STATE OF NORTH CAROLINA		**IN THE OFFICE OF ADMINISTRATIVE HEARINGS**
COUNTY OF WAKE		**22 DOJ 04730**
FALLON COFFER,	)	
	)	
Petitioner,	)	
	)	
v.	)	**PROPOSED FINAL AGENCY DECISION**
	)	
NORTH CAROLINA SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION,	)	
	)	
Respondent.	)	
	)	

THIS MATTER was commenced by a request filed December 12, 2022, with the Office of Administrative Hearings for the assignment of an Administrative Law Judge. Notice of Contested Case Assignment and Order for Prehearing Statements (22 DOJ 04730) were filed December 13, 2022. The parties received proper Notice of Hearing and the Administrative Hearing was held in Raleigh, North Carolina on May 12, 2023, before the Honorable Michael C. Byrne, Administrative Law Judge.

The Petitioner represented herself, *pro se*. The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter the Commission or Respondent) was represented by Assistant Attorney General Kirstin J. Greene.

On May 26, 2023, Judge Byrne filed his Proposal for Decision. On May 31, 2023, counsel to the Commission sent by certified mail a copy of the Proposal for Decision to the Petitioner with a letter explaining Petitioner's rights: (1) to file exceptions or proposed findings of fact; (2) to file written argument; and (3) the right to present oral argument to the Commission.

This matter came before Commission for entry of its **Final Agency Decision** at its regularly scheduled meeting on September 14, 2023.

Having considered all competent evidence and argument and having reviewed the relevant provisions of Chapter 17E of the North Carolina General Statutes and Title 12, Chapter 10B of the North Carolina Administrative Code, the Commission, based upon clear, cogent and convincing evidence, does hereby make the following:

FINDINGS OF FACT

1. Petitioner applied for justice officer's certification with Respondent through the Wake County Sheriff's Office. Petitioner was a credible witness.

2. Petitioner has worked for the Wake County Sheriff's Office as a detention officer since September 2021. Petitioner submitted, and the Tribunal admitted as Petitioner's Exhibit 1, letters from two colleagues praising Petitioner's performance as a detention officer.

3. Though the letters in Exhibit 1 are hearsay, Petitioner also called as a witness Hector Araujo, a Sergeant employed by the Wake County Sheriff's Office. Araujo was a credible witness.

4. Petitioner was an outstanding employee of the Wake County Sheriff's Office, there were no known complaints about Petitioner's performance as a detention officer, and Petitioner has not been subject to any disciplinary action during her employment. (Araujo testimony). Petitioner's Exhibit 1 corroborates Araujo's testimony.

5. All evidence before the Tribunal ~~is~~ was that Petitioner performs her duties as a detention officer in a credible and discipline-free fashion.

6. Prior to being hired by the Wake County Sheriff's Office, Petitioner disclosed that she had a criminal conviction for misdemeanor larceny stemming from incidents in December of 2010 in Kinston, North Carolina.

~~7. Petitioner was also forthright with the Commission about her criminal conviction when she sought certification. The Commission's Probable Cause Committee was, therefore, fully aware of Petitioner's candor with respect to her criminal history at the time it made the decision to find probable cause that Petitioner, who pleaded guilty to a misdemeanor (that would, as discussed below, be no bar to her certification), nonetheless "committed" a felony that, under the Commission's rules, is an absolute bar to Petitioner's certification.~~

~~8.~~7. Respondent, after becoming aware of Petitioner's criminal history, assigned Christopher Scott, an investigator employed with Respondent since 2017, to review the matter. Scott was a credible witness.

~~9.~~8. Scott contacted the Kinston Police Department (Res. Ex. 6) seeking information. The Kinston Police Department produced an incident report (Res. Ex. 7) describing Petitioner's arrest for the criminal offense of "Larceny by Employee" in violation of N.C.G.S. 14-74 (Res. Ex. 5).

~~10. Parts of the "Incident Report" (a statement by a "Mr. Dupree" and video footage not introduced at the contested case hearing) are inadmissible hearsay. Further, while~~ Tthe information Scott obtained tended to show that on December 11, 2010, Petitioner, while employed at a Belk's store in Kinston, was accused of embezzling $266.92 from that business~~, no Kinston police officer testified in the contested case hearing. Barring Petitioner's testimony, then, Respondent's evidence of Petitioner's 2010 arrest was largely based on hearsay~~.

~~11.~~9. Petitioner was indicted by bill of information (Res. Ex. 8) with the felony offense of "Larceny by Employee" in violation of N.C.G.S. 14-74. The dollar amount of larceny listed in Res. Ex. 8 is $240.00, as opposed to the $266.92 listed on Res. Ex. 7.

~~12.~~10. Petitioner, as a part of Scott's investigation, voluntarily provided a statement about the Belk larceny incident. As reproduced by Scott, this statement was: "I, Fallon Coffer, was charged with felony theft in December 2012. At the time I was employed at Belk's department store where I changed the price on items for a friend without the permission of a supervisor or manager on duty." (Res. Ex. 9). Res. Ex. 9 is signed by Scott.

~~13.~~11. The reference to "December 2012" in Res. Ex. 9 is found to be erroneous. All other evidence is that the date of Petitioner's alleged offense was December 11, 2010. Petitioner's formal indictment by bill of information is dated February 3, 2011 (Res. Ex. 8).

~~14.~~12. Petitioner, pursuant to a plea arrangement, pleaded guilty to the offense of "Misdemeanor Larceny" as set out in N.C.G.S. 14-72. This offense is not a "lesser included" offense of "Larceny by Employee."

~~15.~~13. Petitioner testified credibly that on the date of the Belk larceny incident, while working as an employee of Belk's department store, she did provide an excess refund to her friend for the return of a coat and did "ring up" excess discounts for that same person. Petitioner was commendably forthright and non-equivocal with the Tribunal regarding her actions.

~~16. There was no evidence that Petitioner, even if her actions of December 2010 had gone undetected, would have profited personally from those actions.~~

~~17. Petitioner has neither been charged with nor convicted of any criminal offense since her guilty plea stemming from the incidents of December 2010. The Tribunal finds as a fact that Petitioner has led a law-abiding and crime-free life for nearly 13 years.~~

~~18. The Tribunal finds as a fact that~~ Petitioner has never been convicted of or pleaded guilty to any felony offense, including but not limited to the offense of "Larceny by Employee" in violation of N.C.G.S. 14-74.

~~19. There is no evidence that Petitioner's actual conviction, by guilty plea, for "Misdemeanor Larceny" would have barred her certification as a Wake County detention officer. Petitioner's conviction was in early 2011. Nicholas Chase Worsley v. NC Sheriffs Education and Training Standards Commission, 2018 WL 2387455, 17 DOJ 07633~~

~~20.~~14. By letter dated October 28, 2022, Respondent notified Petitioner, via certified mail, that Respondent's Probable Cause Committee had found probable cause to deny Petitioner's application for justice officer certification pursuant to 12 N.C.A.C. .0204(c)(1) Chapter 10B, Title 12, on the grounds that on or about December 11, 2010, Petitioner "committed" the felony of "Larceny by Employee" in violation of N.C.G.S. 14-74.

~~21.~~15. On November 22, 2022, Petitioner requested an administrative hearing. (Res. Ex. 1). In that request Petitioner cited (a) the length of time since the Belk larceny incident, (b) the reduction of the charged offense to misdemeanor larceny, (c) her restitution of the funds concerned, (d) her lack of criminal activity in the intervening years since 2010, and (e) her 14 months (as of this Proposed Decision, now 32 months) of meritorious employment with the Wake County Sheriff's

Office. Id.

~~22. Petitioner testified credibly that she enjoys her work and wants to make law enforcement a career. Petitioner also testified credibly that she understands the need for someone involved in law enforcement to act honestly and be worthy of trust, including in the detention context being worthy of entrustment of the custody of human beings.~~

~~23. The Tribunal finds as a fact that the persons in the best position to determine Petitioner's fitness to serve as a detention officer in Wake County, North Carolina are the elected sheriff of Wake County, North Carolina and/or his officers. One such officer testified very credibly and with strong support for Petitioner's certification.~~

~~24.~~16. At the close of the hearing, as is the Tribunal's practice, the Tribunal inquired of counsel for the Commission what the Commission's general position was on the matter. Counsel responded that the governing rules provided no discretion regarding certification of persons found to have committed or been convicted of a felony offense.

Based on these Findings of Fact, ~~the Tribunal~~ Respondent makes these:

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings ~~has~~ had jurisdiction over this contested case pursuant to N.C.G.S. 150B, Article 3A, following a request from Respondent under N.C.G.S. 150B-40(e) for an Administrative Law Judge to hear this contested case. In such cases the Tribunal sits in place of the agency and has the authority of the presiding officer in a contested case under Article 3A. The Tribunal makes a proposal for decision, which contains findings of fact and conclusions of law. Respondent makes the final agency decision. N.C.G.S. 150B-42.

2. The parties ~~are~~ were properly before the ~~Tribunal~~ assigned Administrative Law Judge, in that jurisdiction and venue ~~are~~ were proper, and both parties received Notice of Hearing.

3. It is not necessary for the Tribunal to make findings on every fact presented at the hearing, but rather those which are material for resolution of the present dispute. Flanders v. Gabriel, 110 N.C. App. 438, 440, 429 S.E.2d 611, 612, (1993), affirmed, 335 N.C. 234, 436 S.E.2d 588 (1993).

4. To the extent the Findings of Fact contain Conclusions of Law, or vice versa, they should be so considered without regard to the given labels. Matter of V.M., 273 N.C. App. 294, 848 S.E.2d 530 (2020).

~~5. This case presents a specific situation where interpretations of rules, enacted by the Commission with the laudable goal of barring malefactors from the profession of law enforcement, resulted in an injustice. For that reason, the Tribunal first (a) analyzes this case under the rules for the offense found by the Commission's Probable Cause Committee, and also (b) whether the Probable Cause Committee's decision to find probable cause that Petitioner "committed" the felony offense of "Larceny by Employee" was, under the specific facts of this case, arbitrary and~~

~~capricious.~~

5. The party with the burden of proof in a contested case must establish the facts required by N.C.G.S. § 150B-23(a) by a preponderance of the evidence. N.C.G.S. § 150B-29(a). The administrative lase judge shall decide the case based upon the preponderance of the evidence. N.C.G.S. § 150B-34(a).

6. Petitioner has the burden of proof in the case at bar. Overcash v. N.C. Dep't of Env't & Natural Resources, 172 N.C. App 697, 635 S.E. 2d 442 (2006).

~~Respondent's Authority Under N.C.G.S. 17E~~

~~6.~~7. The General Assembly, creating the North Carolina Sheriffs' Education and Training Standards Commission in N.C.G.S. 17E-3, states, "The General Assembly finds and declares that the office of sheriff, the office of deputy sheriff and the other officers and employees of the sheriff of a county are unique among all of the law-enforcement officers of North Carolina. … 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. The training and educational needs of such officers therefore require particularized and differential treatment from those of the criminal justice officers certified under Article 1 of Chapter 17C of the General Statutes." N.C.G.S. 17E- 1 (condensed).

~~7.~~8. In N.C.G.S. 17E-4, "Powers and Duties of the Commission," the General Assembly authorizes Respondent to make enforceable "rules and regulations" and "certification procedures" regarding such officers in a number of areas. Most specific to this case, N.C.G.S. 17E-4(3) authorizes Respondent to "certify, pursuant to standards that it may establish for the purpose, persons as qualified under the provisions of this Chapter who may be employed at entry level as officers."

~~8.~~9. N.C.G.S. 17E-7, "Required standards," directs and authorizes Respondent to set certain standards for appointment of justice officers, and "may fix other requirements, by rule and regulations, for the employment and retention of justice officers… ." Id. at (c).

~~9.~~10. Respondent's authority to impose standards for certification of justice officers is recognized by our Supreme Court. Britt v. N. Carolina Sheriffs' Educ. & Training Standards Comm'n, 348 N.C. 573, 501 S.E.2d 75 (1998).

~~10. However, as very recently affirmed by the Court of Appeals, the Commission may not act in a manner that is arbitrary and capricious. Devalle v. N. Carolina Sheriffs' Educ. & Training Standards Comm'n, No. COA22-256, 2023 WL 3470876 (N.C. Ct. App. May 16, 2023). This includes the Commission's operation and interpretation of its own rules and standards. Devalle.~~

~~11. If Respondent's Probable Cause Committee was arbitrary and capricious in finding probable cause that Petitioner's "committed" a felony, that decision is subject to reversal as a matter of law. Devalle, see also N.C.G.S. 150B-23(b)(4)~~

~~The Rules at Issue~~

~~12.~~11. "Every justice officer employed or certified in North Carolina shall: (10) not have committed or been convicted of a crime or crimes specified in 12 N.C.A.C. 10B .0307" 12 N.C.A.C. 10B.0301(10)

~~13.~~12. "Consistent with and subject to the requirements of 12 NCAC 10B .0204, every justice officer employed or certified in North Carolina shall not have committed or been convicted by a local, state, federal, or military court of: (1) a felony." 12 N.C. Admin. Code 10B.0307 (pertinent part).

~~14.~~13. 12 N.C.A.C. 10B.0204 holds:

> (a) The Commission **shall** revoke or **deny the certification** of a justice officer when the Commission finds that **the applicant** for certification or the certified officer **has committed** or been convicted of:
>
> (1) **a felony**; or
> (2) a crime for which the authorized punishment could have been imprisonment for more than two years.
>
> Id. (emphasis supplied).

~~15.~~14. "As used in **statutes**, the word 'shall' is generally imperative or mandatory." Silver v. Halifax Cty. Bd. of Commissioners, 371 N.C. 855, 863–64, 821 S.E.2d 755, 761 (2018). "May," by contrast, is intended to convey that the power granted should be exercised with discretion. Id. (emphasis supplied).

~~16.~~15. "Felony" means any offense designated a felony by the laws, statutes, or ordinances of the jurisdiction in which the offense occurred. 12 N.C.A.C. 10B.0103(11).

~~17.~~16. "Commission" as it pertains to criminal offenses means a finding by the North Carolina Sheriffs' Education and Training Standards Commission or an administrative body, pursuant to the provisions of G.S. 150B, that a person performed the acts necessary to satisfy the elements of a specified criminal offense. 12 N.C. Admin. Code 10B.0103(16); see also 12 N.C.A.C. 10B.0307

~~15. The Administrative Code defines "conviction" and "commission" of a crime separately. Becker v. N. Carolina Crim. Just. Educ. & Training Standards Comm'n, 238 N.C. App. 362, 768 S.E.2d 200 (2014) (unpublished). In addition to Britt, the Court of Appeals has held that Respondent "may revoke a correctional officer's certification if it finds that the officer committed a misdemeanor, regardless whether he was criminally convicted of that charge." Becker, citing Mullins v. N.C. Criminal Justice Educ. & Training Standards Comm'n, 125 N.C. App. 339, 348, 481 S.E.2d 297, 302 (1997). Though these cases involve the North Carolina Criminal Justice Education and Training Standards Commission, that body and Respondent serve similar functions and rules and the Tribunal presumes them to have equal regulatory authority.~~

~~16. No North Carolina appellate case requires the Commission to revoke or deny a certification based on a showing that a person "committed" a criminal offense of which they were not convicted, either by trial or admission of guilt, in the General Court of Justice. Nor does any North Carolina statute, including Chapter 17E (see below).~~

~~17. Moreover, no North Carolina appellate case or statute requires the Commission's Probable Cause Committee to find probable cause that a person not convicted of a felony nonetheless "committed" it.~~

~~21.~~17. In determining whether a person "committed" a crime, the Commission does not "attempt to interpret North Carolina's criminal code," but instead must "use pre-established elements of behavior which together constitute an offensive act. The Commission **relies on the elements of each offense, as specified by the Legislature and the courts**." Mullins at 347, 302 (emphasis supplied). See State v. Eastman, 113 N.C. App. 347, 351, 438 S.E.2d 460, 462 (1994): "The State failed to show any instance where the defendant [a state employee at the Governor Morehead School] could exercise sovereign power at any time in the course of his employment.

~~22. Petitioner's 2011 conviction for "Misdemeanor Larceny," standing alone, would not prevent her certification as a Wake County detention officer." Nicholas Chase Worsley v. NC Sheriffs Education and Training Standards Commission, 2018 WL 2387455, 17 DOJ 07633.~~

~~Whether Petitioner "Committed" a Felony in Violation of N.C.G.S. 14-74~~

~~23.~~18. Petitioner has never been convicted of or pleaded guilty to any felony, including N.C.G.S. 14-74, in the General Court of Justice. The initial question is whether Petitioner nonetheless "committed" this felony under Respondent's rules as alleged by the Probable Cause Committee.

~~24.~~19. N.C.G.S. 14-74 is defined by statute:

> If any servant or other **employee**, to whom any **money, goods or other chattels**, or any of the articles, securities or choses in action mentioned in G.S. 14-75, by his master shall be delivered safely to be kept to the use of his master, shall withdraw himself from his master and go away with such money, goods or other chattels, or any of the articles, securities or choses in action mentioned as aforesaid, or any part thereof, with intent to steal the same and defraud his master thereof, contrary to the trust and confidence in him reposed by his said master; or if any servant, being in the service of his master, without the assent of his master, shall embezzle such money, goods or other chattels, or any of the articles, securities or choses in action mentioned as aforesaid, or any part thereof, **or otherwise convert the same to his own use, with like purpose to steal them, or to defraud his master thereof**, the servant so offending shall be guilty of a felony: Provided, that nothing contained in this section shall extend to apprentices or servants within the age of 16 years. If the value of the money, goods, or other chattels, or any of the articles, securities, or choses in action mentioned in

> G.S. 14-75, is one hundred thousand dollars ($100,000) or more, the person is guilty of a Class C felony. If the value of the money, goods, or other chattels, or any of the articles, securities, or choses in action mentioned in G.S. 14-75, is less than one hundred thousand dollars ($100,000), the person is guilty of a Class H felony
>
> N.C.G.S. 14-74 (emphasis supplied).

~~25.~~20. The elements of larceny by employee are: (1) the defendant was an employee of the owner of the stolen goods; (2) the goods were entrusted to the defendant for the use of the employer; (3) the goods were taken without the permission of the employer; and (4) the defendant had the intent to steal the goods or to defraud his employer. State v. Frazier, 142 N.C. App. 207, 209, 541 S.E.2d 800, 801 (2001).

~~26.~~21. Applied to the evidence here, primarily through Petitioner's testimony:

~~(1)~~(a) On December 11, 2010, Petitioner was an employee of Belk's.
~~(2)~~(b) The goods and money at issue (the statute specifically includes "money") were entrusted to Petitioner for the use and benefit of her employer, Belk's.
~~(3)~~(c) The monies, at least, were taken without permission of Belk's.
~~(4)~~(d) Petitioner had the intent to defraud Belk's by both giving an excess refund and by selling goods at less than their stated prices, both without the permission of Belk's.
~~(5)~~(e) Additionally, as required by the statute, Petitioner was over age 16 at the time of these actions (Res. Ex. 7).

~~27.~~22. Petitioner, almost exclusively by her own testimony, "performed the acts necessary to satisfy the elements" of N.C.G.S. 14-74. Therefore, by mechanistic application of the rules, Respondent, in December 2010, "committed" the felony of "Larceny by Employee."

~~Whether The Probable Cause Committee's Probable Cause Finding Was Arbitrary and Capricious~~

~~28. This contested case arises under Article 3A of the Administrative Procedure Act. In such cases, "The administrative law judge assigned to hear a contested case under this Article shall sit in place of the agency and shall have the authority of the presiding officer in a contested case under this Article. The administrative law judge shall make a proposal for decision, which shall contain proposed findings of fact and proposed conclusions of law." N.C.G.S. 150B-40.~~

~~29. The final decision in this case, barring contrary decisions on judicial review, is made by Respondent. N.C.G.S. 150B-42. The Tribunal's role, summarily stated, is to review the evidence under the controlling laws and rules and propose a decision.~~

~~30. There is no doubt that if the Probable Cause's Committee's decision to find probable cause in this case was legally correct, then (a) under 12 N.C.A.C. 10B.0204 as written, and (b) based largely on her own honest statements about her actions in 2010, Petitioner may not be certified by Respondent.~~

31. However, "The Office of Administrative Hearings is established **to ensure that administrative decisions are made in a fair** and impartial **manner** to protect the due process rights of citizens who challenge administrative action and to provide a source of independent administrative law judges to conduct administrative hearings in contested cases in accordance with Chapter 150B of the General Statutes and thereby prevent the commingling of legislative, executive, and judicial functions in the administrative process." N.C.G.S. 7A-750 (emphasis supplied).

32. The facts of this case, then, raise this question: was the Probable Cause Committee's decision to find probable cause that Petitioner committed a felony, when her actual criminal conviction would not bar her certification, and when the Probable Cause Committee was aware of Petitioner's candor about her past wrongdoing, arbitrary and capricious? Stated concisely: was changing the offense from one that would be no barrier to certification to one that is an absolute bar to certification, and of which Petitioner was never convicted, legally correct?

33. Analysis of that question requires discussion of the effects of the Commission's "committed a felony" rules, as applied to this case.

The Constitution of North Carolina Disfavors Barring Citizens From Professions

34. "The right to work and to earn a livelihood is a property right that cannot be taken away except under the police power of the State in the paramount public interest for reasons of health, safety, morals, or public welfare." Roller v. Allen, 245 N.C. 516, 518–19, 96 S.E.2d 851, 854 (1957). "The right to conduct a lawful business or to earn a livelihood is regarded as fundamental." McCormick v. Proctor, 217 N.C. 23, 6 S.E.2d 870, 876 (1940). Further, there "is a well recognized gap between the regulation of a business or occupation and restrictions preventing persons from engaging in them to which courts must pay careful attention." State v. Harris, 216 N.C. 746, 6 S.E.2d 854, 863 (1940).

35. The Tribunal does not question Respondent's authority to deny, suspend or revoke, under appropriate facts, a law enforcement certification. The Tribunal instead emphasizes a principle so imperative that it appears at Article 1, Section 1 of the Constitution of North Carolina: "We hold it to be self-evident that all persons are created equal; that they **are endowed by their Creator with certain inalienable rights**; that among these are life, **liberty, the enjoyment of the fruits of their own labor**, and the pursuit of happiness." N.C. Const. art. I, § 1 (emphasis supplied).

36. Indeed, North Carolina's Constitution commands that the Tribunal recall these issues: "A frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty." N.C. Const. art. I, § 3. "The admonition of the Constitution requiring frequent recurrence to fundamental principles is politically sound. Only in this way may we avoid a break with tradition that preserves the spirit, and often the letter of the law. One of the cardinal rules of construction as applied to the Constitution is that it must be interpreted in the light of its history." State v. Harris, 216 N.C. 746, 6 S.E.2d 854, 865 (1940).

37. Respondent cites Harris in its rule on the "good moral character." (12 N.C.A.C.

10B.0301). Harris emphasizes constitutional concerns about laws (here, rules) that drive or bar North Carolinians from a profession, and the resulting tension between such restrictions and fundamental rights in our State Constitution:

> There is nothing in government more dangerous to the liberty and rights of the individual than a too ready resort to the police power. … No good can come to society from a policy which tends to drive its members from the ranks of the independently employed into the ranks of those industrially dependent, and the economic fallacy of such a policy is too obvious for comment.
>
> Harris, Id.

38. Arbitrary and capricious employment of rules that operate to cause automatic lifetime exclusion from a profession, even one properly regulated under the police power, increases that constitutional tension. Acting with discretion, by contrast, reduces it. "The right to work and to earn a livelihood is a property right that cannot be taken away except under the police power of the State in the paramount public interest for reasons of health, safety, morals, or public welfare." Roller v. Allen, 245 N.C. 516, 518, 96 S.E.2d 851, 854 (1957).

The Governing Statutes Do Not Cite "Commission," As Opposed to Conviction, of a Felony

39. While N.C.G.S. 17E-4(3) authorizes Respondent to "certify, pursuant to standards that it may establish for the purpose, persons as qualified under the provisions of this Chapter who may be employed at entry level as officers," nowhere does that statute, nor any other provision of Chapter 17E (including N.C.G.S. 17E-7) require lifetime disqualification for "commission," as opposed to "conviction," of a felony. This disqualification is solely imposed by rule.

40. Further, those sections of Chapter 17E that do reference felonies in the disqualification context refer to convictions only. N.C.G.S. 17E-12(b); N.C.G.S. 17E-25. N.C.G.S. 17E-12(b) states that Respondent "may" (not, "shall") deny, suspend, or revoke a person's certification based on an expunged felony conviction.

41. The General Assembly's concern about the rectitude of those serving in the office of high sheriff is apparent at the outset of Chapter 17E: "The sheriff is the only officer of local government required by the Constitution. The sheriff, in addition to his criminal justice responsibilities, is the only officer who is also responsible for the courts of the State, and acting as their bailiff and marshal. The sheriff administers and executes criminal and civil justice and acts as the ex officio detention officer." N.C.G.S. 17E-1 (quoted in pertinent part).

42. Accordingly, N.C.G.S. 17E-25 requires that any individual attempting to serve in the office of sheriff of any county must cooperate with the creation of a disclosure statement "verifying that individual has no prior felony convictions or expungements of felony convictions." Id. at (a).

N.C.G.S. 17E-25, however, says nothing about "commission" of a felony.

43. Ms. Coffer, the petitioner, could thus lawfully be elected and serve as the high sheriff of Wake County. At the same time, if the Probable Cause Committee decision stands, she

may not be certified to serve under the Wake County sheriff in a role formerly described as a "turnkey." Town of Fuquay Springs v. Rowland, 239 N.C. 299, 299, 79 S.E.2d 774, 775 (1954).

44. The Tribunal in so observing does not diminish the significance of the detention officer role or the need for standards related to it. The Tribunal instead marks the incongruity of interpretations of rules barring otherwise well-qualified candidates from that job while, at the same time, the General Assembly does not bar such persons from the vast authority and responsibility of the office of high sheriff.

The Supreme Court of North Carolina Disapproves of Inflexible Rules and Policies In Agency Decision-making

45. In 2015, the Supreme Court decided a significant law enforcement employment case, Wetherington v. North Carolina Dep't of Pub. Safety, 368 N.C. 583, 780 S.E.2d 543 (2015).[1] Wetherington involved a trooper with the North Carolina Highway Patrol terminated for making false statements regarding the loss of his hat, in violation of the Patrol's truthfulness policy. Id. at 588, 546.

46. The evidence at the ensuing OAH trial was that the Patrol's truthfulness policy provided the agency with no discretion:

Colonel Glover testified that because petitioner's conduct "was obviously a violation of the truthfulness policy," dismissal was required, and he repeatedly asserted that **he "had no choice" to impose any lesser punishment**. After petitioner's counsel asked Colonel Glover whether, "when there is a substantiated or adjudicated finding of untruthfulness ... [a trooper] would necessarily need to be terminated," Colonel Glover reiterated that if "that's the violation, again ... I have no choice because that's the way I view it." Petitioner's counsel then asked, "[D]oes that mean **if you find a substantiated or adjudicated violation of the truthfulness policy ... that you don't feel like that gives you any discretion as Colonel to do anything less than termination?" Colonel Glover agreed with that statement**.

Id. at 592, 548 (emphasis supplied).

47. The Supreme Court held that the Patrol's "automatic dismissal" policy was contrary to State law. Most significant here, the Court held: "Application of an inflexible standard deprives management of discretion." Id. at 593, 548. "The better practice," the Court continued, "would be to allow for a range of disciplinary actions in response to an individual act of untruthfulness, rather than the categorical approach employed by management in this case." Id.

48. Wetherington's rejection of per se or absolutist agency policies, and its requirement that agencies use consideration and discretion – the "Wetherington factors" – is now settled law in the public employment context. Brewington v. N. Carolina Dep't of Pub. Safety, State Bureau of Investigation, 254 N.C. App. 1, 25, 802 S.E.2d 115, 131 (2017), disc. rev. denied, 371 N.C. 343,

[1] Wetherington returned to the Court of Appeals for a second time prior to the case's final resolution in 2020. Wetherington v. NC Dep't. of Pub. Safety, 270 N.C. App. 161, 840 S.E.2d 812 (2020), review denied, 374 N.C. 746, 842 S.E.2d 585 (2020).

813 S.E.2d 857 (2018); Joe T Locklear v. North Carolina Department of Public Safety, 2022 WL 2389874, 21 OSP 01175.

49. Here, the Probable Cause Committee's action, in concert with the rules at issue, works to deprive the Commission of any discretion regarding an otherwise well-qualified applicant. There would seem every reason to apply discretion with an applicant whose criminal conduct is over a decade in the past, involved small sums even at the time, featured an actual conviction for a misdemeanor, and who has served with complete satisfaction in the position at issue for nearly two years. The "inflexible" approach in the Commission's rules, as implemented by its Probable Cause Committee, is precisely what the Supreme Court rejects in Wetherington.

50. The Probable Cause Committee's decision to proceed under the "commission" of a felony portion of 12 N.C.A.C. 10B.0204, then, as well as N.C.A.C. 10B.0301(10), and 12 N.C.A.C.10B.0307, both handcuffs the Commission generally and deprives, without a compelling reason, the Wake County Sheriff's Office of a valuable employee. "As the Tribunal has referenced in other decisions, the person in the best position to determine whether a sheriff's office employee should be hired is the county sheriff in question, who is answerable for that employee's acts and omissions." Tawanda T Tillery v. North Carolina Sheriffs Education and Training Standards Commission, Respondent, 2022 WL 1201783, 21 DOJ 04957.

The Probable Cause Committee's Action Works to Nullify the Effect of Plea Bargains

51. Petitioner, though charged with a felony, pleaded guilty to a misdemeanor through a plea arrangement with the State. While the Supreme Court has held that conviction is not necessary for a revocation, Britt v. N. Carolina Sheriffs' Educ. & Training Standards Comm'n, 348 N.C. 573, 577, 501 S.E.2d 75, 78 (1998), that case (as well as others addressing the law enforcement commissions) fails to analyze the significance of plea bargains and their effects on the certification process (or vice versa).

52. As the Supreme Court has long held (and recently held again, Harper v. Hall, No. 413PA21-2, 2023 WL 3137057, at 50 (N.C. Apr. 28, 2023): "There is no virtue in sinning against light or in persisting in palpable error, for nothing is settled until it is settled right." Sidney Spitzer & Co. v. Commissioners of Franklin Cnty., 188 N.C. 30, 123 S.E. 636, 638 (1924). In an effort to "settle this issue right," a discussion of plea bargains is necessary to determine whether the Probable Cause Committee's action was correct.

53. As far back as 1976, the North Carolina Supreme Court held, "We are aware that 'plea bargaining' has emerged as a major aspect in the administration of criminal justice. As stated by Mr. Chief Justice Burger in Santobello v. New York, 404 U.S. 257, 260-61, 92 S.Ct. 495, 498, 30 L.Ed.2d 427, 432 (1971): 'The disposition of criminal charges by agreement between the prosecutor and the accused, sometimes loosely called 'plea bargaining,' is an essential component of the administration of justice. Properly administered, it is to be encouraged.'" State v. Slade, 291 N.C. 275, 277-78, 229 S.E.2d 921, 923 (1976). Without plea bargains, the Court continued, "the States and the Federal Government would need to multiply by many times the number of judges and court facilities." Id.

54. As our Supreme Court recently also held, persons, innocent or otherwise, elect to make guilty pleas for "a number of perfectly understandable reasons." State v. Alexander, 2022-NCSC-26, ¶ 42, 380 N.C. 572, 591, 869 S.E.2d 215, 229. These include "cutting their losses," "more control over the sentence," an outcome that "is more predictable than what a judge and jury may decide to do," and simple fear that "prosecutors are more likely to seek an aggravated sentence or to ask for consecutive sentences in cases that proceed through trial." Id. at 592, 230.

55. Another "perfectly understandable" reason for plea bargains is avoiding the considerably more severe consequences of a felony versus a misdemeanor, including loss of voting/citizenship rights: "Our state constitution ties voting rights to the obligation that all citizens have to refrain from criminal misconduct. Specifically, it denies individuals with felony convictions the right to vote unless their citizenship rights are restored 'in the manner prescribed by law.' Cmty. Success Initiative v. Moore, 886 S.E.2d 16, 23 (N.C. 2023). Most particularly, conviction of a felony an obstacle to entry into various fields of work

56. Petitioner's case provides a stark example of the felony/misdemeanor difference. If Petitioner was convicted of felony "Larceny by Employee," she could not be certified irrespective of the "committed" issue – a consequences that was obviously known the Probable Cause Committee at the time it took the actions at issue.

57. By contrast, as was also known to the Committee, was that Misdemeanor Larceny, the offense to which Petitioner pleaded, is no barrier to Petitioner's certification under Respondent's rules, as it occurred in 2011. Absent the Probable Cause Committee's re-amplification or re-conflation of a misdemeanor into a felony, then, Petitioner's past criminal behavior would be no barrier to her law enforcement aspirations.

58. Therein lies another problem. A plea bargain is not just a "deal" between the defendant and the State. Violation of a plea agreement is a violation of constitutional rights: "[W]hen a prosecutor fails to fulfill promises made to the defendant in negotiating a plea bargain, the defendant's constitutional rights have been violated and he is entitled to relief." Northeast Motor Co. v. N.C. State Bd. of Alcoholic Control, 35 N.C. App. 536, 538, 241 S.E.2d 727, 729 (1978); State v. Knight, 2021-NCCOA-100, ¶ 16, 276 N.C. App. 386, 390, 857 S.E.2d 728, 732. Though a plea bargain is a contract, it is more significant than the usual kind:

Even though a plea agreement arises in the context of a criminal proceeding, it remains in essence a contract. State v. Rodriguez, 111 N.C. App. 141, 144, 431 S.E.2d 788, 790 (1993). However, it is markedly different from an ordinary commercial contract. By pleading guilty, a defendant waives many constitutional rights, not the least of which is his right to a jury trial. State v. Pait, 81 N.C. App. 286, 289, 343 S.E.2d 573, 576 (1986). "No other right of the individual has been so zealously guarded over the years and so deeply embedded in our system of jurisprudence as an accused's right to a jury trial." State v. Boone, 293 N.C. 702, 712, 239 S.E.2d 459, 465 (1977). As such, due process mandates strict adherence to any plea agreement.

State v. Blackwell, 135 N.C. App. 729, 731, 522 S.E.2d 313, 315, writ allowed, 351 N.C. 360,

541 S.E.2d 731 (1999), and writ allowed, 351 N.C. 361, 541 S.E.2d 731 (1999).

59. While there is no evidence that future law enforcement employment was a specific part of Petitioner's guilty plea, "Due process mandates strict adherence to any plea agreement to ensure the defendant [receives] what is reasonably due in the circumstances." State v. Wentz, 2022- NCCOA-528, ¶ 10, 284 N.C. App. 736, 739, 876 S.E.2d 814, 816-17. Moreover, a "defendant should not be forced to anticipate loopholes that the State might create in its own promises." Id. at 741, citing State v. Blackwell, 135 N.C. App. 729, 731, 522 S.E.2d 313, 315, writ allowed, 351 N.C. 360, 541 S.E.2d 731 (1999), and writ allowed, 351 N.C. 361, 541 S.E.2d 731 (1999).

60. What Petitioner was "reasonably due" was to have her guilty plea to a misdemeanor treated, by the State, as a misdemeanor. Clearly it was not: the State (in the form of the Probable Cause Committee), in 2023 now disregards the agreement the State (in the form of the district attorney) made with Petitioner in 2011 to treat her criminal offense as a misdemeanor. That this is not "strict adherence to any plea agreement" seems beyond reasoned dispute.

61. The "unanticipated loophole in the State's promises," at least to persons in Petitioner's position, is obvious: in 2011 the State made an agreement with Petitioner that she would plead guilty to a misdemeanor. In 2023, despite that agreement, the State (in the form of the Probable Cause Committee) now decides that Petitioner must nonetheless bear the consequences of a felony conviction, and consequently, must be forever barred from employment as a justice officer.

62. "Agency actions have been found to be arbitrary and capricious when such actions 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**." Comr. of Insurance v. Rate Bureau, 300 N.C. 381, 420, 269 S.E.2d 547, 573, (1980); Devalle v. N. Carolina Sheriffs' Educ. & Training Standards Comm'n, No. COA22-256, 2023 WL 3470876 (N.C. Ct. App. May 16, 2023) (emphasis supplied).

63. Whether the rules at issue violate the constitutional rights of persons who enter into plea bargains is not for the Tribunal, as hearing officer, to say. Moreover, this case is under Article 3A of the Administrative Procedure Act. Under Article 3, the Tribunal may "Determine that a rule as applied in a particular case is void because (1) it is not within the statutory authority of the agency, (2) is not clear and unambiguous to persons it is intended to direct, guide, or assist, or (3) **is not reasonably necessary to enable the agency to fulfill a duty delegated to it by the General Assembly**." N.C.G.S. 150B-33(b)(9) (emphasis supplied). The Tribunal's powers under Article 3A are set forth in a different statute. N.C.G.S. 150B-40(c).

64. However, irrespective of whether one agrees with the Tribunal's analysis of the State's respective actions in 2011 and 2023, the plea bargain issue at the very least further emphasizes the need for the Probable Cause Committee, in the context of "committed" versus "conviction" of a felony, to act with discretion – so that matters like prior plea agreements may be, among other aggravating or mitigating factors, taken into consideration in a decision to find probable cause

65. Further, the Probable Cause Committee's decision – and, in candor, the current

rules themselves – cannot help but discourage persons having any future interest in law enforcement service from admitting wrongdoing and accepting responsibility for their actions by a guilty plea. This general discouragement of honest behavior provides the final part of the Tribunal's analysis.

The Probable Cause Committee's Decision Discourages Honesty By Applicants

66. Petitioner was all times honest and forthright with the Commission and with the Tribunal regarding her criminal conduct in 2010 (for example, Res. Ex. 9).

67. At the contested case hearing, Petitioner voluntarily took the stand and admitted, without hesitation or equivocation, her 2010 wrongdoing and the details thereof, thereby establishing her "commission" of the felony offense.

68. No Kinston police officer or Lenoir County assistant district attorney testified at the contested case hearing. The Kinston police records were hearsay, and the comments of others therein (such as those of "Mr. Dupree," the Belk's manager) were hearsay within hearsay. The video footage referenced in the Kinston police reports was not produced at trial. No employee of Belk's testified.

69. Without Petitioner's honesty and candor, then, the evidence could not have shown that Petitioner "committed" a felony as opposed to pleading guilty to a misdemeanor.

70. Thus, it was Petitioner's own honesty and forthrightness – evidence Petitioner could have declined to provide – that, if the Probable Cause Committee's decision stands, bars her from a profession in which she has for 32 months provided meritorious service.

71. The Tribunal contrasts this result with George Sturges v. North Carolina Sheriffs Education and Training Standards Commission, 2020 WL 11273151, 20 DOJ 00787. Sturges worked as a mechanic for Kelley Amerit Fleet Services in Asheville, North Carolina. Mr. John Petersen was Sturges' direct supervisor during this time. On June 21, 2012, Petersen reported to the Asheville Police Department that Sturges had made several unauthorized purchases using company credit cards. Sturges, Finding of Fact 4. Petersen himself did not testify at the contested case hearing.

72. Kevin Taylor, a detective with the Asheville Police Department, investigated Petersen's allegations against Sturges. Taylor testified that he met with Sturges, who confirmed that he had made the purchases and outlined which purchases were authorized/legitimate and which were made fraudulently. Of the forty listed purchases, Sturges identified that nearly twenty were fraudulent. As a result, Sturges – like Petitioner here – was charged with Larceny by Employee in violation of N.C.G.S. 14-74. Sturges, Finding of Fact 5. The larceny charge was dismissed after Sturges paid restitution. Id. at Res. Ex. 4.

73. Sturges told the Commission's investigators, however, that his criminal charge was "a misunderstanding and Petersen was aware that he was driving a company vehicle to and from home in the evenings between shifts, and using company credit cards to put fuel in the vehicle for

said trips." Sturges claimed that he never admitted to any wrongdoing despite Taylor's testimony at the hearing and the police report, which indicated that Sturges admitted making unauthorized purchases with company credit cards. Sturges, Finding of Fact 9.

74. Sturges testified at the contested case hearing, under oath, that he had no recollection of speaking with any detective about unauthorized charges. The Hon. David F. Sutton, the able and well- respected Administrative Law Judge hearing the case, found that Sturges' claims were not credible, and that Taylor's testimony to the contrary was credible. Sturges, Finding of Fact 10. "[The credibility of witnesses and the probative value of particular testimony are for the [ALJ] to determine, and [the ALJ] may accept or reject in whole or part the testimony of any witness." Harris v. North Carolina Dep't of Pub. Safety, 252 N.C. App. 94, 100, 798 S.E.2d 127, 133, aff'd per curiam, 370 N.C. 386, 808 S.E.2d 142 (2017).

75. Judge Sutton concluded, "[Sturges'] purported inability to recall ever speaking with a detective in reference to the Larceny by Employee charge is disingenuous considering the fact that Det. Taylor spoke with him on at least three occasions and at least one such occasion was in person." Sturges, Conclusion of Law 9. Judge Sutton proposed that Respondent deny certification to Sturges.

76. Respondent's Final Decision in Sturges likewise found that Sturges' denials regarding his conversations with Taylor were not credible. Final Decision, Finding of Fact 9.

77. However, Respondent found that "a preponderance of the evidence presented at the administrative hearing does not support the conclusion that [Sturges] committed the offense of Larceny by Employee. **No testimony was presented from Mr. Petersen or Kelly Amerit Fleet Services**." Final Decision, Conclusion of Law 9 (emphasis supplied). Respondent granted Sturges certification as a justice officer with no restrictions. (Id.).

78. Returning to Petitioner's case, no testimony was presented from Belk's and, unlike in Sturges, no testimony was presented from any investigating police officer. There was thus even less admissible evidence, other than from Petitioner herself, supporting the Probable Cause Committee's determination. Had Petitioner conducted herself like Sturges – denying that she committed any wrongdoing, or simply failing to testify at all – the evidence, as noted, could not support the Probable Cause Committee's decision.

79. Judge Sutton and Respondent rejected Sturges' denial of wrongdoing as incredible, but Sturges was certified as a justice officer anyway, due to lack of evidentiary proof. Petitioner was honest and forthright about her conduct, despite even less evidentiary proof, and as a result the rule employed by the Probable Cause Committee made denial of her certification, should that decision stand, a foregone conclusion. What prospective applicant for certification, weighing these two outcomes, would be encouraged to act with Petitioner's candor and honesty, as opposed to Sturges' denials?

80. These comparative results emphasize the problem presented by this case. A core requirement for certification as a justice officer is that the applicant "be of good moral character as defined in" several appellate cases. 12 N.C.A.C. 9B.0101(12). The first of those In re Willis, 288

N.C. 1, 215 S.E. 2d 771 appeal dismissed 423 U.S. 976 (1975), describes "good moral character" as "**honesty**, fairness, and **respect for the rights of others and for the laws of the state and nation**." Id. at 10, 776-77 (emphasis supplied). Of the two applicants compared here, which one demonstrated those traits?

81. Moreover, the petitioner in Willis, an applicant for the bar examination, lacked good moral character because of repeated deceptive statements regarding his criminal record and his dismissal from the military. Id. at 9, 775. These "misrepresentations and evasive or misleading responses" [were] "inconsistent with the truthfulness and candor required of a practicing attorney." Id. at 18. They are also inconsistent with the candor required of a justice officer. But it was Petitioner's candor before the Probable Cause Committee, and before the Tribunal, which in large measure, if the Probable Cause Committee action stands, ensures she cannot be certified. Sturges' denials of wrongdoing, found to lack credibility by both a learned judge and the Commission itself, in large measure ensured that he was.

CONCLUSION - The Probable Cause Committee's Action Was Arbitrary and Capricious

82. If the Probable Cause Committee's decision was legally correct, then under Respondent's rules at present, this case is easily decided: Petitioner, having admitted to the elements of the felony, is barred from certification.

83. There is no question that the Probable Cause Committee had the authority, under the Commission's rules, to determine that Petitioner's misdemeanor larceny conviction constituted "commission" of a felony. However, this authority, like the "good moral character" rules, "can be a dangerous instrument for arbitrary and discriminatory denial." Devalle, quoting Konigsberg v. State, 353 U.S. 252, 263, 77 S.Ct. 722, 1 L.Ed.2d 810 (1957).

84. A significant part of the problem in this case is the wording of the rules themselves. If an applicant never convicted of a felony is nonetheless found to have "committed" one, the rules provide the Commission with zero discretion – the person may not be certified. A solution, in the Tribunal's view, is to amend those rules so that in cases of "commission" of a felony the Commission may exercise discretion.

85. It should be pellucidly clear that the Tribunal does not propose rule changes regarding persons convicted of a felony, which has wide-ranging and clearly foreseeable consequences. The North Carolina Sheriff's Education and Training Standards Commission barring such persons from the honorable offices of both high sheriff and deputy sheriff (in whatever form) is wholly understandable.

86. That is not the case with the "committed" aspects of those rules. Though this profession is subject to the police power, rules mandating an automatic lifetime ban from a field of work inevitably create tension with the right to "enjoyment of the fruits of their own labor" in our State Constitution. Respondent's governing statutes fail to reference, let alone require, a "committed" versus "convicted" distinction, raising the issue of the rule's necessity to fulfill Respondent's duties.

87. Further, the Supreme Court has specifically disapproved agency rules/policies that are inflexible and prohibit any type of discretion. Those rules can work in the practical sense to nullify plea bargains. They can discourage honesty and forthright behavior by applicants. Finally, in this specific case they can require an outcome unjust both to Ms. Coffer and to the agency that employs her.

88. In making these proposals the Tribunal criticizes neither the Commission nor its laudable goal of shielding the ranks of law enforcement from those of a criminal mindset or who lack good moral character. To the contrary, the Tribunal has the utmost respect for that function. It is that respect, coupled with a desire to promote fairness to applicants like Petitioner, that causes the Tribunal to propose discretion is added to the rules to address cases precisely like this one.

89. In the Petitioner's case, however, the Probable Cause Committee's decision to find probable cause that Petitioner "committed" a felony was, for the reasons discussed herein, "'whimsical' in the sense that [it] **indicate[s] a lack of fair and careful consideration** or fail to indicate any course of reasoning and the **exercise of judgment**." Devalle at 10; Mann Media, Inc. v. Randolph Cnty. Plan. Bd., 356 N.C. 1, 16, 565 S.E.2d 9, 19 (2002) (emphasis supplied).

90. As with the Commission generally, the Tribunal in making this conclusion neither criticizes the Probable Cause Committee nor fails to acknowledge its important role in preventing malefactors from entering the honorable profession of law enforcement.

91. However, "[C]haracter expresses itself, not in negatives nor in following the line of least resistance, but quite often in **the will to do the unpleasant thing if it is right**, and the resolve not to do the pleasant thing if it is wrong." In re Farmer, 191 N.C. 235, 131 S.E. 661, 663 (1926) (emphasis supplied).[2] Petitioner did the right, unpleasant thing: acted with honesty and candor before the Committee regarding her criminal history. Petitioner showed, in a word, character. The result, nonetheless, was that her constitutionally protected plea agreement with the State in 2011 was nullified, for purposes of this process, by another arm of the State in 2023.

92. Moreover, given Petitioner's candor, it was obvious to the Committee at the time it made the decision that under the existing rules, if it made the decision to "upgrade" Petitioner's misdemeanor to a felony, she could not be certified. It was equally obvious that if the Committee acted on what Petitioner pleaded to, it would provide no barrier to her certification, as that offense was more than a decade in the past.

93. In sum, the discretionary decision of the Committee is the sole reason Petitioner may not be certified. That decision, in turn, would act to deprive the full Commission of discretion to consider the aggravating and (considerable) mitigating factors in this case.

94. Under the totality of the circumstances, including the remoteness in time of the offense, the small sum at issue, Petitioner's acceptance of wrongdoing and restitution, Petitioner's plea agreement with the State, Petitioner's long subsequent history of law-abiding behavior,

[2] Farmer, like Harris and Willis, is cited in Respondent's rule on good moral character.

~~Petitioner's candor to the Commission, Petitioner's laudable performance in the very position at issue, and the governing law, the Probable Cause Committee's decision evidences a lack of fair and careful consideration, lacked the exercise of judgment, and was accordingly arbitrary and capricious.~~

~~**PROPOSAL FOR DECISION**~~ ORDER

~~The Tribunal proposes that the Commission conclude that the Probable Cause committee's decision to find probable cause that Petitioner "committed"~~ Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby **ORDERED** that Petitioner's justice officer certification is **DENIED PERMANENTLY** for her committing the felony offense of "Larceny by Employee" ~~was, under the facts of this case, arbitrary and capricious, and **GRANT** Petitioner certification as a justice officer serving the Wake County Sheriff's office as a detention officer~~ pursuant to 12 N.C.A.C. 10B .0204(a)(1).

~~The Tribunal also respectfully proposes that the Commission consider amending its rules – including 12 N.C.A.C. 10B.0204, N.C.A.C. 10B.0301(10), and 12 N.C.A.C.10B.0307 – to provide the Commission discretion, including consideration of aggravating and mitigating factors, in cases where the Probable Cause Committee finds probable cause that a person not convicted of a felony nonetheless "committed" it.~~

IT IS SO ORDERED.

This the _____ day of _____, 2023.

_____
Alan Jones, Chairman
North Carolina Sheriffs' Education and
Training Standards Commission

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the foregoing **PROPOSED FINAL AGENCY DECISION** has been duly served upon the **Petitioner** by mailing a copy to the address below:

Fallon Coffer
4505 McCrimmon Parkway
Apt. 2408
Morrisville, North Carolina 27560

This the 16th day of August, 2023.

JOSHUA H. STEIN
Attorney General

/s/ Kirstin J. Greene
Kirstin J. Greene
Assistant Attorney General
ATTORNEY FOR THE COMMISSION