

STATE OF NORTH CAROLINA
COUNTY OF GUILFORD

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
22 DOJ 03475

CALVIN LAMORSE DRAKEFORD,)
)
 Petitioner,)
)
 v.)
)
 NORTH CAROLINA SHERIFFS')
 EDUCATION AND TRAINING)
 STANDARDS COMMISSION,)
)
 Respondent.)
)
 _____)

EXCEPTIONS

The following **Exceptions** to the **Proposal for Decision** prepared by the Honorable Jonathan S. Dills, Administrative Law Judge, and filed in the Office of Administrative Hearings on May 11, 2023, are hereby submitted to the North Carolina Sheriffs' Education and Training Standards Commission for consideration in its Final Agency Decision.

1. Counsel has made minor typographical and grammatical changes as necessary to make the proposal appropriate for Final Agency Decision.
2. **Finding of Fact No. 2 should be added to accurately reflect the legal authority for action by the Commission. All remaining paragraphs should be renumbered to reflect proper sequential numbering of paragraphs.**
 2. Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B authorizes Respondent to certify sheriffs and to deny, suspend, or revoke such certification.
3. **Findings of Fact Nos. 5 through 9 should be revised for clarity, to more completely reflect the evidence presented during the administrative hearing, and to accurately reflect the position of the Commission. All remaining paragraphs should be renumbered to reflect proper sequential numbering of paragraphs.**
4. 5. Petitioner admitted 2021 paperwork mentions marijuana use 5 years prior, and cocaine use 16 years prior in his 2021 Sheriffs' Standards Personal History statement (F-3). Exhibit 4.
5. 6. Petitioner's 2015 paperwork—Report for Appointment/Application for

Certification (F-5A DOC) mentions neither. Exhibit 5.

~~6. 7.~~ The Sheriffs' Training and Standards Division Commission compared the 2021 F-3 and the 2015 F-5A DOC, paperwork noted the discrepancy, and requested a statement from the Petitioner regarding the discrepancy. The Commission found probable cause to deny certification. Exhibit 2.

~~7. 8.~~ Petitioner had opportunity to appear and explain to the Commission the reasons for his failure to disclose prior drug use on his 2015 application but did not appear. Petitioner provided ~~opted to rely on a~~ written explanation that he went through the 2015 F-5A DOC without giving much thought to the question and did not remember the cocaine incident at the time. His explanation ~~to~~ included details about the substance and doubt that what he actually used was actual cocaine. Exhibit 6.

~~8. 9.~~ At the administrative hearing, it became apparent that ~~the Commission made a mistake on the marijuana issue.~~ Petitioner's admitted Marijuana usage occurred after the 2015 paperwork F-5A DOC was submitted.

4. **Findings of Fact No. 10 and 11 should be revised for clarity.**

~~9. 10.~~ Zero argument was presented that the 2016 marijuana use should affect Petitioner's certification.

~~10. 11.~~ Respondent concedes that the sole issue before the Tribunal is whether the 2015 failure to disclose the purported cocaine use of 16 years ago was a material misrepresentation that should prevent certification now.

5. **Findings of Fact Nos. 14 and 15 should be revised to more accurately reflect the evidence presented at the administrative hearing.**

~~13. 14.~~ In 2005, Petitioner was offered cocaine by friends at a club and told to "[t]ry this. It will make your tongue go numb." Petitioner testified that they told him "it's cocaine". encouraged to stick purported cocaine on his tongue which would purportedly numb it. Petitioner testified that he put the He stuck some unknown substance on his tongue, that he spit it out because it which 'tasted like earwax', and it was like nothing happened. but had zero effect on him. He immediately spit it out. Petitioner testified that Tthere was no numbing. (T p 58)

~~14. 15.~~ Petitioner testified that is reasonably unsure if the substance he barely contacted was indeed cocaine. He reasonably surmises the civilian involved may have been pranking him and in his statement, questioned if it was a drug or not. Exhibit 6.

6. **Findings of Fact Nos. 15 through 16 should be deleted to more accurately**

reflect the evidence presented at the administrative hearing and accurately reflect the position of the Commission. All remaining paragraphs should be renumbered to reflect proper sequential numbering of paragraphs.

~~15.~~ The Tribunal notes an abundance of online resources uniformly describing cocaine as tasting distinctly bitter and immediately numbing to nasal linings and the tongue.

~~16.~~ The Tribunal notes, and common sense dictates, that the purported drug use remaining here at issue is far from any conventional understanding of drug use. *Cf., State v. Wheeler*, 138 N.C. App. 163, — 530 S.E.2d 311 (2000) (tasting then refusing purchase shows defendant lacked ability to control the substance and therefore did not criminally possess it).

~~17.~~16. Neither ~~the~~ The Commission must rely on the testimony and statement provided by the nor the Tribunal can know on the facts of this case whether Petitioner regarding the substance and manner of use. ~~ever stuck actual cocaine on his tongue.~~

7. **Finding of Fact 18 No. should be revised to more accurately reflect the evidence presented at the administrative hearing.**

~~19.~~18. Every indication is that Petitioner testified that he has been named Officer of the Month while employed at the Guilford County Sheriff's Office and is highly praised in his job. ~~has had an exemplary career in law enforcement.~~ He previously served with the Emergency Response Team; attended field training officer school early; is planning to attend an armed detention officer course; and is currently mentored for promotion.

8. **Findings of Fact Nos. 20 through 23 should be revised for clarity and to more accurately reflect the evidence presented at the administrative hearing.**

~~21.~~20. Petitioner's father testified that Petitioner is the oldest of 4 sons- and that Each was taught 'be a man, stay straight, avoid ghetto, avoid thugs, avoid gangs, pull up your pants, do no wrong.' T p 47

~~22.~~21. Petitioner's ~~The~~ father left employment with the Columbia Area Mental Health Center in South Carolina and moved locally to assist Petitioner. He confirms Petitioner's condition at that time to include depression. He helped Petitioner get his corrections interview and job.

~~23.~~22. Petitioner's ~~The~~ father testified ~~indicated~~ that the information in Petitioner's testimony statement was consistent with what he has explained to him. ~~repeatedly heard him relay.~~

~~24.~~23. Petitioner's ~~The~~ father was extraordinarily credible.

9. **Finding of Fact No. 24 should be revised to more thoroughly identify the Respondent's witness Ms. Jones and accurately reflect her testimony and the position of the Commission.**

~~25.24. In contrast, Respondent's sole witness was Sirena Jones, a Deputy Director with Respondent of the Sheriffs' Education and Training Standards Division, testified at the administrative hearing and. She was credible and helpful, but her proffers were significantly documentary, not first hand, and reasonably discounted. Petitioner's previous statements to the Division were admitted through her.~~

10. **Finding of Fact No. 26 should be removed because it does not reflect the position of the commission. All remaining paragraphs should be renumbered to reflect proper sequential numbering of paragraphs.**

~~26. Beyond the subject paperwork which Petitioner credibly explained away, there was zero credible evidence before the Tribunal to justify the denial of certification.~~

11. **Finding of Fact No. 27 should be removed because it is a conclusion of law and does not reflect the position of the commission. All remaining paragraphs should be renumbered to reflect proper sequential numbering of paragraphs.**

~~27. A preponderance of the credible evidence indicates that certification should be allowed.~~

12. **Finding of Fact No. 25 should be revised for clarity, to remove duplicative information, and revised to more accurately reflect the evidence presented at the administrative hearing as well as the position of the Commission. All remaining paragraphs and subsections should be renumbered to reflect proper sequential numbering of paragraphs.**

~~28.25. To any extent relevant, t~~ The following extenuating/mitigating circumstances exist:

- a. Prior life circumstances reasonably distracted applicant Petitioner at the time of the 2015 paperwork Form F-5A (DOC).
- b. Applicant Petitioner has gained significant stability. He is remarried, the children are improved, and supportive parents have moved nearby.
- c. ~~Any issue here stems from applicant's overzealous revelation and mischaracterization of circumstance.~~ Petitioner volunteered the information about the one-time possible cocaine usage during his 2021 application process for employment.
- d. The Commission mistakenly considered the 2016 marijuana use as

a prior omission.

- ~~e.~~ Applicant presented at the hearing as forthright, credible, and professional.
- ~~f.~~ No *mala fides* are evident regarding the paperwork disparity.
- ~~g.~~ There is zero competent evidence of underlying criminal behavior.
- ~~h.~~ ~~e.~~ Petitioner has a positive job performance history with the Guilford County Sheriff's Office and appears to be
- ~~i.~~ Indications are that the applicant is a valued employee.
- ~~j.~~ ~~f.~~ Applicant Petitioner has zero additional violations.
- ~~k.~~ ~~g.~~ Applicant's Petitioner's prior 10-plus years service to his country; 10-plus years with the Marines.

13. **Conclusions of Law Nos. 1 and 2 are added to reflect the position of the Commission. All remaining paragraphs and subsections should be renumbered to reflect proper sequential numbering of paragraphs.**

- 1. The parties are property before this Administrative Law Judge. Jurisdiction and venue are proper and both parties received proper notice of the hearing. To the extent that the findings of Facts contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels.
- 2. The North Carolina Sheriffs' Education and Training standards Commission (hereafter the Commission) has certain authority under Chapter 17E of the North Carolina General statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B to certify justice officers and to suspend, revoke, or deny certification under appropriate circumstances with substantial proof of a rule violation.

14. **Conclusions of Law Nos. 1 through 4 should be deleted because the burden of proof contradicts Respondent's position on burden of proof.**

- ~~1. Citing G.S. 150B-23 (Art. 3) and *Overcash v. N.C. Dep't. of Env't & Natural Resources*, 172 N.C. App 697, 635 S.E.2d 442 (2006) (Art. 3 caselaw), Respondent contends the burden of proof falls on Petitioner. *Contra*, *Homoly v. N. Carolina State Bd. of Dental Examiners*, 121 N.C. App. 695, 697, 468 S.E.2d 481, 483 (1996) ("the contested case provisions of Article 3 do not apply to Article 3A agencies"); and G.S. 150B-40(e) ("The provisions of this Article [3A], rather than the provisions of Article 3, shall govern....").~~
- ~~2. The undersigned has repeatedly ruled the burden is on the agency in this type of contested case. Cf., *Russell v. Commission*, 21 DOJ 03252, 2022 NC OAH LEXIS 55; *Graves v. Commission*, 21 DOJ 05194, 2022 NC OAH LEXIS 374. For a complete analysis of these Art. 3A cases under the APA and burden of proof, see *Canty v. Commission*, 14 DOJ 01202, 2014 NC~~

- ~~3. Further, in the absence of constitutional or statutory direction, we decide on considerations of “policy, fairness and common sense.” *Peace v. Employment Sec. Comm’n of N. Carolina*, 349 N.C. 315, 328, 507 S.E.2d 272, 281 (1998). Applying the prescription of *Peace*, the State bears the burden of proof in an action in which it investigates a prior certificate holder and thereafter proposes to restrict certification. *Id.*~~
 - ~~4. To the extent the burden of proof and persuasion fell to Petitioner, he carried it. To any extent such was on Respondent, it failed.~~
15. **Conclusions of Law Nos. 3 through 4 should be added to align with Respondent’s position on burden of proof. All remaining paragraphs should be renumbered to reflect proper sequential numbering of paragraphs.**

3. 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 law judge shall decide the case based upon the preponderance of the evidence. N.C.G.S. § 150B-34(a).

4. 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).

16. **Conclusion of Law No. 5 should be added to provide authority for Respondent’s action. All remaining paragraphs should be renumbered to reflect proper sequential numbering of paragraphs.**

5. 12NCAC 10B .0204 provides that:

(c) The Commission may revoke, deny, or suspend the certification of a justice officer when the Commission finds that the applicant for certification or certified justice officer:

(1) has knowingly made a material misrepresentation of any information required for certification or accreditation from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission.

(2) has knowingly and designedly by any means of false pretense, deception, fraud, misrepresentation or cheating whatsoever, obtained or attempted to obtain credit, training or certification from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission.

17. **Conclusion of Law No. 6 should be added to reflect the facts of the case and evidence presented at the administrative hearing. All remaining paragraphs should be renumbered to reflect proper sequential numbering of paragraphs.**

6. By a preponderance of the evidence, Petitioner's admitted 2016 Marijuana usage is not a violation of 12 NCAC 10B .0204(c)(1) and (2), in that it occurred after he applied for correctional officer certification with the Criminal Justice Training and Standards Commission in 2015, and his failure to include it on Form F-5A (DOC) was not a material misrepresentation.

18. **Conclusion of Law No. 7 should be added to accurately reflect the position of the Commission. All remaining paragraphs should be renumbered to reflect proper sequential numbering of paragraphs.**

7. The Petitioner's misrepresentation on his 2015 F-5A (DOC) regarding the 2005 prior cocaine usage was material in that an admission to the commission of a felony on that form was grounds for the denial of certification by the North Carolina Criminal Justice Education and Training Standards Commission pursuant to 12 NCAC 10B .0204(a)(1).

19. **Conclusion of Law No. 8 should be revised to accurately reflect the position of the Commission.**

7-8. A preponderance of credible evidence presented at the administrative hearing establishes demonstrates that Petitioner has not violated 12 NCAC 10B .204(c)(1) and (2) when he failed to disclose the prior use of cocaine when applying for certification with the Criminal Justice Training and Standards Commission in 2015.

20. **Conclusions of Law No. 9 should be revised to accurately reflect the present facts and circumstances, and the position of the Commission.**

6-9. Though the material misrepresentation occurred back in 2015 when Petitioner omitted prior drug use from his F-5A (DOC), the Sheriffs' Standards Division's first notice of Petitioner's use of cocaine was after he completed the Sheriff's Standards Personal History statement (F-3) on July 21, 2021. Barely one year passed before the Commission's notification of Probable Cause to Deny Justice Officer Certification was sent to Petitioner on July 28, 2022. Additionally, circumstances here are too far removed. *Seroggs v. N.C. Criminal Justice Educ. & Training Standards Comm'n*, 101 N.C. App. 699, 701, 400 S.E.2d 742, 744 (1991). In *Seroggs*, the Court affirmed While the North Carolina Court of Appeals has previously found that revocation was arbitrary or capricious where 5 years had elapsed, since the respondent commission had notice of a Petitioner's prior drug use was

~~known, there was where~~ Petitioner had an exemplary service record, and ~~information was where~~ Petitioner had volunteered the extent of his prior drug use near the beginning of the process and prior to his submission of the personal history statement, ~~Id.~~ ~~our~~ ~~C~~ circumstances here are ~~sufficiently~~ ~~synonymous~~ very different. *Scroggs v. N.C. Criminal Justice Educ. & Training Standards Comm'n*, 101 N.C. App. 699, 701, 400 S.E.2d 742 (1991)

21. **Conclusions of Law Nos. 7 through 9 should be deleted to accurately reflect the position of the Commission. All remaining paragraphs should be renumbered to reflect proper sequential numbering of paragraphs.**

~~7. The Tribunal concludes that it is arbitrary or capricious to compare paperwork spanning more than 5 years on an incident more than 16 years ago to deny certification, particularly in the light of reasonable explanation or qualification. Id.; ACT-UP Triangle v. Commission for Health Servs., 345 NC 699, 707, 483 SE2d 388, 393 (1997).~~

~~8. Finally, inconsistencies in paperwork alone should not necessarily invoke denial, and particularly so when accompanied by reasonable explanation or qualification. Scroggs, supra; Peace, supra. Policy, fairness, and common sense behooves understanding when an overzealous applicant, bent on truthful revelation, mischaracterizes what is worried to be a shortcoming, but which really says nothing regarding suitability for certification. Ruling otherwise sends the wrong message and motivation.~~

~~9. This ruling is based upon a preponderance of credible evidence after full hearing. There is substantial evidence justifying adoption of Tribunal's proposal. G.S. 150B-42.~~

22. **Proposal for Decision should be revised to reflect the final decision of the Commission as follows:**

PROPOSAL FOR DECISION ORDER

BASED ON the foregoing Findings of Fact and Conclusions of Law, it is ordered that Petitioner's criminal justice officer certification be should be **ALLOWED DENIED** for **FIVE (5) YEARS**; however, the denial is **SUSPENDED** for **TWO (2) YEARS PROBATION**, on the condition that during that period of probation, Petitioner not violate any law (other than infractions) of this state or any other state, and federal laws, or any rules of this Commission or the North Carolina Criminal Justice Education and Training Standards Commission.

The decision of the Probable Cause Committee should be **REVERSED**.

This the 16th day of August, 2023.

JOSHUA H. STEIN
Attorney General

/s/ Meredith L. Britt

Meredith L. Britt
Special Deputy Attorney General
ATTORNEY FOR THE COMMISSION

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the foregoing **EXCEPTIONS** have been duly served upon the **Petitioner** by mailing a copy to the address below:

**Calvin Lamorse Drakeford
3807 Cotswold Avenue, Apt. L
Greensboro, North Carolina 27410**

This the 16th day of August, 2023.

JOSHUA H. STEIN
Attorney General

/s/ Meredith Britt
Meredith Britt
Special Deputy Attorney General
ATTORNEY FOR THE COMMISSION