

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.)
)
 _____)

PROPOSED FINAL AGENCY
DECISION

THIS MATTER was commenced by a request filed September 12, 2022, with the Office of Administrative Hearings for the assignment of an Administrative Law Judge. Notice of Contested Case and Assignment and Order for Prehearing Statements (22 DOJ 03475) were filed September 13, 2022. The parties received proper Notice of Hearing and the Administrative Hearing was held in High Point, North Carolina on January 23, 2023, before the Honorable Jonathan S. Dills, Administrative Law Judge.

The Petitioner represented himself, *pro se*. The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter the Commission or Respondent) was represented by Special Deputy Attorney General Meredith Britt.

On May 11, 2023, Judge Dills 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. The Tribunal ~~has~~ had jurisdiction over the parties and subject matter. Venue ~~is~~ was proper. Parties are properly designated. There is no question as to joinder. Parties received lawful notice.

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.

~~2.3.~~ Petitioner is an applicant for detention officer certification through the Guilford County Sheriff's Office. He was previously certified as a corrections officer by the Criminal Justice Education and Training Standards Commission through the North Carolina Division of Adult Corrections from 12 September 2015 through 12 April 2018.

~~3.4.~~ Respondent's denial of certification is based on the following contentions:

- a. Petitioner failed to disclose prior drug use, specifically marijuana and cocaine, on his 2015 application (F-5A DOC) in violation of 12 NCAC 10B .204(c)(1); and
- b. Such failure to disclose allowed prior certification under false pretense, deception, fraud, or misrepresentation in violation of 12 NCAC 10B .204(c)(2).

Cf., Exhibits 4 & 5.

~~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 ~~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.

~~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.

~~11.12.~~ Respondent's counsel and the state's sole witness were/are commended for clarity and forthrightness on this issue at hearing.

~~12.13.~~ Petitioner credibly testified in line with his prior statement. Exhibit 6.

~~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 ~~there 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.

~~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 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.

~~18.17.~~ Petitioner further credibly testified that in 2015 he was under significant stressors. He was unfocused, getting evicted, leaving 10-plus years' service with the Marines; had four children (one of which was deathly ill and one of which is learning disabled); divorcing; and depressed. In 2021, he was better able to reflect on his past.

~~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.

~~20.19.~~ Petitioner's father testified. An Army medic of 21 years, he served in Desert Storm and Operation Enduring Freedom. He self-describes as a baby boomer that leads from the front.

~~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.

~~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.~~

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

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

~~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.~~

CONCLUSIONS OF LAW

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.

~~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 OAH LEXIS 127.~~

~~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.~~

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).

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.

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.

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).

~~5.8.~~ 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.

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. *Scroggs v. N.C. Criminal Justice Educ. & Training Standards Comm'n*, 101 N.C. App. 699, 701, 400 S.E.2d 742, 744 (1991). In *Scroggs*, 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)

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 the Tribunal's proposal. G.S. 150B-42.~~

~~WHEREFORE~~, the Tribunal makes the following:

PROPOSAL FOR DECISION ORDER

BASED ON the foregoing, ~~certification should be ALLOWED.~~ Findings of Fact and Conclusions of Law, it is hereby **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**.
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:

**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