

**IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
24 DOJ 03310**

**Respondent.**

[illegible]

## EXCEPTIONS

~~10. This second statement contained factual errors, inconsistencies, and even words with which Petitioner appeared unfamiliar and that he struggled to pronounce aloud~~

~~at hearing.~~ 4. Petitioner consistently, ~~stridently, and credibly~~ denies having written or signed the second statement and was not aware of its existence until he received copies of intended exhibits from opposing counsel in advance of the contested case hearing in 22 DOJ 01727. (T. pp 45-52; Resp Ex 7, pp 54-62).

4. Findings of Fact No. 12 should be amended as follows as the information contained therein was irrelevant to render a decision in this matter:

12. Deputy Director Jones included the Final Agency Decision in 22 DOJ 01727 among the documents provided to the SETSC PCC for Petitioner's probable cause hearing. ~~There is no evidence that Deputy Director Jones questioned the veracity or authenticity of the documents she placed before the SETSC PCC, or expressly advised its members of Judge Lassiter's finding in 22 DOJ 01727 that "Petitioner also proved he did not submit [the second statement] to [CJETS] during [its] investigation and that Explanation was filled with incorrect and false information." (Resp Ex 6, p 13, ¶ 16). Rather, despite knowledge that a previous Tribunal had discredited the document and that it was the subject of credible claims of fraud, and without the slightest attempt to investigate those claims, Deputy Director Jones instead represented it as reliable and competent "evidence" of why Petitioner should not be certified by the Commission.~~

5. Findings of Fact paragraphs 14-20 should be deleted in their entirety as they were superfluous, and the remaining paragraphs renumbered accordingly.
6. The Finding of Fact paragraphs 25 and 26 should be deleted in their entirety as they were superfluous, and the remaining paragraphs renumbered accordingly.

~~25. Deputy Director Jones was aware that the statute (N.C.G.S. § 17E-12) pertaining to consideration of expunged felony convictions in the context of justice officer certification uses the word "may" in reference to the SETSC's authority to deny an officer's certification, while the more restrictive rule of the SETSC (12 N.C.A.C. 10B .0204(a)(1)) uses the word "shall." (T. p 19). Deputy Director Jones was also aware that Judge Lassiter had determined these two authorities (or their functional and legal equivalent) to be in conflict in 22 DOJ 01727 and ruled in favor of granting Petitioner's certification in that case. (T. p 20).~~

~~26. Deputy Director Jones never interviewed or otherwise inquired of Petitioner regarding his allegations that one of the statements contained in his CJETS file was not his own and was not prepared or signed by him, of which she was or reasonably should have been aware.~~

7. Findings of Fact paragraphs 36-37 should be deleted in their entirety as they were superfluous, and the remaining paragraphs renumbered accordingly.

~~36. There was no evidence presented at the hearing that rebutted Petitioner's explanation of the facts upon which the conviction for the felony offense of Insurance~~

~~Fraud was based. There was no evidence presented at hearing that rebutted Petitioner's explanation of why, despite knowing himself to be innocent of the crime, he pleaded guilty. There was no evidence presented at the hearing to rebut the inferred contention that former Robeson County sheriff deputies Britt and Taylor wrongfully pursued felony charges against Petitioner in order to coerce him into acting as a confidential informant with the promise of reduced charges in exchange for cooperation, and then failed to honor their agreement with Petitioner. (T. pp 60-61).~~

~~37. There was no evidence presented at hearing proving Petitioner knowingly, willfully, or feloniously filed a claim or statement with his homeowner's insurance company for the pressure washer and lawnmower taken from his home in 1996. Specifically, there was no evidence proving that Petitioner filed a claim with his homeowner's insurance company in 1996, knowing that such claim or statement contained false or misleading information concerning any fact or matter material to the claim, and/or that Petitioner acted with the intent to defraud his insurance company by filing such claim. As such, there was no evidence presented at hearing proving Petitioner "committed" the felony offense of Insurance Fraud on or about July 1, 1996.~~

8. Conclusion of Law No. 5 should be amended to accurately reflect the Commission's position on the Burden of Proof:

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). 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").

~~From its inception, the North Carolina Administrative Procedures Act ("APA"), N.C. Gen. Stat. Chapter § 150B, has been divided into two separate and distinct sets of administrative hearings provisions. Each article contains separate provisions governing all aspects of the administrative hearings to which they apply. Homoly v. N. Carolina State Bd. of Dental Examiners, 121 N.C. App. 695, 697, 468 S.E.2d 481, 483 (1996). The manner in which a contested case is commenced and conducted varies depending on which set of provisions applies.~~

9. Conclusion of Law paragraphs 6-20 should be deleted in their entirety as they are inconsistent with the Commission's position on the Burden of Proof and the remaining paragraphs renumbered.
10. Conclusion of Law paragraphs 21-24 should be deleted in their entirety as they do not accurately reflect the requirements of the Sheriffs Standards Division staff obligations regarding an investigation and the remaining paragraphs renumbered.
11. Conclusion of Law paragraphs 29-38 should be deleted in their entirety as they are irrelevant to the consideration of whether Petitioner was convicted of a felony offense and the remaining paragraphs renumbered.
12. Conclusions of Law paragraphs 43, 48-51, 53, and 55 should be deleted as they are unnecessary for the Commission to reach a decision in this matter.
13. Proposal for Decision should be revised to reflect the final decision of the Commission as follows:

#### **PROPOSED FINAL DECISION ORDER**

Based on the foregoing Findings of Fact and Conclusions of Law, ~~the Undersigned hereby proposes that the Commission REVERSE the proposed denial of it is hereby ordered that~~ Petitioner's law enforcement officer certification be DENIED permanently and issue ~~Petitioner his law enforcement certification in a state of~~ **PROBATION for ONE (1) YEAR,** ~~on the condition that Petitioner shall not violate any federal law, any law of the State of North Carolina, or any rules of the Respondent Commission.~~

This the 19<sup>th</sup> day of May 2025.

JEFF JACKSON  
Attorney General

/s/ J. Joy Strickland  
J. Joy Strickland  
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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:

**L. Johnson Britt  
503 N. Elm Street, Suite B  
Lumberton NC 28359**

This the 19<sup>th</sup> day of May 2025.

JEFF JACKSON  
Attorney General

Attorney General

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