

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
24 DOJ 02657

LATESHIA POLK,)
)
 Petitioner,)
)
 v.)
)
 NORTH CAROLINA SHERIFFS')
 EDUCATION AND TRAINING)
 STANDARDS COMMISSION,)
)
 Respondent.)
 _____)

EXCEPTIONS

The following **Exceptions** to the **Proposal for Decision** prepared by the Honorable Melissa Owens Lassiter, Administrative Law Judge, and filed in the Office of Administrative Hearings on February 13, 2025, 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. Conclusions of Law No. 9 should be amended as follows to reflect the Commission's position regarding the burden of proof.

9. Article 3A does not designate which party has the burden of proof in a contested case heard under that Article. Neither does the Commission's governing statute, Chapter 17E of the North Carolina General Statutes, nor the Commission's rules in Title 12 of the North Carolina Administrative Code, Chapter 10B allocate which party has the burden of proof in an Article 3A contested case hearing. 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").
3. Conclusion of Law No. 23 should be removed and the remaining paragraphs renumbered accordingly.
4. The new Conclusion of Law No. 24 should be amended as follows to reflect the evidence in this case:

~~25-24.~~ There was ~~insufficient~~ sufficient evidence produced at hearing to prove that on September 10, 2009, Petitioner committed the Class B misdemeanor of Possession of Stolen Goods/Property, in violation of N.C.G.S. § 14-71.1. The evidence at hearing showed that Petitioner's cousin, ~~not Petitioner,~~ approached Petitioner about pawning two weed eaters and handed the weed eaters to the pawn shop employee. ~~There was no evidence proving that Petitioner knew or should have known the weed eaters were stolen. Neither was there any evidence that Petitioner intended to benefit from the stolen weed eaters or intended to deprive the rightful owner of such property. Therefore, there was insufficient evidence that Petitioner constructively possessed and had control over the two John Deere weed eaters in violation of N.C.G.S. § 14-71.1. Moreover, these charges were dismissed in criminal court.~~

5. The new Conclusion of Law No. 25 should be amended as follows to reflect the evidence in this case:

~~26-25.~~ In addition, there was ~~insufficient~~ sufficient evidence produced at hearing to prove that on November 20, 2012, Petitioner possessed a stolen license plate, knowing or having reasonable grounds to believe the license plate was stolen; ~~or that Petitioner acted with a dishonest purpose in possessing such property.~~

6. The new Conclusion of Law No. 26 should be amended as follows:

~~27-26.~~ Based on the foregoing Findings of Fact and Conclusions of Law, there was ~~insufficient~~ sufficient evidence to establish that Petitioner committed a combination of the four or more Class A and B misdemeanors.

7. The new Conclusion of Law No. 30 should be amended as follows:

~~31-30.~~ In this case, there was ~~insufficient~~ sufficient evidence at hearing establishing that Petitioner committed the felony offense of Obtaining Property by False Pretenses in violation of N.C.G.S. § 14-100 on September 10, 2009. That is, there was ~~insufficient~~ evidence that Petitioner actually or constructively possessed the two John Deere weed eaters, knew the weed eaters belonged to Paul Thompson or that they were stolen. ~~Petitioner's cousin approached Petitioner about pawning the weed eaters and he, not Petitioner, handed the weed eaters to the pawn shop employee. The clerk gave the money for the items directly to Petitioner's cousin, and Petitioner told the clerk that she was merely signing for her cousin because he didn't have an ID. Petitioner didn't question her cousin about the weed eaters as the cousin and Petitioner's boyfriend worked in lawncare at the time.~~

8. The new Conclusion of Law No. 31 should be amended as follows to accurately reflect the evidence:

~~32.31. While Petitioner agreed and signed a deferred prosecution agreement to resolve the Possession of Stolen Goods and Obtaining Property by False Pretenses charges against her, and Petitioner did so upon advice of her attorney who explained that the agreement would make the criminal charges go away. Petitioner was young and didn't fully understand what she was signing. Therefore, there was insufficient evidence proving that Petitioner knowingly and designedly engaged in false pretenses to obtain money from the pawn shop, with an intent to defraud or cheat.~~

9. The original Conclusion of Law No. 34 should be removed and the remaining paragraph renumbered.

~~34. Even though Petitioner signed a deferred prosecution agreement "admitting" she possessed 2 stolen John Deere weed eaters and obtained such property by false pretenses, the deferred prosecution agreement was not an actual plea of guilty. Without sufficient evidence to prove Petitioner committed the elements of Obtaining Property by False Pretense, and without a guilty plea, the Commission lacks sufficient evidence to deny Petitioner's detention officer certification based on the commission of a felony of Obtaining two John Deere weed eaters by False Pretenses.~~

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

PROPOSAL FOR DECISION ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby ORDERED that: the Undersigned
proposes Respondent:

- (1) DENY Petitioner's justice officer certification for five years pursuant to 12 NCAC 10B .0204(d)(1) and 12 NCAC 10B .0205(2)(a) for the commission of the misdemeanor of Simple Assault (domestic violence related); ~~and~~
- (2) ~~Pursuant to 12 NCAC 10B .0205, substitute and issue a 12-month period of probationary certification, in lieu of a denial of certification, to Petitioner on the grounds that Petitioner abide by Respondent's laws and rules without any violations for that probationary period. DENY Petitioner's justice officer certification for an indefinite period pursuant to 12 NCAC 10B .0204(d)(5) and 12 NCAC 10B .0205(3)(d) for the commission of four or more Class A or B misdemeanors~~
- (3) DENY Petitioner's justice officer certification permanently pursuant to 12 NCAC .0204(a)(1) and 12 NCAC 10B .0205(1)(a) for the commission of the felony offense of obtaining property by false pretenses.

This the 17th day of February 2025.

JEFF JACKSON
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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** by mailing a copy to the address below:

**Daniel Meier
Meier Law Group PLLC
100 E. Parrish Street, Suite 300
Durham, NC 27701**

This the 17th day of February 2025.

JEFF JACKSON
Attorney General

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