

STATE OF NORTH CAROLINA  
COUNTY OF BRUNSWICK

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
23 DOJ 02642

JOHN GALLOWAY, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 NORTH CAROLINA SHERIFFS' )  
 EDUCATION AND TRAINING )  
 STANDARDS COMMISSION, )  
 )  
 Respondent. )  
 )  
 \_\_\_\_\_ )

**PROPOSED FINAL AGENCY  
DECISION**

THIS MATTER was commenced by a request filed June 2, 2023, with the Director of the Office of Administrative Hearings for the assignment of an Administrative Law Judge. Notice of Contested Case Assignment and Order for Prehearing Statements (23 DOJ 02642) were filed June 5, 2023. The parties received proper Notice of Hearing and the Administrative Hearing was held in Jacksonville, North Carolina on March 11, 2024, before the Honorable Samuel K. Morris, Administrative Law Judge.

The Petitioner was represented by counsel, Mikael R. Gross. The North Carolina Sheriffs' Education and Training Standards Commission was represented by Assistant Attorney General J. Joy Strickland.

On June 28, 2024, Judge Morris filed his Proposal for Decision. On July 9, 2024, 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 19, 2024.

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:

## PROCEDURAL HISTORY

### **Petitioner's Motion in *Limine***

Prior to the hearing, Petitioner filed a Motion in *Limine*, seeking to exclude evidence of certain expunged criminal charges and/or convictions. Those offenses included (1) Take Wild Turkey in Closed Season, N.C. Gen. Stat. § 113-291.1, May 21, 2013, (Class A Misdemeanor); (2) Gun on Educational Property, N.C. Gen. Stat. § 14-269.2(b), January 4, 2011 (Class I Felony); (3) Failure to Return Rental Property, N.C. Gen. Stat. § 14-168.4, April 8, 2013 (Class A Misdemeanor); and (4) Failure to Return Rental Property, N.C. Gen. Stat. § 14-168.4, June 2, 2016 (Class A Misdemeanor).

Petitioner's conviction of Taking a Wild Turkey in Closed Season in violation of N.C. Gen. Stat. § 113-291.1 was expunged pursuant to N.C. Gen. Stat. § 15A-145.5.

The remaining three charges subject to the Motion in *Limine* were that of (1) Gun on Educational Property, N.C. Gen. Stat. § 14-269.2(b), January 4, 2011 (Class I Felony); (2) Failure to Return Rental Property, N.C. Gen. Stat. § 14-168.4, April 8, 2013 (Class A Misdemeanor); and (3) Failure to Return Rental Property, N.C. Gen. Stat. § 14-168.4, June 2, 2016 (Class A Misdemeanor). Each of these charges were dismissed and later expunged pursuant N.C. Gen. Stat. § 15A-146.

The Administrative law judge held that although the law may require Petitioner (an applicant) to disclose expunged charges to Respondent as part of his application, it does not change the fact that those charges have been expunged. The Administrative Law Judge also held that while Respondent may access confidential records for certification purposes under N.C. Gen. Stat. § 15A-151(1)(6), nothing in that section or the provisions of Chapter 17E allow the use of the information to deny a certification except for expunctions made under N.C. Gen. Stat. §§ 15A-145.4 and 15A-145.5 for convictions of certain non-violent felonies. Accordingly, the Administrative Law Judge granted Petitioner's Motion in *Limine*.

### **Petitioner's Summary Judgment Motion**

Subsequent to the filing of the Court's order on the Motion in *Limine*, Petitioner filed a Motion for Summary Judgment. Both parties filed briefs and/or memorandums of law in support of their positions regarding the Motion for Summary Judgment.

Petitioner argued that the Court's granting of the Motion in *Limine* precluded Respondent from presenting evidence on any offenses except for one misdemeanor larceny offense from the state of Virginia. Therefore, Petitioner argued that Respondent could not prove the alleged rule violations of the commission/conviction of a felony offense or the combination of Class A and B Misdemeanors. In addition, Petitioner argued in his brief that the failure to include the offense from the state of Virginia did not constitute making a material misrepresentation of information on his application materials.

In the Reply to Petitioner's Motion for Summary Judgment, Respondent argued that the

motion was not timely made as it was filed after the dispositive motions deadline set by the Court, and that the hearing including testimony from the Petitioner was required in that there was a genuine issue of material fact because the Petitioner's state of mind when he completed his application materials for the knowing aspect of making material misrepresentation was relevant to the determination of this matter. In addition, Respondent cited to the provisions of Chapter 150B-41 which require that Respondent include in its final agency decision consideration of any testimony, exhibits, or offer of proof provided at the hearing. The only opportunity for Respondent to present an offer of proof for inclusion in the record for consideration of the final agency decision would be at the hearing of this matter.

The Court heard argument on the Motion for Summary Judgment immediately prior to the beginning of the hearing of this matter. The Court determined that the evidence which would be presented for the Motion for Summary Judgment and during the administrative hearing would be duplicative. The parties agreed to present evidence for consideration on the Motion for Summary Judgment and the administrative hearing simultaneously.

Respondent filed an offer of proof containing affidavits and supporting documentation of all the offenses and charges subject to the Tribunal's order on the Motion in *Limine*. Over Petitioner's objection, the Court accepted Respondent's offer of proof.

### **FINDINGS OF FACT**

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 undersigned Administrative Law Judge makes the following FINDINGS OF FACT.

In making the FINDINGS OF FACT, the Administrative Law Judge weighed all the evidence and assessed the credibility of the witnesses by taking into account the appropriate facts for judging credibility, including, but not limited to, the demeanor of the witness, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences, about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case.

1. Both parties were properly before this Administrative Law Judge, in that jurisdiction and venue were proper, both parties received notice of hearing, and that the Petitioner received by certified mail, the proposed denial letter, mailed by Respondent, the North Carolina Sheriffs' Education and Training Standards Commission (hereinafter "The Commission"), on May 8, 2023. (Joint Stipulation #1)

2. Respondent, North Carolina Sheriffs' Education and Training Standards Commission, 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. (Joint Stipulation #2)

3. Petitioner is an applicant for certification by Respondent North Carolina Sheriff's Education and Training Standards Commission ("Respondent") for employment with the Brunswick County Sheriff's Office in Brunswick County, NC.

4. Petitioner applied for certification for employment with the Brunswick County Sheriff's Office by application ("Petitioner's application") dated May 3, 2021. (Res. Ex. 1 redacted, Respondent's exhibit has no date of receipt showing when the exhibit was received by Respondent).

5. Petitioner was appointed as a deputy sheriff for the Brunswick County Sheriff on May 3, 2021, when he took his Oath of Office as a part-time deputy sheriff and a full-time detention officer. (Resp. Ex. 2).

6. Petitioner was separated as a detention officer in October of 2021 and his application for detention officer is no longer being considered by the Sheriffs' Standards Division. (Resp. Ex. 3). (T.p. 17).

7. Sirena Jones, is the deputy director of the Sheriffs' Education and Training Standards Commission (Sheriffs' Standards Division), has been the deputy director since 2017, and has worked for the North Carolina Department of Justice for 19 years with all of her time in service with the Sheriffs' Standards Division. (T.p. 11).

8. As deputy director, Jones acts as staff liaison to the Commission and assists in the gathering of information and documentation of potential Commission rule violations for presentation to the Commission's Probable Cause Committee. (T.p. 12).

9. Pursuant to her duties, Jones also assigned Petitioner's matter to Field Representative Chris Batton to gather additional information about the facts and circumstances leading to Petitioner being charged with "shoplifting/petit larceny." (T.p. 17).

10. As a result of the investigation into Petitioner's application for appointment and certification, a check of Petitioner's criminal history revealed that Petitioner had failed to list a charge of "shoplifting/ petit larceny" in violation of Virginia Code §18.2-103 on his Form F-3, Personal History Statement. (T.p. 20).

11. The charge of "shoplifting/petit larceny" is listed in the Commission's Class B Misdemeanor Manual. (Resp. Ex. 7).

12. Respondent requested Petitioner explain the nature and details of the charge of shoplifting/petit larceny which occurred in Chesapeake Virginia. (T.p. 22).

13. Petitioner prepared a statement where he explained the circumstances surrounding his charge. Petitioner explained that he entered the store to get a new set of work boots. Petitioner tried on the new boots and placed his old ones in the box on the bench where he was sitting. He then began to walk around to see how the boots felt. While walking around Petitioner was stopped by a store employee and asked to walk out of the exit doors to a small room where he was accused

of stealing the shoes. Law enforcement was called, and Petitioner was issued a citation for shoplifting/petit larceny in violation of Virginia Code 18.2-103. (Resp. Ex.'s 4 redacted and 5). (T.p. 22-23).

14. Petitioner also provided a closing statement to the Commission regarding his desire to remain a law enforcement officer. Petitioner does admit that his history is not what one would expect of one becoming a law enforcement officer but Petitioner states he had been a sworn deputy for one year and five months at the time of this investigation. (Resp. Ex. 6).

15. The statements provided by Petitioner to Respondent were notarized statements but were not affidavits signed under penalty of perjury. (Resp. Ex.'s 5-6).

16. Based on the results of the review of Petitioner's application for Appointment as a deputy sheriff and certification as a Justice Officer, the Respondent notified Petitioner that it was considering denying his application for Justice Officer certification. (T.p. 23).

17. A probable cause hearing was held, and Respondent determined that probable cause existed to deny Petitioner's Justice Officer certification application. (Resp. Ex. 7).

18. Petitioner was sent a Notification of Probable Cause to Deny Justice Officer Certification by letter dated May 8, 2024. The letter was received by Petitioner. (Resp. Ex.'s 7-8).

19. The basis for the denial was that Petitioner<sup>1</sup>:

- a. Committed a Class B Misdemeanor of "shoplifting/petit larceny" in violation of Virginia Code §18.2-103. (Resp. Ex. 7).
- b. Knowingly made a material misrepresentation of any information to the Sheriffs' Education and Training Standards Commission required for certification in violation of 12 NCAC 10B .0204(c)(1) by failing to list the Class B Misdemeanor charge of "shoplifting/petit larceny" on his Form F-3, Personal History Statement. (Resp. Ex. 7).
- c. Knowingly and designedly made by any means of misrepresentation to the Sheriffs' Education and Training Standards Commission to obtain certification by failing to list the Class B Misdemeanor charge of "shoplifting/petit larceny" on his Form F-3, Personal History Statement. (Resp. Ex. 7).

20. Petitioner timely filed a request for contested case with Respondent by letter dated May 17, 2024. (Resp. Ex. 8).

### **Commission of Criminal Offenses**

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<sup>1</sup> The remaining basis cited in Respondent's letter of Notification of Probable Cause to Deny Justice Officer Certification are subject to the Tribunals Order on Petitioner's Motion in Limine, as discussed above.

21. Petitioner was charged on November 18, 2015, with a violation of Virginia Code § 18.2-103, “shoplifting/petit larceny” which is classified as a Class B Misdemeanor under the guidelines the Respondent. (Resp. Ex. 4 redacted).

22. During direct examination of Petitioner by Respondent, Petitioner acknowledged that he had been charged with violating Virginia Code §18.2-103 but denied that he had shoplifted or stolen any property from the merchant. (T.pp. 42-45). (Resp. Ex. 4 redacted).

23. In his statement submitted to Respondent about this issue, Petitioner provided the following details about the Virginia petit larceny charge, in pertinent part:

I entered a Walmart located in Chesapeake Virginia to buy a pair of work boots. . . Upon entering the store, I went to the shoe section and picked out a pair of boots, tried them on and placed my old boots in the box. I then got up, placed the box on the bench that I was sitting on to try on the new boots and proceeded to walk around to see if I liked them. As I approached the front of the store, a gentleman approached me and instructed me to come with him, so I followed him past the registers and through the exit doors to a small room inside the foyer of the store. He informed me that a secret shopper had seen me place my old boots in the box and set the box down, indicating to him that I was attempting to steal the new boots. I informed him that I was making \$1200 to \$2000 a week and that I did not need to, nor did I intend to steal anything. I then pulled cash out of my wallet and showed him that I had enough money to buy multiple pairs of the boots. To the best of my recollection, the cost of the boots was approximately \$35. I told him that I liked them and was going to buy them, and he responded with something along the lines of we're past that now.

He then proceeded to call 911 and have police respond. Upon the officer's arrival, he was told that I was attempting to exit the store with the new boots. I then told him the same thing about my income and proceeded to show the officer the cash that I had just showed the store employee. The store employee advised the officer he did not want the money, he just wanted the boots back. The officer then told me that I was going to be charged with misdemeanor larceny and went out to his patrol car to get the paperwork together. When the officer re-entered the store, he handed me a copy of the paperwork and told me when to be in court.

While I was filling out my F-3 form, this charge must have escaped my memory, or I would have put it down as well as the rest of the items on my background. I did not intend to conceal any of the criminal background by any means. I apologize for any inconvenience this may have caused.

That statement was dated July 24, 2021, and signed before a notary. (Respondent's Exhibit #5)

24. During his testimony, when asked about the size of the Walmart store and

the distance between the shoe department and the front of the store where Petitioner was charged with larceny, Petitioner provided the following:

Q. Was it the size of most Walmart stores? I mean, they're pretty large, right?

A. Yeah, a regular. (T. p. 43)

Q. And when you put your boots inside the empty box that the new shoes came out of, did you pick that box up with you and take it with you as you were walking?

A. No, I left them sitting there.

Q. And why did you do that?

A. I always have. I've never carried a box around with me while I was trying out other shoes. I would always leave them sitting there, and then come back to them if I liked them. Pick them up, and you know go pay period and at that point, I would leave the new shoes on my feet and take the box up, and scan it with my old shoes in them, and pay, and go about my business. (T p 44)

Q. How long did you walk around the store?

A. It wasn't very long, I mean however long it took to get from the back to the front straight line you know, like I said maybe two or three aisles. So I don't know, from start to finish, maybe 45 seconds, if that.

Q. (From the Court) So approximately how many feet would it have been from where the shoe department is to the front of the store?

A. Maybe seventy-five-ish. (T. p. 44)

25. Petitioner testified that he wore the shoes for approximately 45 seconds, was about two to three isles over from the shoe section, had not concealed the boots, had not switched prices on the boots, and had not passed the last point of sale where the boots could be purchased. (T.pp. 42-45) (Resp. Ex. 5).

26. Petitioner was escorted past the last point of sale by the loss prevention employee. Petitioner offered no resistance, did not try to run, and waited for police to arrive. (T.pp. 42-45) (Resp. Ex.'s 4 redacted and 5).

27. On January 29, 2016, the court dismissed the charge against Petitioner citing that no witness or police officer showed up to prosecute the matter. (Resp. Ex.'s 4 redacted and 5).

28. This charge occurred more than five (5) years prior to Petitioner's application for Appointment and Justice Officer certification which is dated May 3, 2021. (Resp. Ex.'s 1- 4 redacted).

29. During cross examination of deputy director Jones, Jones admitted that the charge of "shoplifting/petit larceny," a Class B misdemeanor which occurred more than five years prior to Petitioner's application for appointment and certification, standing alone would be insufficient

to deny applicant's appointment and certification. (T.pp. 25-26).

30. While deputy director Jones agreed that the charge of "shoplifting/petit larceny" would not have been considered, standing alone as far as commission of the offense, the Commission would look at it as a material misrepresentation. (T.p. 26-27).

31. Through an offer of proof, Respondent presented documents and affidavits of witnesses who had been subpoenaed to testify in the hearing of this matter. These witnesses were precluded from testifying due to the judge's granting of Petitioner's Motion in *Limine*.

32. The affidavits and documents contained in the offer of proof submitted and accepted by the court, show that Petitioner was convicted or committed the following offenses:

May 21, 2013 in Brunswick County File # 2012 CR 003895 Convicted of Taking Wild Turkey in Closed Season in violation of N.C.G.S. § 113-291.1;  
April 8, 2013 Commission of Fail to Return Rental Property in violation of N.C.G.S. § 14-168.4 at Aaron's Rental;  
June 2, 2016 Commission of Fail to Return Rental Property in violation of N.C.G.S. § 14-168.4 at Rent-A-Center; and  
January 4, 2011 Commission of Gun on Educational Property in violation of N.C.G.S. § 14-269.2 at West Brunswick High School. (Respondent's Exhibit 9)

### Material Misrepresentation of Information

*Knowingly making a material misrepresentation of any information to the Sheriffs' Education and Training Standards Commission required for certification in violation of 12 NCAC 10B .0204(c)(1) by failing to list the Class B Misdemeanor charge of "shoplifting/petit larceny" on his Form F-3, Personal History Statement.*

33. The provisions of this rule require that the trial court to determine two things in order to determine whether Petitioner violated the rule of knowingly making a material misrepresentation of information to Respondent regarding information required for certification, specifically, not listing the "shoplifting/petit larceny" charge in his applications materials, particularly his Form F-3, Personal History Statement. (See 12 NCAC 10B .0204(c)(1)).

34. The first prong would be to determine if Petitioner *knowingly* failed to list the charge of "shoplifting/petit larceny" on his Form F-3 personal history statement.

35. The second prong would be to determine if failing to list the "shoplifting/petit larceny" was a *material misrepresentation* of information required by Respondent for certification.

36. Petitioner timely prepared an explanation of the charge when requested to do so by Respondent's staff. (Resp. Ex. 5)

37. Petitioner stated in his explanation to Respondent that the charge had "escaped [his]



memory” and that “[he] never intended to conceal or omit any of [his] criminal background by any means.” (Resp. Ex. 5).

38. Petitioner further explained during his direct examination by Respondent that he had a copy of his criminal history which he had obtained from the Brunswick County Clerk of Superior Court that reflected his other charges and he relied on that report to include everything he needed to list on his Form F-3 Personal History Statement with regard to prior criminal charges. During Petitioner’s testimony, he again stated that the charge “escaped his memory.” (T.pp. 51-53).

39. Petitioner also explained how during the application process with the Brunswick County Sheriff’s Office he had “a large amount of paperwork” including multiple forms to complete, some of which were for the Sheriff’s Office and Brunswick County, and others were for Respondent. (T.p. 36).

40. When deputy director Jones was asked what evidence, if any, the Respondent had to show that Petitioner “knowingly” made a material misrepresentation, she answered that it was the fact that Petitioner had submitted the Form F-3 Personal History Statement without having listed the charge of “shoplifting/petit larceny.” (T.pp. 29-30.)

41. “A misrepresentation or omission is ‘material’ if, had it been known to the party, it would have influenced the party’s judgment or decision to act.” *Latta v. Rainey*, 202 N.C. App. 587, 599, 689 S.E.2d 898, 909 (2010) (citation omitted).

42. Deputy director Jones conceded that, pursuant to 12 NCAC 10B .0204 (d)(2) that Petitioner’s failure to list the charge of “shoplifting/petit larceny” was not material standing alone because the charge fell outside of the five (5) year limitation of the Respondent’s ability to suspend, revoke, or deny an applicant’s certification as a Justice Officer. (Also see 12 NCAC 10B .0204 (d)(2)).

**Knowingly and designedly made by any means of misrepresentation to the Sheriffs’ Education and Training Standards Commission to obtain certification in violation of 12 NCAC 10B .0204(c)(2) by failing to list the Class B Misdemeanor charge of “shoplifting/petit larceny” on his Form F-3, Personal History Statement. (Resp. Ex. 7).**

43. The testimonial evidence shows that Petitioner failed to list the charge of “shoplifting/petit larceny” on his Form F-3 Personal History Statement for Respondent. However, testimony and the exhibit provided by Respondent show that when Petitioner was questioned about the failure to list the charge on his F-3, Petitioner was honest and forthright about the circumstances and prepared a written statement to explain the charge. (Resp. Ex. 5). (T.pp. 51-52).

44. Additionally, Petitioner testified that he had requested his criminal history form the Clerk of Superior Court in Brunswick County and he listed all of the relevant charges on his Form F-3 Personal History Statement believing that the criminal history contained all of his charges. (T.p. 52).

## CONCLUSIONS OF LAW

1. To the extent that the Findings of Fact contain conclusions of law, or that the Conclusions of Law below are findings of fact, they should be so considered without regard to their given labels. *Charlotte v. Heath*, 226 N.C. 750, 755, 40 S.E.2d 600, 604 (1946); *Peters v. Pennington*, 210 N.C. App. 1, 15, 707 S.E.2d 724, 735 (2011). A court need not make findings as to every fact that arises from the evidence and need only find those facts which are material to the settlement 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).

2. Respondent, North Carolina Sheriffs' Education and Training Standards Commission, 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 justice officers and to revoke, suspend, or deny such certification.

3. The party with the burden of proof in a contested case must establish the 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).

4. While N.C. Gen. Stat. § 150B-40 enumerates the powers of the presiding officer, including an Administrative Law Judge in Article 3A cases, such statute does not address which party has the burden of proof in an Article 3A contested case hearing. Neither has the North Carolina Constitution nor the General Assembly addressed the burden of proof in Article 3A cases. However, the Commission has consistently held that Petitioner has the burden of proof in the case at bar as does a petitioner in an Article 3 case. *Overcash v. N.C. Dep't. of Env't & Natural Resources*, 179 N.C. App 697, 635 S.E.2d 442 (2006) (stating that "the burden of proof rests on the petitioner challenging an agency decision").

5. Respondent's rule in 12 NCAC 10B .0204(d)(5) states that the Commission may revoke, suspend, or deny a certification for Justice Office if the Commission finds that Petitioner has been convicted of or committed of any combination of four or more crimes or unlawful acts defined as Class A or Class B misdemeanors.

6. The trial Tribunal found that a preponderance of the evidence does not support the Commission's conclusion that Petitioner "committed" the Class B misdemeanor offense of "shoplifting/petit larceny" in violation of Virginia Code § 18.2-103. However, there is substantial evidence in the record to show Petitioner committed the shoplifting/petit larceny offense. There is additional evidence that Petitioner was convicted of taking wild turkey in Brunswick County File # 2012 CR 003895 in violation of N.C.G.S. § 113-291.1, committed the offense of failing to return rental property to Aaron's Rental on April 8, 2013 in violation of N.C.G.S. § 14-168.4, committed the offense of failing to return rental property to Rent-A-Center on June 2, 2016 in violation of N.C.G.S. § 14-168.4.

7. Petitioner committed the misdemeanor offense of petit larceny in the state of Virginia in violation of Virginia Code 18.1-103. Petitioner tried on a new pair of boots in the store

after placing his old boots inside the new box. Petitioner left his old boots in the box and began walking around the store. He walked towards the front of the Walmart store, which is very large. Petitioner's explanation that he was simply trying out the boots was not credible in light of the other evidence presented.

8. Petitioner also committed the offense of Gun on Educational Property in violation of N.C.G.S. § 14-269.2 at West Brunswick High School on January 24, 2011..

9. 12 NCAC 10B .0204(c)(1) and (c)(2) provide, in pertinent part, the Commission may revoke, deny, or suspend the certification of a justice officer when the Commission advised that the applicant for certification or certified justice officer has knowingly made a material misrepresentation of any information required for certification or accreditation from the Commission . . . or 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 . . .

10. 12 NCAC 10B .0205(2)(c) and (d) provides, in pertinent part, that when the Commission suspends, revokes or denies the certification of a justice officer, the period of sanction shall be not less than five years where the cause of sanction is material misrepresentation of any information required for certification or accreditation from the Commission ...

11. The trial Tribunal found that Respondent's conclusion that Petitioner knowingly made a material misrepresentation to Respondent by failing to list the Class B misdemeanor offense of "shoplifting/petit larceny" is unsupported by the evidence. However, there is substantial evidence in the record to show Petitioner knowingly made a material misrepresentation of information required for certification.

12. Petitioner's' explanation and testimony that he simply forgot the misdemeanor larceny charged from the state of Virginia is not credible in light of all the evidence presented. Both Petitioner's statement and testimony provided great detail about the incident in the state of Virginia. Petitioner was detained by the store employee and interacted with a law enforcement officer who clearly informed Petitioner he was being charged with a criminal offense of larceny. Petitioner had more than one court date prior to his charge being dismissed. Petitioner's failure to include this offense which is the one offense that had not previously been expunged constituted knowingly making a material misrepresentation of information required for certification.

13. Based upon the foregoing findings of fact and conclusions of law, the Administrative Law Judge denied Petitioner's Motion for Summary Judgment as MOOT.

14. The Administrative Law Judge erroneously granted Petitioner's Motion in *Limine*. The probable cause committee and this body are allowed under current law to consider expunged offenses and have done so properly in this case. Therefore, in addition to the above findings of fact and conclusions of law, we find that based on the evidence included in the offer of proof, that Petitioner had committed or been convicted of a combination of four or more crimes classified as class A or B misdemeanors and committed the offense of possession of a weapon on educational property.

**ORDER**

WHEREFORE, Petitioner's certification is GRANTED and Petitioner be placed on a three year period of probation due to the length of time that has elapsed since the date of the offenses, Petitioner's age at the time of the offenses.

**IT IS SO ORDERED.**

This the 19<sup>th</sup> day of September, 2024.

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**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's counsel** by mailing a copy to the address below:

**Mikael R. Gross  
11510 Auldbury Way  
Raleigh, North Carolina 27617**

This the \_\_\_\_ day of August, 2024.

JOSHUA H. STEIN  
Attorney General

*/s/ J. Joy Strickland* \_\_\_\_\_  
J. Joy Strickland  
Assistant Attorney General  
ATTORNEY FOR THE COMMISSION