately one hour and fifteen minutes. (T Vol 1 pp. 183-232)

After claiming that he could not recall the events from 2016, Commission counsel provided Devalle with excerpts of transcripts of Devalle’s statements to the Patrol during the internal affairs investigation. Even after being shown those transcripts, and having his recollection refreshed, Devalle continued to claim he did not remember or recall the events. (R p. 15, FAD FOF 80)

Based on his testimony in totality, the administrative law judge and the Commission found that Devalle “exhibited a lack of candor and sincerity” and

“was evasive and feigned a lack of memory or confusion.” (R p. 15, FAD FOF 80)

ARGUMENT

I. The Court of Appeals erred by affirming the trial court’s ruling to overturn the Commission’s final agency decision denying Devalle’s certification for lack of good moral character.

The Court of Appeals upheld the order of the Superior Court finding that Devalle’s justice officer certification should be granted. Specifically, the Court of Appeals held that the Commission’s final agency decision denying Devalle’s justice officer certification was in error because the Commission “applied a heightened good moral character standard” and therefore “was arbitrary and capricious.” Devalle at 29, 887 S.E.2d 891, 902. In addition, the Court of Appeals held that the final agency decision was not supported by substantial evidence. Id.

Standard of Review

When a final agency decision is reviewed to determine if it is supported by substantial evidence or arbitrary and capricious, the reviewing “court shall conduct its review of the final decision using the whole record standard of review.” N.C.G.S. §§ 150B-150(5) and (6). It is well settled by this Court that the whole record test is not a tool of Court intrusion. In re Harris Teeter, LLC, 378 N.C. 108, 119, 861 S.E.2d 720, 729 (2021) (internal citations omitted).

Contrary to a de novo review in which a reviewing court will consider the matter anew and is allowed to freely substitute its own judgment for the agency's decision, “[w]hen the trial court applies the whole record test, however, it may not substitute its judgment for the agency's as between two conflicting views, even though it could reasonably have reached a different result had it reviewed the matter de novo.” N.C. Dep’t of Env’t & Nat. Res. v. Carroll, 358 N.C. 649, 660, 599 S.E.2d 888, 895 (2004) (internal citations omitted).

Standard and Purpose of the Good Moral Character Consideration in Occupational Licensing

The existence or lack of good moral character is considered as a factor for licensing and certification in many professions. This Court has a long history of cases recognizing uniformly that good moral character is a necessary and important trait for attorneys seeking admission to practice law in North Carolina, (See In re Legg, 325 N.C. 658, 673, 386 S.E.2d 130 (1924); In re Rogers, 297 N.C. 48, 253 S.E.2d 912 (1979); and In re Elkins, 308 N.C. 317, 302 S.E.2d 215 (1983)).

This Court has opined that that the purpose of withholding the certification of an applicant “is not to punish the candidate but to protect the public” from someone who is unfit to practice law. In re Legg, 325 N.C. 658, 673, 386 S.E.2d 174, 182 (1989).

The United States Supreme Court has recognized the term “good moral character,” by itself, can be ambiguous, but, 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.

The holding of the Court of Appeals in the present case ignores the long-standing interpretation of the good moral character standard as set forth by this Court.

Role of the Commission to Consider the Presence or Absence of Lack of Good Moral Character When Certifying or De-certifying a Justice Officer

Just as this Court has held that good moral character is a necessary trait for applicants for the North Carolina State bar examination, it is an equally important trait for sworn law enforcement officers who have taken an oath to uphold the laws and constitution of this State and our nation.

The role of Sheriff and Deputy Sheriff are extremely important and warrant withholding of certification if the applicant or officer is unfit, just as

with candidates for the practice of law.

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 the State.

N.C.G.S. § 17E-1. Specifically, the General Assembly has enacted legislation authorizing the Commission to consider the character of an applicant for justice officer certification. N.C.G.S. § 17E-7(c) (2024) provides in pertinent part that:

. . . the Commission, by rules and regulations, may fix other qualifications for the employment and retention of justice officers including minimum age, education, physical and mental standards, citizenship, good moral character, experience, and such other matters as relate to the competence and reliability of persons to assume and discharge the responsibilities of the office.

(Emphasis added).

To accomplish the duties and responsibilities set forth in Chapter 17E, the Commission has adopted rules that are incorporated in Title 12 of the North Carolina Administrative Code (NCAC), Chapter 10B, to certify justice officers and to revoke, suspend, or deny such certification.

12 NCAC 10B .0204(b)(2) states: “The Commission shall revoke, deny, or suspend the certification of a justice officer when the Commission finds that the applicant for certification . . . fails to meet or maintain any of the employment or certification standards required by 12 NCAC 10B .0300.” 12

NCAC 10B .0301 sets forth the minimum standards including good moral character in subsection (a)(8)1 which states, “Every Justice Officer employed or certified in North Carolina shall . . . be of good moral character . . .” as defined by many opinions issued by this Court and their progeny.

A. The Commission Properly Applied the Good Moral Character Standard and Thus, the Final Agency Decision in this Matter was not Arbitrary and Capricious.

The Court of Appeals held that Commission’s final agency decision was arbitrary and capricious. Specially the Court of Appeals held that the Commission: (1) relied solely on Devalle’s conduct in 2016 while employed with the Patrol as the evidence to support the conclusion that he lacked good moral character and (2) decided this matter contrary to the earlier final agency decision in the Royall v. N.C. Sheriffs' Educ. and Training Standards Comm'n., Final Agency Decision, 09 DOJ 5859 (5 January 2011). These holdings are erroneous because the Commission properly applied the good moral character standard and its final agency decision in this case was not contrary to its earlier decision in the Royall case, and thus, was not arbitrary and capricious and the decision is supported by substantial evidence in the record.

This Court has held that,

[i]n determining whether an agency decision is arbitrary or capricious, the reviewing court does not have the authority to override decisions within agency discretion is exercised in good faith and in accordance with law. The arbitrary and capricious standard is a difficult one to meet.

Mann Media, Inc. v. Randolph Cnty. Planning Bd., 356 N.C. 1, 16, 565 S.E.2d 9, 19 (2002). (internal quotations and citations omitted).

This Court has held that an agency decision is arbitrary and capricious, when such decisions are ‘whimsical’ because they indicate a lack of fair and careful consideration; when they fail to indicate any course of reasoning and the exercise of judgment, or when they impose or omit procedural requirements that result in manifest unfairness in the circumstances.

State ex rel. Comm’r of Ins. v. North Carolina Rate Bureau, 300 N.C. 381, 420, 269 S.E.2d 547, 573 (1980) (internal citations omitted).

Review of the “whole record” in this case indicates that Commission carefully considered the facts established at the contested case hearing in rendering its Final Agency Decision, and properly applied the good moral character standard as set forth by this Court and the United States Supreme Court. The Commission’s decision, containing eighty-one findings of fact and twenty-eight conclusions of law, was not “whimsical,” rather, it was well supported by the evidence, well-reasoned and entered in accordance with the law. (R pp. 5-22) Given the severity of the actions at issue, the Commission’s decision to deny Devalle’s certification was not arbitrary or capricious.

B. The Commission’s Decision in this Case is not Inconsistent with the Commission’s Royall Decision

Instead of applying the precedent set forth in the litany of cases described herein and other opinions issued by this Court concerning the good moral character standard, primarily, the Court of Appeal’s opinion appeared

to rely on its interpretation that the Commission's decision in this case is contrary to its previous decision in the Royall case. Devalle at 21, 887 S.E.2d 891, 898. The Court of Appeals erroneously concluded Devalle and Royall were “similarly situated individuals” and because Royall was not denied certification by Commission, but Devalle was, that the final agency decision was based on a higher standard of moral character. Id.

That interpretation is not supported by the evidence of the two cases as the present case is easily distinguishable from the Royall case. In Royall, the officer released confidential, law enforcement intelligence to the public, contrary to his office policy. Id. That conduct, though inappropriate and actionable, was not as egregious as the conduct in the matter at bar.

Devalle and Royall are not similarly situated. First, Royall was found to have released confidential law enforcement records via social media in a single incident of conduct. Royall’s conduct was not repeated over a period of time, nor did it involve multiple instances of knowing and willful lack of candor to his agency and to the tribunal like Devalle’s conduct. This Court has held that isolated instances of conduct are generally not enough to demonstrate lack of good moral character. In re Rogers, 297 N.C. 48, 58, 253 S.E.2d 912, 918. The Commission in the Royall case found the behavior to be a single incident that did not meet that standard.

To the contrary as set forth herein, Devalle's conduct in this matter was much more than a single incident of inappropriately sharing confidential information. Specifically, the Commission concluded that Devalle's conduct "did not occur one time, but occurred multiple times over the course of weeks or months in 2016, even after being cautioned about such conduct by his superiors" in early 2016. (R p. 19, FAD COL 23) Devalle falsified documents regarding his time and travel, was untruthful about his residency, and repeatedly failed to report for work but claimed time as work time. The record demonstrates numerous distinct acts of misconduct, illustrating a pattern of untruthfulness, deceit, and fraudulent behavior over time while employed with the State Highway Patrol.

Devalle continued his pattern of deceit and untruthfulness during his testimony under oath at the administrative hearing of this matter, unlike Royall. Devalle exhibited "lack of candor and sincerity" and "feigned" a lack of memory only when questioned by Commission's counsel. Instead of taking full responsibility for his actions, he attempted to justify actions at hearing but was refuted by other evidence in the case.

Finally, Royall's conduct did not constitute the commission of a crime as Devalle's did. Both the administrative law judge and the Commission concluded that Devalle's actions constituted the commission of the misdemeanor offense of Willfully Failing to Discharge his duties, which

Devalle does not contest. The record shows that Devalle committed this misdemeanor by repeatedly providing falsified time sheets and mileage logs, defrauding the State, being at home at hours he was supposed to be working, and failing to report as required to his duty station. As such, he neglected the duties owed to the citizens of Wayne County that he had sworn to uphold. (R p. 19)

Devalle lacks good moral character based upon the commission of the criminal offense of willfully failing to discharge his duties, his repeated behavior of defrauding the State, his repeated falsehoods regarding the performance of his duties, his deceptive testimony given under oath at the hearing, and his attempt to justify his behavior at the hearing despite clear evidence to the contrary. His continued deceptive behavior creates a pattern of untruthful conduct spanning years that supports the decision of the Commission in finding that Devalle lacks good moral character.

In addition, Devalle has done nothing to rehabilitate his lack of good moral character. Though he presented witnesses at the hearing who indicated their opinion of his character, when questioned by Commission counsel the witnesses admitted they did not know the details of Devalle's conduct. Because the witnesses did not have the information to make an informed decision about Devalle's conduct and its bearing on his good moral character, their testimony did not carry any weight in the Commission's final agency decision analysis.

Using the standard for good moral character as set forth by this Court, reviewing the whole record in this case, the Commission's decision concluding that Devalle currently lacks the good moral character required of a justice officer is not arbitrary and capricious.

C. The Final Agency Decision was Supported by Substantial Evidence.

As previously set out herein, the standard of review is the whole record test. Under the whole record test, this Court must examine all the record evidence – that which detracts from the agency's findings and conclusions as well as that which tends to support them – to determine whether there is substantial evidence to justify the agency's decision. “Substantial evidence [is] defined as 'more than a scintilla or a permissible inference.’” State ex rel. Utils. Comm'n v. Cooper, 368 N.C. 216, 222, 775 S.E.2d 809, 813 (2015). Substantial evidence is relevant evidence a reasonable mind might accept as adequate to support a conclusion. N.C. Dep't of Env't & Nat. Res. v. Carroll, 358 N.C. 649, 660, 599 S.E.2d 888, 895 (2004) (internal citations omitted); see also N.C.G.S. § 150B-2(8b) (2025); see also State ex rel. Comm'r of Ins. v. N.C. Fire Ins. Rating Bureau, 292 N.C. 70, 80, 231 S.E.2d 882, 888 (1977).

As detailed above, there is substantial evidence in the record supporting the final agency decision that Devalle lacks good moral character and has not been rehabilitated. The Court of Appeals reached its erroneous decision in part

by finding that the Commission only relied upon the testimony of Devalle to find that he currently lacked good moral character, which the Court of Appeals held was insufficient to rebut the testimony of two witnesses who testified on Devalle's behalf about his character. There was substantial evidence in the record to support the final agency decision finding that Devalle currently lacked the good moral character required of a justice officer and thus, the Court of Appeals' opinion should be reversed.

The United States Supreme Court has held that the term good moral character "by itself, is unusually ambiguous," Konigsberg v. State Bar of Cal., 353 U.S. 252, 263, 1 L. Ed. 2d, 810, 819 (1957). However, this Court has interpreted the good moral character standard in multiple cases and has repeatedly referred to untruthfulness and neglect of duty to constitute lack of good moral character. In Legg, this Court held that actions which "reveal a systemic pattern of carelessness, neglect, inattention to detail and lack of candor that permeates the applicant's character . . . could seriously undermine public confidence . . ." may demonstrate lack of good moral character. Legg at 674, 386 S.E.2d 174, 183. In Legg, this Court upheld the State Bar's denial of Legg's application for the bar exam because of his prior misconduct while practicing law in the state of West Virginia, as well as his omissions from his bar application, and his "displayed lack of fairness and candor in dealing with the Board" during his hearing on the denial. Legg at 669, 386 S.E.2d at 180.

This Court has held that good moral character has been defined as “honesty, fairness, and respect for the rights of others and for the law of the state and nation.” In re Willis, 288 N.C. 1, 10, 215 S.E.2d 771, 775-77 (1975); Legg at 673, 386 S.E.2d at 182 (Good moral character has many attributes but none are more important than honesty and candor). The substantial evidence in the record supports the Commission’s final agency decision concluding that Devalle had a pattern of misconduct while employed by the Patrol, including but not limited to, being dishonest and submitting false paperwork. In addition, like in the Legg case in which he found to have been untruthful with the during his hearing before the board, Devalle lacked candor when testifying at the hearing of this case.

Petitioner’s Conduct While Employed by the Patrol

Both the administrative law judge in the proposal for decision and the Commission's final agency decision found that Devalle injured the public by failing to serve the citizens of Wayne County, knowingly violating numerous policies of the Patrol, and completing and submitting false mileage logs and timesheets. The submission of time sheets to be compensated for time in which he did not work, is tantamount to lying, defrauding the State, and constitutes the commission of the misdemeanor offense of failing to discharge his duties, which is a finding he has not contested on appeal. Petitioner repeatedly travelled to his residence for a lengthy lunch break on occasions logged on as

if he was beginning his shift and remained at his residence, not completing work assignments, for his whole shift. Not only did Devalle leave the employees he supervised without proper supervision, but he also failed the citizens of Wayne County by failing to provide the law enforcement functions he was hired and paid to do.

The administrative law judge found the following finding of fact that was adopted in the final agency decision:

In this case, Petitioner was dishonest and untruthful when he reported he was performing his duties as a patrol Sergeant assigned to Wayne County, when in fact he was at his at home in Wake County on? numerous occasions. He did not respect the rights of those members of the public of Wayne County who were entitled to law enforcement protection – rights which he was sworn to protect. He failed to uphold the laws of this State as a patrol officer while remaining at his home while on duty for the patrol. (R p. 19, FAD FOF 20)

In addition, petitioner submitted false time and mileage sheets, thereby defrauding the State, and falsely claiming to have been actively serving members of the community. Petitioner's untruthfulness and such actions demonstrate a lack of good moral character at that time.(R p. 19, FAD FOF 21)

The State paid Petitioner to perform his duties in his assigned duty station of Wayne County. However, for multiple days, petitioner was not in Wayne County, and accordingly, Petitioner could not perform his duties as assigned. Common sense dictates that Petitioner was unable to provide training and support to troopers under his command in light of his absence from Wayne County. As a result, Wayne County was deprived of Petitioner's services and the public paid Petitioner for work that he did not fulfill. Petitioner's conduct also created an inherent lack of trust and dispersion of the reputation of the Patrol, which is also a public injury. (R p. 13, FAD FOF 60)

. . . The most recent demonstration of Petitioner's character was the hearing itself. Petitioners profound lack of candor and truthfulness while testifying under oath at this contested case demonstrated that truthfulness is still a challenge for petitioner. (R p. 20, FAD FOF 25)

The Administrative law judge concluded that there was substantial evidence in the record to find that Petitioner-Appellant committed the misdemeanor crime of Willfully Failing to Discharge Duties, a conclusion that was adopted in the final agency decision. (R p. 149, FAD COL 17) While employed with the Patrol, Devalle knowingly filed a false residency form, for months he falsely checked in as being "on duty" when he was not, and he repeatedly falsified timesheets and mileage logs. This dishonest and fraudulent conduct of Devalle was properly considered in the final agency decision as evidence of his lack of good moral character.

Petitioner's Witnesses at the Administrative Hearing Do Not Establish that Devalle had Restored his Character.

The Court of Appeals focused heavily on the testimony of Devalle's character witnesses at the administrative hearing. Those witnesses included then sitting Columbus County Sheriff Jody Greene¹ and Principal Jeremiah

¹ Sheriff Jody Greene resigned from this office twice; once on 24 October 2023, and once on 3 January 2024, after removal petitions were filed against him. Embattled NC sheriff resigns again before DA details accusations against him in court. www.newsobserver.com (January 5, 2023)

Johnson. The Court of Appeals found their testimony credible and considered it as substantial evidence that Devalle had rehabilitated his character since his conduct while working with the Patrol. Devalle at 25, 887 S.E.2d at 899.

The sworn testimony of Sheriff Greene and Johnson did not indicate Devalle's character had been rehabilitated. This testimony did not address the contested issue – whether he has been rehabilitated to such a degree that he will tell the truth, not only when it is easy, but when it is difficult. In re Rogers, 297 N.C. 48, 57, 253 S.E.2d 912, 918 (1979). Sheriff Greene and Johnson merely testified about Devalle's ability or capacity to tell the truth. Although Sheriff Greene testified Devalle possessed the good moral character to be a school resource officer, Sheriff Greene admitted he did not know the facts and circumstances that precipitated his dismissal from the Patrol, nor did he endeavor to find out. (T1 pp. 31, 36-37) Nor did Sheriff Greene provide any examples of Devalle's conduct with regard to his alleged rehabilitation as applied to his truthfulness and honesty. See generally T1 pp. 29-39. Likewise, Johnson testified he was not aware of any act that would cause him to doubt Devalle's "capacity to be truthful" but failed to provide any examples of his conduct in relation to his alleged rehabilitation as it applies to his truthfulness and honesty. See generally T1 pp. 234-241. Their personal opinions,

<https://www.newsobserver.com/news/state/northcarolina/article270702722.html>

particularly when they were not aware of the conduct at issue, are insufficient to overcome the other evidence in the record concerning Devalle's lack of good moral character.

Devalle presented no evidence that he took affirmative steps to rehabilitate his character. As this Court has said before, it is a matter “of time and growth” when a person has “forfeited” his good moral character. In re Dillingham, 188 N.C. 162, 165, 124 S.E. 130, 132 (1924) This Court in In re Dillingham found that when the questioned conduct involves crimes and allegations of moral turpitude, even the sworn statements of numerous individuals corroborating a petitioner’s good moral character, and his own pledge to conduct himself in an upright manner, are not sufficient to overcome a lack of good moral character. See In re Dillingham, 188 N.C. 162, 165, 124 S.E. 130, 132 (1924).

The Commission properly considered the testimony of Greene and Johnson and made findings of fact and conclusions of law regarding that evidence. However, in the final agency decision, the Commission determined that all of the evidence in the record including Devalle's testimony at the hearing of this matter outweighed the character evidence presented at the hearing.

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 including Dillingham and In re Applicants for License, 143 N.C. 1, 55 S.E. 635 (1906), two cases also cited by 12 NCAC 10B. 0301 (a)(8) to help define the parameters of good moral character for justice officers. In each of those cases, the applicants for the bar, had submitted character letters or affidavits attesting to their good moral character. In each case, this Court upheld the denial of the board finding that evidence of good character did not rehabilitate the character of the applicant due to the serious nature of their conduct.

This Court described the Dillingham case as follows: in that case, affidavits and certified court records indicated in 1919, 1920 and 1921, Dillingham engaged in what amounted to “many instances of violations of the criminal law, including obtaining goods by false pretense, larceny, or conspiracy to commit it, forgery, extortion and others, all to them involving moral turpitude.” In re Willis, 288 N.C. at 12, 215 S.E.2d at 778. Dillingham did not deny the bad acts, but instead claimed he had “turned from his evil practices and [] since demeaned himself as a good citizen.” Id. In addition to this assertion, Dillingham submitted a certificate signed by many prominent citizens attesting that having interacted and worked with him on a regular basis for 12 months, they were of the opinion that he was “rapidly regaining the position of respect and confidence which he formerly held in the community.” Id. Regardless of that certificate, this Court proclaimed, “it is of

supreme importance... that one who aspires to this high position should be of upright character and should hold, and deserve to hold, the confidence of the community where he lives and works” and denied Dillingham’s application. Dillingham at 165, 124 S.E. 130 at 132.

In Willis, this Court described the case of In re Applicant for License as follows: one of the applicants was denied:

“on grounds that in his office as a justice of the peace of Wilson County, he has not only failed to make due returns and account for moneys and things intrusted to him, but in some instances, he has converted them to his own use; and that he has generally engaged in unethical practices. In response thereto, the applicant offered a large number of affidavits from citizens of Wilson County attesting to his general good character. In denying his application, the Court concluded the evidence showed such a lack of moral perception, or careless indifference to the rights of others that they were unable to say the applicant possessed the requisite upright character.”

Willis at 13, 215 S.E.2d at 778. (internal quotations omitted)

In this case, like the evidence in the Legg and In re Applicants for License cases, Devalle’s two witnesses who have no knowledge of his conduct while employed with the Patrol and who have known him for a short period of time, do not outweigh the substantial evidence in the record that Devalle lacks good moral conduct because of his conduct.

Devalle’s Testimony at the Administrative Hearing

In addition to Devalle's conduct while employed at the Patrol, the Commission also considered his testimony during the hearing of this matter at

the Office of Administrative Hearings, during which the presiding judge found that Devalle lacking candor with the court. This demonstrates that the termination from the Highway Patrol for his actions and the proposed action of the Commission was an insufficient deterrent to curb Petitioner-Appellant's conduct of untruthfulness. Specifically, regarding Petitioner's lack of credibility under oath, the administrative law judge made the following findings of fact which were adopted in the final agency decision:

At hearing, Petitioner attempted to justify his working from home while on duty by stating that a "very, very small percentage" of his job duties involve being on patrol. However, petitioner completed weekly reports of daily activity claiming approximately 40% of his time was spent on patrol in Wayne County. (R p. 12, FAD FOF 54)

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 faint 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 his recollection refreshed with his prior statements. In contrast, Petitioner readily recollected circumstances from this., when questioned by his own counsel, without having to review any materials. (R p. 12, FAD FOF 80)

The administrative law judge made the following conclusions of law concerning Devalle's conduct while with the State Highway Patrol and during the administrative hearing of this matter. These conclusions were adopted in the final agency decision.

In this case, Petitioner was dishonest and untruthful when he reported he was performing his duties as a patrol Sergeant assigned

to Wayne County, when in fact he was at home in Wake County on numerous occasions. He did not respect the rights of those members of the public of Wayne County who are entitled to law enforcement protection – right which he was sworn to protect. He failed to uphold the laws of this state as a patrol officer while remaining at his home while on duty for the patrol. (R p. 19, FAD COL 20)

In addition, Petitioner submitted false time and mileage sheets, thereby defrauding the State, and falsely claiming to have been actively serving members of the community. Petitioner's untruthfulness in such actions demonstrate a lack of good moral character at that time. (R p. 19, FAD COL 21)

In Petitioner's case, the aforementioned conduct did not occur one time, but occurred multiple times over the course of weeks or months in 2016, even after being cautioned about such conduct by his superiors. Moreover, Petitioner's profound lack of candor and truthfulness while testifying under oath at this contested case demonstrated that truthfulness is still a challenge for petitioner. (R p. 19, FAD COL 23)

This Court has previously addressed the issue of untruthful testimony concerning the denial of an applicant in the case of In re Elkins, 308 N.C. 317, 302 S.E.2d 215 (1983). In Elkins, this Court held that an applicant to take the state bar examination was properly denied when the board of law examiners presented evidence that the applicant had been convicted of a criminal offense and then provided testimony "internally inconsistent, intrinsically implausible and repeatedly contradicted by substantial evidence" during the hearing of the matter. Elkins at 328, 302 S.E.2d at 221 While Devalle was not convicted of a crime, his conduct is comparable to the conduct in Elkins, as is his testimony which lacked candor.

The whole record supports the findings and conclusions that Devalle was untruthful for months while employed by the Patrol by preparing and submitting false timesheets and mileage logs and for failing to work at his duty station to fulfill his assigned duties and responsibilities. Devalle continued to be untruthful during the administrative hearing of this matter. The administrative law judge found that Devalle's testimony and conduct at the hearing of this matter "demonstrated that truthfulness is still a challenge for Petitioner." That continued untruthfulness, coupled with Petitioner's commission of the criminal offense of willfully discharging his duties while employed with the Patrol and his untruthfulness related to his time sheets and mileage logs also while employed with the Patrol demonstrate his current lack of good moral character. All of that evidence outweighs the testimony of two individuals who personally believe Devalle currently has good moral character.

Allowing a person to remain a justice officer, armed with a badge and a gun, with the tremendous responsibility of protecting the public and enforcing the laws of North Carolina, after the person has shown a repeated pattern of misconduct is contrary to our state's principals of justice. When that person continues demonstrating his lack of good moral character by testifying untruthfully during a hearing on the merits of whether he should be certified as a justice officer, the Commission has substantial evidence to find that he

lacks the good moral character required of a justice officer and such finding is not arbitrary or capricious.

Accordingly, this Court should find that the Court of Appeals erred in holding that there was not substantial evidence to support the final agency decision concluding Devalle lacks the good moral character required of a justice officer.

CONCLUSION

For the reasons stated herein, the Commission respectfully requests that this Court overturn the decision of the Court of Appeals and hold that the Commission's decision to deny Devalle's justice officer certification for lacking the good moral character required of justice officers was not arbitrary and capricious and was supported by substantial evidence in the record.

Electronically submitted this the 6th day of August, 2024.

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CERTIFICATE OF COMPLIANCE WITH RULE 28 (J)(2)

Undersigned counsel certifies that the Respondent-Appellant's Brief is in compliance with Rule 28(j)(2) of the North Carolina Rules of Appellate Procedure in that it is printed in thirteen-point Century Schoolbook font and the body of the brief, including footnotes and citations, contains no more than 8,750 words as indicated by Word, the program used to prepare the brief.

Electronically submitted this the 6th day of August, 2024.

Electronically Submitted
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing NEW BRIEF
FOR THE RESPONDENT-APPELLANT upon the PETITIONER-APPELLEE
by electronic mail addressed to his ATTORNEY OF RECORD as follows:

Mr. J. Michael McGuinness
jmichael@mcguinnesslaw.com

Electronically submitted this the 6th day of August, 2024.

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