

STATE OF NORTH CAROLINA
COUNTY OF GUILFORD

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
23 DOJ 04885

DARIEN K. HERBIN,

Petitioner,

v.

NORTH CAROLINA SHERIFFS'
EDUCATION AND TRAINING
STANDARDS COMMISSION,

Respondent.

EXCEPTIONS

The following **Exceptions** to the **Proposal for Decision** prepared by the Honorable Jonathan S. Dills, Administrative Law Judge, and filed in the Office of Administrative Hearings on June 11, 2024, are hereby submitted to the North Carolina Sheriffs' Education and Training Standards Commission for consideration in its Final Agency Decision.

1. Counsel has made minor typographical and grammatical changes as necessary to make the proposal appropriate for Final Agency Decision.
2. Finding of Fact No. 6 should be amended to accurately reflect the procedural posture of the ALJ's recommended decision.
 6. Notwithstanding, the Administrative Law Judge recommended that the Commission consider exercising its discretion. 12 NCAC 10B .0205(2).
3. Finding of Fact No. 7 should be deleted as superfluous.
 7. ~~There is substantial evidence justifying the following proposal. G.S. 150B-42.~~
4. Conclusions of Law Nos. 4 and 5 should be modified to reflect the Commission's position regarding the burden of proof. All remaining paragraphs should be renumbered to reflect proper sequential numbering of paragraphs.
 4. The Administrative Law Judge found that Respondent met its burden here as a preponderance of evidence supports that on 09 January 2019, Petitioner committed the misdemeanor offense of going armed to the terror of the people. *State v. Lancaster*, 385 N.C. 459, 895 S.E.2d 337, 2023 N.C. LEXIS 948.

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

PROPOSAL FOR DECISION ORDER

WHEREFORE, based on the foregoing Findings of Fact and Conclusions of Law, it is hereby ORDERED that Respondent should Petitioner’s justice officer certification is REVOKED for FIVE (5) YEARS. issue reprimand and prescribe a three year period of probation beginning from final decision, conditioned upon the immediate enrollment of Petitioner into an Anger Management Certification Course, acceptable to the General Court of Justice in or around Guilford, Alamance or Wake County, and the successful completion of at least 24 hours of same within a reasonable time not to exceed 3 months.

This the 23rd day of August, 2024.

JOSHUA H. STEIN
Attorney General

/s/ J. Joy Strickland

J. Joy Strickland
Assistant Attorney General
N.C. Department of Justice
9001 Mail Service Center
Raleigh, North Carolina 27699-9001
Telephone: (919) 716-6401
State Bar No.: 25695
COUNSEL TO THE COMMISSION

CERTIFICATE OF SERVICE

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

**Barry K. Henline
Post Office Box 15862
Wilmington, North Carolina 28408**

This the 23rd day of August 2024.

JOSHUA H. STEIN
Attorney General

/s/ J. Joy Strickland _____
J. Joy Strickland
Assistant Attorney General
ATTORNEY FOR THE COMMISSION