

**IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
24 DOJ 04153**

PROPOSED FINAL AGENCY DECISION

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:

FINDINGS OF FACT

1. 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 detention officers and to revoke, suspend, or deny such certification under appropriate circumstances with valid proof of a rule violation.

2. Petitioner is an applicant for certification with Respondent through the New Hanover County Sheriff's Office for a detention officer position. (Respondent's Exhibit 8)

3. Included with Petitioner's certification application packet was the Personal History Statement Form F-3, AOC-CR-280 expungement verification form, AOC match report regarding a dismissed misdemeanor larceny charge, a statement provided by the Petitioner about the misdemeanor larceny charge, and the New Hanover County Sheriff's Office investigative report regarding the arrest of the Petitioner for misdemeanor larceny. (Respondent's Exhibits 2-5).

4. Sheriffs' Standards Division field representative and investigator Trey Piland was assigned to investigate the misdemeanor larceny charge disclosed in Petitioner's application materials. As part of that investigation Piland interviewed Ms. Delores Smith, the victim of the larceny. Ms. Smith was cooperative with Investigator Piland during the interview.

5. The results of Piland's investigation were provided to Respondent's probable cause committee who found probable cause to deny Petitioner's application for detention officer certification for the commission of a misdemeanor larceny, which constituted the commission of a class B misdemeanor within the five year period prior to application for certification. Written notification of that finding was provided to Petitioner. (Respondent's Exhibit 6)

6. Ms. Smith testified at the hearing that she had ordered some items from Amazon and had received the tracking information alerting her that her package had been delivered. When she arrived home, the package was not at her residence. Ms. Smith again checked the tracking to confirm that the package has been delivered. She also asked her neighbor if she had picked up the package because at prior times her neighbor would retrieve packages off her porch. After confirming that the package had been delivered but was not at her home, Ms. Smith looked at her ring doorbell camera video footage to confirm the delivery. She saw on the video footage that the delivery person had delivered her package. She then moved forward on the video and saw a Domino's Pizza delivery person delivering a pizza to her neighbor and then after her package was removed.

7. Ms. Smith was aware that there is only one Domino's Pizza that delivers to her apartment complex. She went to that Domino's location and encountered a female employee at the counter. Ms. Smith asked if they had a delivery driver deliver a pizza to

her neighborhood, and the employee said yes. Smith asked the employee if that delivery driver was there, and the employee said no. About that time, Ms. Smith saw the same delivery driver come through the from the back of the store. Smith began talking to the driver, identified later as Petitioner, about the package. Smith asked Petitioner if he had stolen her package. Petitioner said no and called her a liar. She asked him again if he had the package and had taken it, she said she wouldn't call the police if he would just give her the package. He called her a liar again.

8. Smith went outside and called the Sheriff's Office. A sheriff's deputy arrived, and she explained about the video footage and her package. At the request of the deputy, Smith sent him a copy of the video footage. The deputy spoke to Petitioner away from Smith. After the two of them spoke, Petitioner retrieved the package from his car and gave it to the deputy who returned it to Smith. Smith looked at the contents of the package and it appeared that nothing was missing. The package contained items for her kids to be used for an upcoming vacation.

9. Petitioner testified that he delivered a pizza to Smith's neighbor. While there, he saw an open package on Smith's porch, and he picked it up so that no one else would steal it. He said his intention was to return later in the day either when he was doing a delivery in the area or when he ended his shift that night to return the package. When asked how many other times he had retrieved a package for safekeeping during the three years he worked with Domino's Pizza, he said no other time had he done that.

10. Petitioner denied calling Ms. Smith a liar in the store. He said he attempted to explain to her what happened, but she was yelling and wouldn't listen. Petitioner said he was arrested but did not go to court. Petitioner indicated he hired a lawyer, and he did 90 to 100 hours of community service at a church and at the pastor's home prior to going to court. Petitioner indicated that the work he did at the church was at the church he had previously been a member of. Petitioner indicated that he has been working in the detention facility in New Hanover County since February of 2024 and as part of his responsibilities there he has trained other detention officers.

11. During his testimony, Petitioner admitted to taking the package but continued to say he only took the package for safekeeping. He admitted that he did not knock on the door where the package was located or any of the surrounding doors to see if anyone was home. He was aware there was an office area at the apartment complex and did not take the package there. Petitioner didn't recall how much longer he worked that day but admitted he had not attempted to return the package prior to Ms. Smith arriving at the Domino's store.

12. The New Hanover County Sheriff's Office report included a narrative consistent with Ms. Smith's account of the events. On or about July 1, 2021, Ms. Smith reported a larceny of her property. On the same date, Petitioner was arrested for larceny of Ms. Smith's property. The report does not indicate that Petitioner told the deputy that he had the package for safekeeping but does indicated Petitioner admitted he had the package in his car, and it was returned to Ms. Smith. (Respondent's Exhibit 4).

CONCLUSIONS OF LAW

1. The parties were properly before the Administrative Law Judge and jurisdiction and venue were proper.

2. The Office of Administrative Hearings had personal and subject matter jurisdiction over this contested case. The parties received proper notice of the hearing in this matter. To the extent that the findings of Facts contain Conclusions of Law, or that the C14-72onclusions or Law are Findings of Fact, they should be so considered without regard to the given labels.

3. The party with the burden of proof in a contested case must establish the facts required by N.C.G.S. § 150B-23(a) by a preponderance of the evidence. N.C.G.S. § 150B-29(a). The Administrative Law Judge placed the burden of proof on Petitioner as he is an applicant for certification.

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. The preponderance of the evidence supports the finding that Petitioner committed the offense of misdemeanor larceny in violation of N.C.G.S. §14-72(a). Petitioner's statements that he retrieved the package for safekeeping is not credible considering the testimony of Ms. Smith.

6. N.C.G.S. §14-72(a) provides that larceny of property where the value of the property or goods is not more than one thousand dollars (\$1,000), is a Class 1 misdemeanor.

7. The Respondent's Class B misdemeanor manual includes the offense of misdemeanor larceny in violation of N.C.G.S. §14-72(a). (Respondent's Exhibit 8)

8. 12 NCAC 10B .0204(d)(2) provides that the Commission may deny the certification of a justice officer when the Commission finds that the applicant has committed "a crime or unlawful act defined in 12 NCAC 10B .0103(17)(b) as a Class B misdemeanor within the five-year period prior to the date of appointment."

9. Per 12 NCAC 10B .0205(3)(d), the sanction for this rule violation is indefinite as long as the stated deficiency continues to exist where the cause of sanction is "commission or conviction of offenses as specified in 12 NCAC 10B .0204(d)(2) ..." "The Commission may either reduce or suspend the periods of sanction for 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.” In this case, the commission of the misdemeanor offense was on July 1, 2021. Therefore, the period of denial would be for a 5-year period from that date, or July 1, 2026.

10. The findings of the Respondent's probable cause committee were not arbitrary and capricious.

PROPOSED FINAL DECISION ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby ~~proposed~~**ORDERED** that Petitioner's justice officer certification ~~is~~**should be** denied until July 1, 2026, due to the Commission of the Class B misdemeanor, misdemeanor larceny in violation of N.C.G.S. § 14- 72(a), within the five-year period prior to application.

IT IS SO ORDERED.

This the 12th day of June 2025.

Alan Norman, Chair
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** by mailing a copy to the address below:

**William Lee Buck
470 Drake Court
Wilmington, NC 28403**

This the 19th day of May 2025.

JEFF JACKSON
Attorney General

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