

STATE OF NORTH CAROLINA
COUNTY OF EDGEcombe

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
23 DOJ 02859

<p>Michael Thomas Cannon Petitioner,</p> <p>v.</p> <p>NC Sheriffs Education and Training Standards Commission Respondent.</p>	<p>PROPOSAL FOR DECISION</p>
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This contested case was heard before Lawrence R. Duke, Administrative Law Judge on October 16, 2023, at the Office of Administrative Hearings in Raleigh, North Carolina following the request of Respondent NC Sheriffs' Education and Training Standards Commission ("Respondent" or "Commission") for appointment of an Administrative Law Judge to hear the case of Michael Thomas Cannon ("Petitioner") pursuant to N.C. Gen. Stat. § 150B-40(e).

APPEARANCES

Mr. Robert O. Crawford III, Counsel for Petitioner
Law Offices of Robert O. Crawford III, PLLC
4242 Six Forks Road, Suite 1550
Raleigh, NC 27609

Ms. Haley A. Cooper, Counsel for Respondent
Assistant Attorney General
North Carolina Department of Justice, Law Enforcement Liaison Section
9001 Mail Service Center
Raleigh, NC 27699-9001
Attorney for Respondent

EXHIBITS

Petitioner's Exhibits Nos 1 – 5 were admitted
Respondent's Exhibit Nos 1 – 41 were admitted

WITNESSES

For Respondent

Sirena Jones, Deputy Director
Chris Batten, Investigator
Russell Ogden
Shawn Swindell
J.W. Mitchell

For Petitioner

Michael T. Cannon, Petitioner
Matt Sasser, Sheriff, Greene County
Melissa Cannon

ISSUES

1. Whether Respondent correctly found probable cause to deny Petitioner's justice officer certification based on Petitioner's "commission" of four or more Class A or Class B misdemeanors.
2. Whether Respondent correctly found probable cause to deny Petitioner's justice officer certification based on Petitioner having knowingly made a material misrepresentation of information required for certification by failing to disclose nine misdemeanor charges on his Personal History Statement (Form F-3).
3. Whether Petitioner introduced sufficient evidence of extenuating circumstances to warrant the substitution of a period of probation in lieu of denial of Petitioner's application for justice officer certification.

BURDEN OF PROOF

There is no statutory allocation of the burden of proof in contested cases heard under Article 3A of the Administrative Procedure Act. In the absence of that direction, the burden of proof is "judicially allocated on considerations of policy, fairness and common sense." 1 Kenneth S. Broun, *Brandis & Broun on North Carolina Evidence* § 37 (4th. Ed. 1993); citing *Peace v. Employment Sec. Comm'n of N. Carolina*, 349 N.C. 315, 328, 507 S.E.2d 272, 281 (1998); *Robert Shawn Gaddis v. North Carolina Sheriffs Education and Training Standards Commission*, 2023 WL 2424080, 22 DOJ 03415.

While at least one appellate decision in the Chapter 150B, Article 3 context suggests approval of requiring petitioners to prove a negative, no North Carolina appellate court has endorsed the State, in any form, first deciding that a citizen committed a crime and then requiring that citizen to prove that they did not. *Christopher Lee Jackson v. NC Criminal Justice Education and Training Standards Commission*, 2021 WL 2779127, 20 DOJ 04578.

Thus, when Respondent's agency action is based on its conclusion that a citizen not convicted of a crime nonetheless "committed" a crime, the burden of proof is on Respondent to show, by (at least) a preponderance of the evidence, that the person's actions satisfied all elements of the crime. *Christopher Garris v. NC Criminal Justice Education and Training Standards Commission*, 2019 WL 2183214, 18 DOJ 04480.

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the Tribunal makes the following:

FINDINGS OF FACT

1. The parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, both parties received notice of hearing, and that the Petitioner received by certified mail, the proposed denial letter, mailed by Respondent on May 8, 2023.

2. Respondent has the authority granted under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B, to certify sheriffs and to revoke, suspend, or deny such certification under appropriate circumstances with valid proof of a rule violation.

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

4. Petitioner had been certified as a law enforcement officer and was employed with Winterville Police Department, the Belhaven Police Department, and the Youngsville Police Department. (Respondent's Exhibit 4). Since leaving the Youngsville Police Department in November 2002, Petitioner had been a self-employed commercial and residential painting contractor.

5. On June 7, 2022, Petitioner began active duty with the Greene County Sheriff's Office as a School Resource Officer ("SRO") at Greene County High School or, when not working at the school, as a courtroom bailiff and patrol officer. All evidence before the Tribunal is that Petitioner performs his duties in a credible and discipline-free manner.

6. Greene County Sheriff Matt Sasser has been in law enforcement since 2005. Sheriff Sasser was a credible witness. He was Chief Deputy when Petitioner began employment with the Sheriff's Office. Sheriff Sasser supervised Petitioner when he was Chief Deputy and now as elected Sheriff. Due to being short-staffed, Petitioner has been asked to work other duties in the County.

7. Sheriff Sasser testified credibly and incontrovertibly that Petitioner has been an outstanding officer for the Greene County Sheriff's Office. He is one of the best deputies in the Office, has good character, and is an asset to the Sheriff's Office as a trained and seasoned SRO.

8. Petitioner was charged in Pitt County file number 97CR6329 for the March 16, 1997, offense of Driving While Impaired, in violation of N.C. Gen. Stat. § 20-138.1, a Class A Misdemeanor. On July 1, 1997, Petitioner entered a plea of "not guilty," was tried by judge, found "guilty" as charged, and sentenced at Level 5. Petitioner was sentenced to 60 days in the custody of the Sheriff. Petitioner's sentence was suspended for a term of two years of unsupervised probation, on conditions that he surrender his driver's license, not operate a motor vehicle until properly licensed, not possess a firearm, and complete community service. Petitioner appealed to Superior Court, but the appeal was later withdrawn. (Respondent's Exhibit 12). Petitioner subsequently voluntarily resigned from his employment with the Winterville Police Department.

9. Petitioner was charged in Franklin County file number 02CR53286 for the November 13, 2002, misdemeanor offense of simple assault, in violation of N.C. Gen. Stat. § 14-33(A), a Class A Misdemeanor. On January 21, 2003, Petitioner pleaded "not guilty" and was found "not guilty" of simple assault. (Respondent's Exhibit 27). Petitioner provided a sworn statement describing the incident, stating Manning approached Petitioner in a threatening manner and swung at him, to which Petitioner "retaliated" by hitting Manning two or three times. Petitioner provided credible sworn testimony at the hearing related to these offenses, stating his actions were in self-defense after his friend Michael Manning became verbally and physically aggressive towards Petitioner. Manning was charged with Disorderly Conduct.

10. Det. Russell Ogden, formally of Youngsville Police Department and the charging officer in 02CR53286, provided sworn, remote testimony at the hearing. Det. Ogden testified that he had been training Petitioner to be a detective at Youngsville Police Department, noted no problems with Petitioner on the job, and considered Petitioner to be a good police officer who acted professionally. Manning did not wish to pursue charges, but Det. Ogden decided to arrest Petitioner for assaulting Manning.

11. Petitioner was charged in Franklin County file number 02CR53432 for the December 5, 2002, misdemeanor offense of threatening phone call, in violation of N.C. Gen. Stat. § 14-196(a)(2), a Class B Misdemeanor. On January 7, 2003, the charge was voluntarily dismissed. (Respondent's Exhibit 29). Petitioner provided sworn testimony at the hearing related to this offense that Eric Dorsey, the complainant, was a neighbor with whom he did not associate and never had negative interactions. Petitioner testified the call was never made. A letter written by Eric Dorsey was submitted into evidence. (Respondent's Exhibit 37).

12. Petitioner was charged in Franklin County file number 03CR51161 for the May 11, 2003, misdemeanor offenses of: (1) communicating threats, in violation of N.C. Gen. Stat. § 14-277.1; (2) assault on government official/employee, in violation of N.C. Gen. Stat. § 14-33(c)(4); and (3) resisting a public officer, in violation of N.C. Gen. Stat. § 14-223. On February 9, 2004, Petitioner pleaded guilty to communicating threats, with prayer for judgment continued as to that

charge. (Respondent's Exhibits 6, 30, 31). Communicating threats is categorized as a Class A Misdemeanor.

13. In Franklin County file number 03CR51161, the accompanying charges of misdemeanor assault on government official/employee and resisting a public officer were dismissed pursuant to the plea to Communicating Threats. (Respondent's Exhibits 6, 30, 31). In reference to Franklin County file number 03CR51161, the following sworn testimony was provided at the hearing:

14. Petitioner admitted he was guilty of misdemeanor assault on a government official/employee and resisting a public officer. (T. p. 181:10-18). Petitioner stated he and his girlfriend were involved in a domestic dispute, which led to two law enforcement officers responding to his residence. Petitioner's vehicle was blocking his girlfriend's vehicle in the driveway, preventing her from leaving. Petitioner admitted he was too intoxicated to move his vehicle, and as law enforcement tried to assist in moving the vehicle, Petitioner stated he "resisted a little." (T. p. 166:11). Petitioner admitted that after Sgt. Mitchell had touched his shoulder, Petitioner pushed Sgt. Mitchell into the vehicle, going down to the ground with the officers.

15. Officer Shawn Swindell, formally of Franklinton Police Department, was the charging officer in these offenses and provided sworn remote testimony. Off. Swindell testified he had previously worked with Petitioner at Youngsville Police Department and described Petitioner as a good, reliable officer. Off. Swindell responded to the call for service involving a domestic dispute. Off. Swindell stated Petitioner appeared intoxicated. Off. Swindell observed Petitioner threaten and assault a fellow officer, Sgt. Mitchell, by grabbing him by the neck, leading to a scuffle on the ground in an attempt to handcuff Petitioner.

16. Sgt. Johnny Mitchell, formally of Franklinton Police Department and the victim in the case, provided sworn, remote testimony. Sgt. Mitchell testified Petitioner threatened him, for which Sgt. Mitchell attempted to arrest Petitioner, which resulted in a physical altercation in which Sgt. Mitchell sustained minor injuries.

17. Petitioner was charged in Franklin County file number 03CR53389 for the May 24, 2003, misdemeanor offense of simple worthless check, in violation of N.C. Gen. Stat. § 14-107(D)(1), a Class A Misdemeanor. On January 23, 2004, Petitioner pleaded guilty as charged. Petitioner was ordered to pay court costs and restitution in the amount of \$96.98. (Respondent's Exhibit 5).

18. Petitioner was charged in Franklin County file number 04CR51125 for the June 11, 2003, misdemeanor offense of simple worthless check, in violation of N.C. Gen. Stat. § 14-107(D)(1), a Class A Misdemeanor. On March 24, 2009, Petitioner pleaded guilty as charged. Petitioner was sentenced to 30 days in the custody of the Sheriff. Petitioner's sentence was suspended for a term of 6 months unsupervised probation, on conditions that Petitioner pay court costs, fine, and restitution in the amount of \$308.35. (Respondent's Exhibit 8).

19. Petitioner was charged in Franklin County file number 03CR51694 for the June 13, 2003, misdemeanor offense of simple worthless check, in violation of N.C. Gen. Stat. § 14-

107(D)(1), a Class B Misdemeanor. On August 5, 2003, Petitioner pleaded guilty as charged. Petitioner was ordered to pay court costs and restitution in the amount of \$60.87. (Respondent's Exhibit 9).

20. Petitioner was charged in Franklin County file number 03CR52388 for the August 15, 2003, misdemeanor offense of worthless check closed account, in violation of N.C. Gen. Stat. § 14-107(D)(4), a Class B Misdemeanor. On February 9, 2004, Petitioner pleaded guilty as charged. Petitioner was sentenced to 45 days in the custody of the Sheriff. Petitioner's sentence was suspended for a term of 12 months unsupervised probation, on conditions that Petitioner pay court costs, fine, and restitution in the amount of \$135.00. (Respondent's Exhibit 10).

21. Petitioner was charged in Franklin County file number 04CR51678 for the April 23, 2004, misdemeanor offense of simple worthless check, in violation of N.C. Gen. Stat. § 14-107(D)(1), a Class B Misdemeanor. On March 24, 2009, Petitioner pleaded guilty as charged. Petitioner's sentence was consolidated for one judgment (Respondent's Exhibit 11) with Franklin County file number 04CR51125. (Respondent's Exhibit 8).

22. Petitioner was charged in Wake County file number 06CR90390 for the May 10, 2004, misdemeanor offense of simple worthless check, in violation of N.C. Gen. Stat. § 14-107(D)(1), a Class A Misdemeanor. On June 19, 2006, Petitioner pleaded guilty as charged. Petitioner was ordered to pay court costs and restitution in the amount of \$42.48. (Respondent's Exhibit 5).

23. Petitioner was charged in Pitt County file number 05CR52024 for the October 2, 2004, misdemeanor offense of simple worthless check, in violation of N.C. Gen. Stat. § 14-107(D)(1), a Class A Misdemeanor. On April 21, 2006, Petitioner pleaded guilty as charged. Petitioner was sentenced to 45 days in the custody of the Sheriff. Petitioner's sentence was suspended for a term of 12 months unsupervised probation, on conditions that Petitioner pay court costs and restitution in the amount of \$374.96. (Respondent's Exhibit 13).

24. Petitioner was charged in Pitt County file number 05CR60671 for the January 22, 2005, misdemeanor offense of simple worthless check, in violation of N.C. Gen. Stat. § 14-107(D)(1), a Class B Misdemeanor. On April 21, 2006, Petitioner pleaded guilty as charged. Petitioner's sentence was consolidated for one judgment (Respondent's Exhibit 16) with Pitt County file number 05CR52024. (Respondent's Exhibit 13).

25. Petitioner was charged in Pitt County file number 05CR60672 for the January 22, 2005, misdemeanor offense of simple worthless check, in violation of N.C. Gen. Stat. § 14-107(D)(1), a Class B Misdemeanor. On April 21, 2006, Petitioner pleaded guilty as charged. Petitioner's sentence was consolidated for one judgment (Respondent's Exhibit 16) with Pitt County file number 05CR52024. (Respondent's Exhibit 13).

26. Petitioner was charged in Pitt County file number 05CR60670 for the January 24, 2005, misdemeanor offense of simple worthless check, in violation of N.C. Gen. Stat. § 14-107(D)(1), a Class B Misdemeanor. On April 21, 2006, Petitioner pleaded guilty as charged.

Petitioner's sentence was consolidated for one judgment (Respondent's Exhibit 15) with Pitt County file number 05CR52024. (Respondent's Exhibit 13).

27. Petitioner was charged in Pitt County file number 05CR60669 for the January 24, 2005, misdemeanor offense of simple worthless check, in violation of N.C. Gen. Stat. § 14-107(D)(1), a Class B Misdemeanor. On April 21, 2006, Petitioner pleaded guilty as charged. Petitioner's sentence was consolidated for one judgment (Respondent's Exhibit 14) with Pitt County file number 05CR52024. (Respondent's Exhibit 13).

28. In 2021, Petitioner applied to be a school resource officer with the Greene County Sheriff's Office. Petitioner disclosed his past record and was hired with the understanding that he would go through BLET school.

29. Petitioner applied for certification as a justice officer with Respondent and completed BLET at Martin County Community College.

30. As part of his application for certification, Petitioner submitted a "Personal History Statement" (Form F-3) sworn to and dated May 10, 2021. (Respondent's Exhibit 39).

31. Petitioner went to each county where he had resided or gone to high school to search his criminal history. The Franklin County report that he obtained did not show the worthless check charges.

32. Chris Batten was assigned to investigate Petitioner's background on behalf of Respondent. Mr. Batten interviewed witnesses related to Petitioner's criminal history record. He returned a summary of findings to Deputy Director Sirena Jones. (Respondent's Exhibit 35).

33. Petitioner had omitted nine charges from Franklin County on his Form F-3. (Respondent's Exhibit 1).

34. Petitioner explained in writing to Respondent on July 18, 2022, that those charges had been dismissed, were therefore not listed on the criminal history report he had obtained and were therefore not included on Petitioner's Form F-3. (Respondent's Exhibit 40).

35. Petitioner credibly testified that there was no intent to mislead the Greene County Sheriff's Office or Respondent about this criminal record history, and Respondent did not establish this intent.

36. Petitioner testified credibly that the worthless check charges occurred after he had resigned from the Youngsville Police Department, was self-employed as a painter, and struggled with his finances. He acknowledged that he should not have written the checks and had paid restitution.

37. By letter dated May 8, 2023, Petitioner was notified that Respondent had found probable cause to deny his application for certification. (Respondent's Exhibit 1).

38. Petitioner timely requested an administrative hearing. (Respondent's Exhibit 3).

39. Petitioner's application is supported by his wife, his mother-in-law, colleagues, and, most credibly and importantly, by Sheriff Matt Sasser. (Petitioner's Exhibits 1-5).

40. Petitioner testified credibly that since meeting his wife in 2005 and getting married in 2008, he rarely drinks alcohol and remains mostly at home with his wife and twin teenage sons. He enjoys watching football on Sunday afternoons and going to races a couple of times per year. His lifestyle is very different now that he has a stable marriage and the responsibility that comes with having children. Petitioner has had no incidents involving alcohol since May 2003, and has had no criminal charges in almost two decades.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has 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. All parties are properly before the Office of Administrative Hearings and there is no question as to joinder or misjoinder. There was no objection from either party to the Tribunal hearing this contested case.

3. This case involves a proposal to revoke an occupational license or certification. It thus affects the substantive rights of the Petitioner, and he is entitled to both notice and opportunity to be heard. *Scroggs v. N. Carolina Criminal Justice Educ. & Training Standards Comm'n*, 101 N.C. App. 699, 701, 400 S.E.2d 742, 744 (1991). Notice was duly provided to all parties by the Office of Administrative Hearings.

4. To the extent that the Findings of Fact contain Conclusions of Law, and vice versa, they should be so considered without regard to their given labels. *Charlotte v. Heath*, 226 N.C. 750, 755, 440 S.E.2d 600, 604 (1946).

5. A court, or in this case an administrative Tribunal, need not make findings as to every fact that arises from the evidence and need only find those facts which are material to the resolution of the dispute. *Flanders v. Gabriel*, 110 N.C. App. 438, 440, 429 S.E.2d 611, 612, *aff'd*, 335 N.C. 234, 436 S.E.2d 588 (1993).

6. Respondent has authority granted by Chapter 17E of the General Statutes and the Administrative Code to certify sheriffs and to revoke, suspend, or deny such certification under appropriate circumstances with valid proof of a rule violation.

7. Although Respondent has this authority granted by the General Statutes, our Supreme Court has also stated, with regards to the Constitutional authority of a sheriff, that

The office of the sheriff, one of great antiquity, is established in North Carolina by our constitution. N.C. Const. art. VII, § 2; *Borders v. Cline*, 212 N.C. 472, 476, 193 S.E. 826, 828 (1937) (“The office of sheriff is constitutional.”). The General Assembly explicitly has recognized the unique nature of the sheriff’s position. N.C.G.S. § 17E-1 (2013). The sheriff is elected by the people, N.C. Const. art. VII, § 2, and alone is responsible for carrying out his or her official duties, N.C.G.S. § 162-24 (2013) (“The sheriff may not delegate to another person the final responsibility for discharging his official duties . . .”). In addition, the sheriff has singular authority over his or her deputies and employees and is responsible for their actions. Under North Carolina law, each sheriff “has the exclusive right to hire, discharge, and supervise the employees in his office.” *Id.* § 153A-103(1) (2013).

Young v. Bailey, 368 N.C. 665, 669, 781 S.E.2d 277, 280 (2016). Sheriff Matt Sasser’s testimony about Petitioner has, therefore, been given the appropriate weight of one who holds this Constitutionally established office to which Sheriff Sasser was elected by the people.

8. Respondent “may revoke, suspend, 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 . . . any combination of four or more crimes or unlawful acts defined in 12 NCAC 10B .0103(10)(a) as a Class A misdemeanor or defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor regardless of the date of commission or conviction.” 12 N.C.A.C. 10B.0204 (d)(5).

9. “Class A” and “Class B” misdemeanors are both defined, for this case, by Respondent’s definition in 12 N.C.A.C. 10B.0103.

10. Respondent “may revoke, suspend, or deny the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer . . . 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. 12 N.C.A.C. 10B.0204(c)(1).

11. Respondent “may revoke, suspend, or deny the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer . . . 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 Standards Commission.” 12 N.C.A.C. 10B.0204(c)(2)

12. Respondent may reduce or suspend the periods of sanction where revocation, denial, or suspension of certification is based upon a finding of a violation of 12 NCAC 10B .0204(d) or substitute a period of probation in lieu of revocation, suspension, or denial following an administrative hearing. “This authority to reduce or suspend the period of sanction may be utilized by the Commission when extenuating circumstances brought out at the administrative hearing warrant such a reduction or suspension.” 12 N.C.A.C. 10B.0205.

13. The Administrative Code defines “conviction” and “commission” of a crime, for purposes of Respondent’s activities, separately. *Becker v. N. Carolina Crim. Just. Educ. & Training Standards Comm’n*, 238 N.C. App. 362, 768 S.E.2d 200 (2014) (unpublished). The Court of Appeals has held, at least in one case, 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).

14. A “material misrepresentation” is “a false representation of fact or omission of fact reported to or required to be reported to the Commission that if the true fact were known would have induced or caused the Commission to have treated the individual’s certification or application differently.” 12 NCAC 10B.0205(2)(b).

15. 12 NCAC 10B.0205(2)(b) provides that when the Commission denies the certification of a justice officer for material misrepresentation, such denial shall be for not less than five years, but that the Commission may either reduce or suspend the sanction or substitute a period of probation in lieu of denial when extenuating circumstances brought out at an administrative hearing warrant such a reduction.

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

17. Petitioner has the burden of proof in this Chapter 150B, Article 3A contested case, except in those instances where Respondent’s action is based on its conclusion that Petitioner, while not convicted of a crime, nonetheless “committed” a crime. Where Respondent has based its action on Petitioner having “committed” a crime, the burden of proof is on Respondent to show, by (at least) a preponderance of the evidence, that Petitioner’s actions satisfied all elements of the crime. *Garris*, 2019 WL 2183214, 18 DOJ 04480.

18. The preponderance of the competent evidence presented at the hearing supports a finding that Petitioner committed and was convicted of DWI in 1997.

19. The preponderance of the evidence presented at the hearing supports a finding that Petitioner disclosed the November 2002 Simple Assault charge on Michael Manning brought by the Youngsville Police Department but that he was not guilty by reason of self-defense. (Respondent’s Exhibit 39).

20. The preponderance of the evidence at the hearing fails to support a finding that Petitioner committed the offense of making a threatening phone call as alleged by Eric Dorsey in December 2002.

21. The preponderance of the evidence presented at the hearing supports a finding that Petitioner disclosed the May 2003 Assault on Government Official charge by the Franklinton Police Department.

22. Although the Assault charge was dismissed in exchange for pleading guilty to Communicating Threats, the preponderance of the evidence supports a finding that Petitioner committed the offenses of assault on a police officer and resisting arrest. (Respondent's Exhibit 39).

23. The preponderance of the evidence presented at the hearing supports a finding that Petitioner committed four or more offenses of Simple Worthless Check.

24. The preponderance of the evidence supports a finding that Petitioner has committed four or more Class A or Class B misdemeanors.

25. The preponderance of the competent evidence presented at the hearing does not support a finding that Petitioner's omission of the nine Franklin County charges, that were dismissed and did not appear on his criminal records check, constitutes a "material misrepresentation" as defined by 12 NCAC 10B.0205(2)(b).

26. In light of the competent evidence presented at the hearing and the testimony of the witnesses, Respondent's proposed five-year denial or indefinite suspension of Petitioner's justice officer certification is not supported by the preponderance of the evidence.

27. The undersigned Administrative Law Judge has carefully weighed the nature of the criminal offenses, the dates of the offenses, Petitioner's age and circumstances at the time of the offenses, Petitioner's restitution, Petitioner's employment record and lifestyle for the last 20 years, and the character references presented in support of Petitioner's application.

28. Accordingly, the undersigned finds that the preponderance of the evidence presented at the hearing demonstrates sufficient extenuating circumstances to warrant the granting of Petitioner's application with a period of probation.

PROPOSAL FOR DECISION

NOW, THEREFORE, based upon the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, the undersigned Administrative Law Judge recommends that Petitioner's justice officer certification be DENIED, however, that period of denial be SUSPENDED for a period of ONE year and the certification be GRANTED on the condition that Petitioner not violate any law (other than infractions) of this state or any other state, any federal laws, or any rules of this Commission or the North Carolina Criminal Justice Education and Training Standards Commission.

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this Proposal for Decision, to submit proposed Findings of Fact and to present oral and written arguments to the agency. N.C.G.S. 150B-40(e).

The agency that will make the final decision in this contested case is the North Carolina Sheriffs' Education and Training Standards Commission.

A copy of the final agency decision or order shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency and a copy shall be furnished to any attorney of record. N.C.G.S. 150B-42(a). A copy shall be forwarded to OAH.

SO ORDERED.

This the 9th day of May, 2024.

A handwritten signature in cursive script that reads "Lawrence R. Duke". The signature is written in black ink and is positioned above a horizontal line.

Lawrence R. Duke
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 at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), 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 who subsequently will place the foregoing document into an official depository of the United States Postal Service:

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This the 9th day of May, 2024.



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