

STATE OF NORTH CAROLINA  
COUNTY OF GUILFORD

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
22 DOJ 03475

Calvin Lamorse Drakeford, Petitioner,  v.  NC Sheriffs Education and Training Standards Commission, Respondent.	<b>PROPOSAL FOR DECISION</b>
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**THIS MATTER PRESENTS** under authority of the North Carolina Constitution, Art. 3, Sec. 11, *accord*, Art. IV, Sec. 3; G.S. 7A-750; and G.S. 150B (“APA”); following *hearing on the merits* on 23 January 2023 before Jonathan S. Dills, Administrative Law Judge (“ALJ”) with the Office of Administrative Hearings (“OAH”); for proposed decision per Art. 3A of the APA.

The ALJ must sit for the agency, establish facts, apply law, and issue proposal. G.S. 150B-40(e).

**APPEARANCES**

Petitioner: Calvin Lamorse Drakeford, *pro se*  
Guilford County, NC Resident

Respondent: Meredith Britt  
Special Deputy Attorney General  
Attorney for Respondent  
North Carolina Department of Justice  
Special Prosecutions and Law Enforcement Section

**ISSUE**

Should Petitioner be denied certification?

ANSWER: No. Petitioner should be allowed certification.

**BASED UPON** careful consideration of the entire record; having weighed all the evidence and assessing the credibility of each witness by considering appropriate factors for judging credibility, including demeanor, interests, biases, and prejudices; the opportunity to see, hear, know, and remember; reasonableness; and consistency with all other believable evidence; the undersigned makes the following:

## FINDINGS

1. The Tribunal has jurisdiction over the parties and subject matter. Venue is proper. Parties are properly designated. There is no question as to joinder. Parties received lawful notice.
  2. 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. 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. Petitioner's 2021 paperwork mentions marijuana use 5 years prior, and cocaine use 16 years prior. Exhibit 4.
  5. Petitioner's 2015 paperwork mentions neither. Exhibit 5.
  6. The Commission compared the paperwork and found probable cause to deny certification. Exhibit 2.
  7. Petitioner had opportunity to appear and explain to the Commission but opted to rely on written explanation to include doubt that he actually used, actual cocaine. Exhibit 6.
  8. At hearing, it became apparent that the Commission made a mistake on the marijuana issue. The admitted use occurred after the 2015 paperwork.
  9. Zero argument was presented that marijuana use should affect Petitioner's certification.
  10. Respondent concedes that the sole issue before the Tribunal is whether the failure to disclose the purported cocaine use of 16 years ago should prevent certification now.
  11. Respondent's counsel and the state's sole witness were/are commended for clarity and forthrightness on this issue at hearing.
  12. Petitioner credibly testified in line with his prior statement. Exhibit 6.

13. In 2005, Petitioner was encouraged to stick purported cocaine on his tongue which would purportedly numb it. He stuck some unknown substance on his tongue which ‘tasted like earwax’ but had zero effect on him. He immediately spit it out. There was no numbing.
14. Petitioner is reasonably unsure if the substance he barely contacted was indeed cocaine. He reasonably surmises the civilian involved may have been pranking him.
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. Neither the Commission nor the Tribunal can know on the facts of this case whether Petitioner ever stuck actual cocaine on his tongue.
18. 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. Every indication is that Petitioner 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. 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. Petitioner is the oldest of 4 sons. Each was taught ‘be a man, stay straight, avoid ghetto, avoid thugs, avoid gangs, pull up your pants, do no wrong.’
22. 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. The father indicated that Petitioner’s testimony was consistent with what he has repeatedly heard him relay.
24. The father was extraordinarily credible.

25. In contrast, Respondent's sole witness was Sirena Jones, a Deputy Director with Respondent. She was credible and helpful, but her proffers were significantly documentary, not first-hand, and reasonably discounted.
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. To any extent relevant, the following extenuating/mitigating circumstances exist:
  - a. Prior life circumstances reasonably distracted applicant at the time of the 2015 paperwork.
  - b. Applicant 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.
  - d. The Commission mistakenly considered marijuana use.
  - 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. Job performance history is exemplary.
  - i. Indications are that the applicant is a valued employee.
  - j. Applicant has had zero additional violations.
  - k. Applicant's prior service to his country: 10-plus years with the Marines.

### CONCLUSIONS

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.
5. A preponderance of credible evidence demonstrates that Petitioner has not violated 12 NCAC 10B .204(c).
6. 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 that revocation was arbitrary or capricious where 5 years had elapsed, prior drug use was known, there was an exemplary service record, and information was volunteered. *Id.* Circumstances here are sufficiently synonymous.
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**

**BASED ON** the foregoing, certification should be **ALLOWED**.

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

### **NOTICE**

The agency captioned and addressed herein will make the final decision in this contested case. G.S. 150B-38 *et seq.* (Art.3A).

The parties must be given opportunity in advance "to file exceptions and proposed findings of fact and to present oral and written arguments to the agency." G.S. 150B-40(e).

The agency or its counsel will timely file a copy of the final decision referencing the case number specified herein with the Office of Administrative Hearings.

**ORDERED** the 11th day of May 2023.

A handwritten signature in blue ink, appearing to read "Jonathan S. Dills", is positioned above a solid blue horizontal line.

The Honorable Jonathan S. Dills  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below by electronic service as defined in 26 NCAC 03 .0501(4) and/or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center which thereafter places the foregoing document into an official depository of the United States Postal Service, as follows:

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Greensboro NC 27410  
Petitioner

Meredith Britt  
North Carolina Department of Justice  
mbritt@ncdoj.gov  
Attorney for Respondent

The 11th day of May 2023.



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