

SUPREME COURT OF NORTH CAROLINA

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

**BRIEF OF *AMICUS CURIAE* NORTH CAROLINA
FRATERNAL ORDER OF POLICE IN SUPPORT OF
PETITIONER-APPELLEE MAURICE DEVALLE¹**

¹ Pursuant to Rule 28.1(b)(3)c. of the North Carolina Rules of Appellate Procedure, no other person or entity helped write this brief or contributed money for its preparation.

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NO. 158PA23

FIFTEENTH DISTRICT

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**BRIEF OF *AMICUS CURIAE* NORTH CAROLINA
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INTEREST OF NCFOP AS *AMICUS CURIAE*

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

The NCFOP appears before appellate courts in cases of special significance to the policing community. Nationally, the FOP has more than 377,000 members, including over 6,100 members within North Carolina.

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

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

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

STATEMENT OF FACTS

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

SUMMARY OF THE ARGUMENT

The Commission's decision in this case undermines and, indeed, ignores the important and firmly rooted principles of good moral character and rehabilitation and restoration of good moral character in North Carolina law enforcement justice officer certification cases.

Where a law enforcement officer has presented substantial evidence that he or she has rehabilitated and restored their good moral character, the Commission is not at liberty to ignore such evidence, and the denial or suspension of that officer's certification must accordingly be lifted. That is particularly so where it is the Commission's burden of proof – not Mr. Devalle's – and the Commission presented no evidence that he does not presently possess good moral character. *See, e.g., Aboussleman v. N.C. Sheriffs' Educ. & Training Stds. Comm'n*, 23 DOJ 05109 (2024).

Finally, this Court should provide clarity and guidance to both the Commission and the law enforcement community as to what constitutes both the critical standards of good moral character and rehabilitation of good moral character under North Carolina law.

ARGUMENT

I. THE COURTS BELOW WERE CORRECT IN FINDING THAT THE COMMISSION’S DENIAL OF MR. DEVALLE’S CERTIFICATION WAS ARBITRARY AND CAPRICIOUS.

The Superior Court and Court of Appeals both correctly held that the Commission erred in denying Mr. Devalle’s certification. The Commission’s most critical errors were in exclusively relying upon evidence of Mr. Devalle’s initial lapse of judgment in 2016, ignoring its *own* standards for evaluating good moral character, ignoring its *own* actual finding of Mr. Devalle’s good moral character, and ignoring the substantial and compelling rehabilitation of good moral character evidence presented by Mr. Devalle. It is therefore the opinion of the NCFOP that while this Court should articulate standards governing this important body of law (discussed below), the specific facts and circumstances of this case do not counsel for or otherwise permit any other outcome but affirming the decisions below. To wit:

- The *only* evidence presented was from Mr. Devalle and, as all courts below found, it was substantial and compelling. *See, e.g.,* COA, pp. 21-22.² Conversely, the Commission presented *no* evidence whatsoever that Mr. Devalle did not possess good moral character or had not rehabilitated or otherwise restored his good moral character. Rather, the Commission’s *entire*

² Citations to the Court of Appeals’ decision below are referenced as “COA.”

basis for initially denying his certification and then upholding that denial was its review of his prior actions years earlier at the Highway Patrol. COA, p. 16; R. at 81, ¶ 32. Because the *only* evidence available in the record on this issue supports Mr. Devalle's recertification, the Commission's denial was clear error.

- The Commission itself concluded as a matter of law that Mr. Devalle's "impairment" under the Administrative Code (12 NCAC 10B.0205(3)) no longer exists. R. at 19, ¶ 24; R. at 15, ¶ 81; COA, p. 23.
- The Commission "did not abide by its own good moral character standard when it denied Mr. Devalle's justice officer certification indefinitely." COA, pp. 11-12. This shortcoming constituted a principal basis of the Court of Appeals' finding of arbitrariness.
- The Commission violated its duty to investigate the alleged charge against Mr. Devalle. *See* 12 NCAC 10B.0201. While a detailed discussion of this clear error on the part of the Commission is outside the scope of this amicus brief, it is well-covered in the Superior Court's Order (R. at 84, ¶¶ 6-7), the Court of Appeals' decision (p. 16), Mr. Devalle's New Brief (pp. 32-33, 69-72), and the other amicus briefs (*see, e.g.,* NCAJ/SEANC, pp. 15-19). *See also, Locklear v. N.C. Criminal Justice Educ. & Training Stds. Comm'n*, 24-CVS-470 (2024), pp. 26-28.

- The Commission’s attempt to avoid these terminal shortcomings by cherry-picking one of the ALJ’s Findings of Fact that Mr. Devalle’s “testimony exhibited a lack of candor and sincerity during cross-examination” is further unavailing and a red herring. R. at 39, ¶ 69 (adopted by the Commission at R. at 15, ¶ 80). Indeed, this appears to be an afterthought as the Commission’s Conclusions of Law are laser-focused on the prior misconduct at the Highway Patrol that occurred long before Appellee Devalle’s rehabilitation. R. at 16-19, ¶¶1-24. This Court should summarily reject this disingenuous post hoc rationale because both the Notice of Probable Cause to Deny Certification and the Commission’s Conclusions of Law clearly centered upon Mr. Devalle’s prior allegations of misconduct. Additionally, the Commission only passingly referenced Mr. Devalle’s purported “profound lack of candor and truthfulness while testifying under oath in this contested case” (R. at 19-20, ¶ 25) and it pointed to no specific testimony that it deemed untruthful, vague, or otherwise lacking. Moreover, the ALJ – who is the ultimate judge of credibility and character in proffered testimony – concluded that “[e]ven given Petitioner’s cross-examination testimony at hearing, the totality of the evidence rebutted the finding by the Probable Cause Committee that Petitioner lacks the good moral character required of a justice officer and showed that Petitioner has rehabilitated his character since 2017.” R. at 43, ¶ 24. Finally, as the Court of

Appeals found, the Commission's reliance on this conclusion conflicts with its own standard applied in *Royall v. N.C. Sheriffs' Educ. & Training Standards Comm'n*, 09 DOJ 5859 (2011). *See* COA, pp. 21-23. In short, the cross-examination finding – overstated as it was by the Commission and rejected by five experienced trial and appellate judges – is a red herring intended to mask the Commission's abject failure to contend with the critical principles of good moral character and rehabilitation of good moral character under North Carolina law.

As such, this Court should summarily affirm the Court of Appeals below.

II. THIS COURT SHOULD CLARIFY THE STANDARD AS TO WHAT CONSTITUTES GOOD MORAL CHARACTER.

In light of several important cases, including *Konigsberg v. State Bar of Calif.*, 353 U.S. 252 (1957), from the United States Supreme Court, *In re Willis*, 288 N.C. 10 (1975), from this Court, and numerous other important North Carolina cases, this Court should articulate a heightened standard in order for the Commission to be able establish that an officer or deputy has a lack of good moral character. Indeed, the Commission should have to satisfy a very high bar in order to excommunicate a law enforcement officer from his or her occupation.

First, by only relying upon evidence from years prior at the Highway Patrol, the Commission failed to consider Mr. Devalle's present good moral character. R. at 81, ¶ 32. That is the expectation articulated in a long line of cases. *See, e.g.,*

Schwartz v. Bd. of Bar Exam'rs, 353 U.S. 232, 246 (1957) (the relevant time for assessing moral character is the present); *In re Moore*, 301 N.C. 634, 640 (1981) (“In the present case we find that Moore through his application and evidence in support thereof made out a prima facie showing of his present good moral character.”); *Russell v. N.C. Crim. Justice Educ. and Training Stds. Comm’n*, 21 DOJ 03252, ¶¶ 3, 26(n), 26(t) (2022). This Court should reiterate this temporal relevancy requirement.

Second, this Court should clarify the specific parameters as to what constitutes a showing of present good moral character. This is necessary because, as fellow amici and Mr. Devalle have each eloquently articulated, there is no readily discernible good moral character standard for law enforcement to look to for guidance. There are Administrative Code references to string cites of lines of aged cases, there are various manifestations of what it means that have been proffered by the Commission in various of its findings (some released publicly and some not), and there are other types of cases, such as those involving attorney licensure, that can be considered and analogized to, but nothing that carries the same unique considerations as that of law enforcement. Vagueness and ambiguity in defining the qualifications required to enjoy the Constitutionally protected right to earn a living is dangerous, as is subjectivity in their application; all of which invite abuse.

Not surprisingly, the Commission would rather not be bound by standardized

qualifications and retain its unchecked flexibility to apply an eye of the current beholder evaluation in deciding who may be certified on a case-by-case basis, whether arbitrary, capricious, or rationally related to its other decisions or not. But that does not honor due process, nor does it respect the rights and dignities of the law enforcement community in this state that deserves not to have to negotiate a moving goal post in order to protect and serve our communities. The public good and trust is never advanced by allowing state police power “to exclude persons from an ordinary calling.” *See State v. Harris*, 216 N.C. 746, 865 (1940).

Because the Commission ultimately has the power to deprive law enforcement officers like Mr. Devalle of their fundamental inalienable rights to earn a living, to engage in their chosen profession, to support their families, and to maintain their reputation and dignity, clarity and guidance from this Court, informed by decades of precedent, is in order. The NCFOP therefore respectfully submits that some or all of the following considerations – already part of our jurisprudence – should help inform the Court, should it choose to provide clarity as to a clear, ascertainable standard to guide what “good moral character” means in this context:

- Good moral character means trustworthiness, honesty, candor, respect for the rights of others and for the laws of the state and nation, fairness, citizenship, and being a caring individual. *Royall*, 09 DOJ 5859; *In re Willis*, 288 N.C. at 10 (citing *Konigsberg*, 353 U.S. 252); *Giroux v. N.C. Criminal Justic Educ.*

& Training Stds. Comm’n, 23 DOJ 02864, ¶ 8 (2023); *King v. N.C. Criminal Justice Educ. & Training Stds. Comm’n*, 23 DOJ 02317, ¶ 55 (2023) (citing *In re Legg*, 325 N.C. 658, 660 (1989)); *Devalle*, R. p. 43.

- “[A]ny suspension or revocation of an officer’s law enforcement certification based on an allegation of a lack of good moral character should be reserved for **clear and severe** cases of misconduct.” *Royall*, 09 DOJ 5859 (emphasis added); *Locklear*, 24-CVS-470, ¶¶ 78, 80(8); *Giroux*, 23 DOJ 02864, ¶ 13 (citing *David v. N.C. Criminal Justice Educ. & Training Stds. Comm’n*, 17 DOJ 06743 (2018); *Boone v. N.C. Sheriff’s Educ. & Training Stds. Comm’n*, 11 DOJ 0678 (2013); *Knox v. N.C. Sheriff’s Educ. & Training Stds. Comm’n*, 11 DOJ 04831, ¶ 7 (2014); *DeCotis v. N.C. Sheriff’s Educ. & Training Stds. Comm’n*, 10 DOJ 07779 (2011); *Mims v. N.C. Sheriff’s Educ. & Training Stds. Comm’n*, 02 DOJ 1263 (2003); COA, pp. 22-23.
- “[I]solated instances of [mis]conduct are insufficient to properly conclude that someone lacks good moral character.” *Royall*, 09 DOJ 5859; *Giroux*, 23 DOJ 02864, ¶ 23. This is particularly so “with persons of demonstrated historical character.” *Locklear*, 24-CVS-470, ¶ 63. 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.” *Royall*, 09 DOJ 5859; *Dietrich v. N.C. Dep’t of Crime*

Control, 00 OSP 1039 (2001) (a one-time incident in an “otherwise unblemished career and long history of very good moral character” does not “outweigh his life and career of very good moral character.”). Good moral character should “seldom [be] subject to proof by reference to one or two incidents.” *In re Rogers*, 297 N.C. 48, 58 (1979); *Rector v. N.C. Sheriffs’ Educ. & Training Stds Comm’n*, 103 N.C. App. 527, 532 (1991); *Gray v. N.C. Sheriffs’ Educ. & Training Stds. Comm’n*, 09 DOJ 4364 (2010); *In re Willis*, 288 N.C. at 13; *State v. Benbow*, 309 N.C. 538, 653 (1983); COA, p. 13.

- Any denial of justice officer certification for lack of good moral character must be “reasonably necessary to promote the accomplishment of a public good or prevent the infliction of a public harm.” *State v. Ballance*, 229 N.C. 764, 770 (1949); *see also*, N.C.G.S. § 14-230. This must be an actual, concrete injury to the public, not a potential, theoretical, or speculative injury. *State v. Anderson*, 196 N.C. 771 (1929).
- A record of “exemplary service” must be considered. *Scroggs v. N.C. Criminal Justic Educ. & Training Stds. Comm’n*, 101 N.C. App. 699, 702 (1991).
- The petitioning officer’s voluntary offering of pertinent information to the Commission with respect to the misconduct allegations must be considered. *Scroggs*, 101 N.C. App. at 702.

- Good moral character considerations may also include but are not limited to “being a good citizen, supporting one’s community, being helpful to others, being a caring person, supporting one’s family, being a good [parent], educating children, being a public servant, promoting law and order, attending church, being active in one’s church, having a good reputation in one’s residential community, having a good reputation in one’s occupational community, earning awards from community organizations, having a good work ethic, being a good employee, being fair to others, respecting the rights of others, being fiscally responsible, accepting responsibility for mistakes, and having a good record of being law abiding and the absence of criminal convictions” (*Locklear*, 24-CVS-470, ¶ 83), as well as a “history of helping others, teaching, promoting law enforcement and other education, supporting community service programs[,] and long[-]term police service.” *Marcum v. N.C. Criminal Justice Comm’n*, 15 DOJ 07702, at *27-28 (2016).
- The “totality of the facts and circumstances” after “fair and careful consideration” must be considered before suspending an officer’s certification. *Royall*, 09 DOJ 5859; *Rector*, 103 N.C. App. at 532.
- “Character [] encompasses both a person’s past behavior and the opinion of members of his community arising from it.” COA, p. 13 (citing *In re Rogers*, 297 N.C. at 58).

III. THIS COURT SHOULD ALSO CLARIFY THE STANDARD AS TO WHAT CONSTITUTES THE SUCCESSFUL REHABILITATION OF ONE'S GOOD MORAL CHARACTER.

When a law enforcement officer rehabilitates and restores their good moral character, that evidence must be considered. *See Russell*, 21 DOJ 03252, at ¶¶ 26-32, 36. Nevertheless, as all courts below found, the Commission improperly ignored the important and well-established principle of *rehabilitation* of good moral character when it denied Mr. Devalle's certification. This Court should therefore also clarify and establish a clear and articulable standard for evaluating whether one's good moral character has been successfully rehabilitated so that future Commission actions cannot be so arbitrary and inconsistent at the expense of the Constitutional rights of our state's law enforcement community.

"The principle of *restoration* or rehabilitation of good moral character is widely recognized." R. at 85. "That a man may turn from evil and rehabilitate his character is universally recognized; and the record here leads irresistibly to the conclusion that this petitioner has really turned from a life of law violation to one of upright living." *Marcantonio v. U.S.*, 185 F.2d 934, 938 (4th Cir. 1950). Our Administrative Code reiterates and, indeed, codifies this principle, as it states that suspension or denial of the justice officer certification shall be only for "**so long as the stated deficiency, infraction, or impairment continues to exist.**" 12 NCAC 10B.0205(3) (emphasis added). Inherent in that precise wording is the

acknowledgment – commonplace in this nation’s jurisprudence³ – that where a law enforcement officer has successfully rehabilitated and restored their good moral character such that the impairment no longer exists, suspension of the officer’s certification must be lifted.

This Court has the opportunity to clarify the parameters to be applied to establish rehabilitation of good moral character through this case. Such rehabilitation analysis should be deferential and give strong consideration to the employer’s opinion, who is undoubtedly in the best position to know the officer’s current rehabilitated character. The Commission must then meet a high burden to show a lack of rehabilitation of the officer in the face of such compelling evidence.

Here, the uncontroverted evidence reflects that Mr. Devalle served admirably and professionally as a school resource officer, that he held the special trust and confidence of the sheriff, principal, school board members, parents, and students, that he performed his duties “above and beyond,” that his absence would negatively

³ There are hundreds of cases in other legal contexts where courts apply the rehabilitation of good moral character standard, including, by way of example, attorney bar admissions and immigration. *See, e.g., In re Braverman*, 549 F.2d 913, 915 (4th Cir. 1976) (“Regarding Braverman's moral character, the state court panel found that ‘the impressive and unchallenged evidence presented by the petitioner of his present good character clearly established his eligibility for reinstatement on this score.’”); *In re Clark*, 272 N.C. App. 577 (2020); *In re G.L.S.*, 439 A.2d 1107, 1108 (1981); *In re Dreier*, 258 F.2d 68, 69 (3d Cir. 1958); *Marcantonio*, 185 F.2d at 936.

impact both the school and the sheriff's department, including school safety, that he had developed and exhibited highly favorable traits such as helping, teaching, and serving as a positive role model for the students, that he served the community as a school resource officer, assistant football coach, and track coach, that he was dedicated to the school, students, and staff, that he went to work every day, that he was the principal's "right-hand man," that he helped students by buying them shoes and lunch and gave them food, and that by all accounts was truthful, trustworthy, and served admirably with character. *See, e.g.,* R. at 14-15, ¶¶ 69-77, 81; 37-39, ¶¶ 58-66, 70; 78-79, ¶¶ 19-21; 80-83, ¶¶ 29-31, 33-40, 43. *See also*, COA, pp. 17-20. These are clear and articulable examples of rehabilitation of good moral character with which even the Commission agrees.⁴

⁴ Indeed, the Commission *itself* concluded that this evidence established that Appellee Devalle had rehabilitated and restored his good moral character:

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

R. at 19, ¶ 24.

Additionally, *Marcum* provides further guidance that this Court should consider if it indeed undertakes to clarify the standard for rehabilitation. 15 DOJ 07702. In finding that the totality of the credible evidence demonstrated that he had “successfully and completely rehabilitated and rebuilt his life and his career,” the ALJ held that Officer Marcum

possesses and exhibits highly favorable traits, including but not limited to **a history of helping others, teaching, promoting law enforcement and other education, supporting community service programs and long term police service**. The scope and magnitude of Petitioner's character traits substantially outweighs Petitioner's lapse in judgment in his personal behaviors at issue. Further, Petitioner's **resumption of a broad range of very positive conduct** demonstrates that Petitioner is rehabilitated from his previous lapse of judgement.

Id. at *27-28 (emphasis added). These are important additional considerations.

In short, “where evidence of rehabilitation is presented, the question becomes one of time and growth.” COA, p. 22. And this Court should so hold.

Finally, while it may seem implicit or otherwise obvious, this Court should also clarify that where evidence is presented that an officer or deputy has rehabilitated their good moral character, the Commission is not at liberty to ignore such evidence, as it did here. Rather, only where such evidence has *not* been presented can the Commission reasonably conclude that a petitioning officer has not rehabilitated their good moral character. *See, e.g., Bland v. Crim. Justice Comm’n*, 12 DOJ 03839, ¶ 23 (2013); *King v. N.C. Sheriffs’ Educ. & Training Stds. Comm’n*, 11 DOJ 11631, ¶ 20 (2012); *In re Clark*, 272 N.C. App. 577.

The ability to rehabilitate one's good moral character is neither a novel concept nor new doctrine. It has long been the law of the land in this state. And yet, the Commission ignored it, the implications of which are understandably significant for the law enforcement community. Because it ignored the extensive evidence of the rehabilitation and restoration of good moral character, the Commission's decision was appropriately overruled by the courts below. Because the Commission retains this authority over the state's law enforcement community in the future, this Court should make its expectations clear that this critical tenet of reinstatement upon the rehabilitation of good moral character is of paramount importance, not just in this case, but in our state's overall jurisprudence.

CONCLUSION

For the foregoing reasons, the NCFOP respectfully prays that this Court affirm the courts below and provide needed clarity to this important body of law.

Respectfully submitted, this the 9th day of December, 2024.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing *AMICUS CURIAE*
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