

Christian Alexander Ortega Petitioner,  v.  NC Sheriffs Education and Training Standards Commission Respondent.	<p style="text-align: center;"><b>EXCEPTIONS</b></p>
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The following Exceptions to the Proposal for Decision prepared by the Honorable Michael C. Byrne, Administrative Law Judge, and filed in the Office of Administrative Hearings on May 23, 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. Counsel has also added references to the hearing transcript at various points.
2. In Finding of Fact 6, language is added to agree with the relevance and importance of agency leadership assessment of an officer's fitness for duty as found by the administrative law judge, without finding that these are the persons in the best position to determine fitness as that is a case by case assessment.

The elected sheriff of Petitioner, Hoke County Sheriff Roderick C. Virgil, wrote a strong letter of support for Petitioner stating that he wished for Petitioner to remain employed as a deputy in Hoke County. (Res. Ex. 3). The ~~Tribunal finds~~administrative law judge found as a fact that the persons in the best position to determine Petitioner's fitness to serve as a deputy sheriff in Hoke County, North Carolina are the elected sheriff of Hoke County and his officers, one of whom attended the contested case hearing in support of Petitioner. See ~~Darren Tyree Taylor v. The Commission~~ agrees that the assessment of agency leadership is important in determining the fitness of a person to serve as a deputy sheriff, and that the evidence in this regard was favorable to the Petitioner. NC Sheriffs Education and Training Standards Commission, 2021 NC OAH LEXIS 278, \*4, 21 DOJ 00829.

3. In Conclusion of Law 2, add language to indicate the matter was properly before the administrative law judge and is now properly before the Commission.

The parties ~~were~~are properly before the Tribunal, in that jurisdiction and venue are proper, and both parties received Notice of Hearing. The parties are now properly before the Commission and both parties received Notice of Hearing.

4. Delete Conclusion of Law 11 as unnecessary for the decision and renumber remaining paragraphs accordingly.
5. Add Conclusion of Law 16 to reflect the Commission's position on the burden of proof.

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").

6. Delete Conclusions of Law 17-20 (indicated as 16-19 on the proposed final agency decision) as not reflecting the Commission's position on the burden of proof.

~~The Tribunal adopts and incorporates by reference its analysis and conclusions on the burden of proof in Article 3A contested cases set forth in *Alex William Aboussleman v. NC Sheriffs Education and Training Standards Commission*, 23DOJ05109 (August 27, 2024); see also *Malcolm T. Kennedy v. NC Criminal Justice Education and Training Standards Commission*, 2024 NC OAH LEXIS 346, at \*9, 24 DOJ 00515.~~

~~It is a general legal principle that the burden is on the party asserting a claim to show the existence of that claim. *Robinson v. Univ. of N.C. Health Care Sys.*, 242 N.C. App. 614, 621, 775 S.E.2d 898, 903 (2015). Here, Respondent claims that Petitioner committed multiple crimes, without evidence of a conviction.~~

~~While at least one appellate decision in the Article 3 context suggests approval of requiring petitioners to prove a negative, no North Carolina appellate court has endorsed the State, in any form, first deciding that a citizen committed a crime and then requiring that citizen to prove that they did not. *Jones v. All American Life Ins. Co.*, 68 N.C. App. 582, 585, 316 S.E.2d 122, 125, (1984), \*9, affirmed, 312 N.C. 725, 727, 325 S.E.2d 237, 238 (1985); see also *Christopher Lee Jackson v. NC Criminal Justice Education and Training Standards Commission*, 2021 WL 2779127, 20 DOJ 04578.~~

~~Accordingly, the Tribunal placed the burden of proof on Respondent. When Respondent's proposed agency action is based on its conclusion that a citizen not convicted of a crime nonetheless "committed" a crime, the burden of proof is on Respondent to show, by (at least) a preponderance of the evidence, that the citizen's actions satisfied all elements of the crime. *In re B.L.H.*, 376 N.C. 118, 124, 852 S.E.2d 91, 96 (2020).~~

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

### **PROPOSAL FOR DECISION ORDER**

~~It is proposed that Respondent take no action against Petitioner's justice officer certification.~~

It is hereby ordered that no action be taken against Petitioner's Justice Officer Certification.

**CERTIFICATE OF SERVICE**

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

Christian Ortega  
113 Lakeview Drive  
Red Springs, NC 28377

This the 15th day of August, 2025.

JEFF JACKSON  
Attorney General

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