

STATE OF NORTH CAROLINA
COUNTY OF PITT

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
25 DOJ 00389

<p>Ernest Levine Brown Petitioner,</p> <p>v.</p> <p>NC Sheriffs Education and Training Standards Commission Respondent.</p>	<p>FINAL DECISION</p>
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This contested case was heard before William W. Peaslee, Administrative Law Judge on August 6, 2025 at the Pitt County Courthouse in Greenville, North Carolina following the request of Respondent NC Sheriffs' Education and Training Standards Commission ("Respondent" or "Commission") for appointment of an Administrative Law Judge to hear the case of Ernest Levine Brown ("Petitioner") pursuant to N.C.G.S. § 150B-40(e).

APPEARANCES

Mr. Andrew Nail
825 Hardee Road
Kinston, NC 28504

Ms. J. Joy Strickland
Assistant Attorney General
North Carolina Department of Justice
114 West Edenton Street
Raleigh, NC 27603

EXHIBITS

Petitioner – no exhibits
Respondent's Exhibits 1-6 were admitted.

WITNESSES

For Respondent:

Melissa Bowman, Respondent's
Ernest Levine Brown, Petitioner

ISSUE

Whether Respondent's Probable Cause Committee correctly found probable cause to deny

Petitioner's justice officer certification based on Petitioner's "commission" of one or more felonies.

RULES

12 NCAC 10B .0204 (a)(1)

12 NCAC 10B .0205(1)(a)

BURDEN OF PROOF

There is no statutory allocation of the burden of proof in contested cases heard under Article 3A of the Administrative Procedure Act. In the absence of that direction, the burden of proof is "judicially allocated on considerations of policy, fairness and common sense." 1 Kenneth S. Broun, Brandis & Broun on North Carolina Evidence § 37 (4th. Ed. 1993); citing Peace v. Employment Sec. Comm'n of N. Carolina, 349 N.C. 315, 328, 507 S.E.2d 272, 281 (1998); Robert Shawn Gaddis v. North Carolina Sheriffs' Education and Training Standards Commission, 2023 WL 2424080, 22 DOJ 03415.

While at least one appellate decision in Chapter 150B, Article 3A 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. Christopher Lee Jackson v. NC Criminal Justice Education and Training Standards Commission, 2021 WL 2779127, 20 DOJ 04578.

Thus, when Respondent's 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 person's actions satisfied all elements of the crime. Christopher Garris v. NC Criminal Justice Education And Training Standards Commission, 2019 WL 2183214, 18 DOJ 04480.

Based upon the testimony of the witnesses, consideration of all the admitted exhibits, the governing law and rules, and all evidence of record, the Tribunal makes the following:

FINDINGS OF FACT

1. Both parties were properly before the Administrative Law Judge, in that jurisdiction and venue were proper, both parties received notice of hearing, and that the Petitioner received by certified mail, the proposed denial letter, mailed by Respondent on December 19, 2024.

2. Respondent, the 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 justice officers and to revoke, suspend, or deny such certification under appropriate circumstances with valid proof of a rule violation.

3. Petitioner is an applicant for detention officer certification with the Lenoir County Sheriff's Office.

4. Petitioner was appointed as a detention officer by the Sheriff of Lenoir County in November 2021. Since that time, he has been promoted to the rank of Corporal and supervises other detention employees.

SEXUAL ASSAULT

5. Pursuant to Connecticut General Statutes (hereinafter "C.G.S.") § 53a-71 (2000):

A person is guilty of sexual assault in the second degree when such person engages in sexual intercourse with another person and: (1) Such other person is thirteen years of age or older but under sixteen years of age and the actor is more than two years older than such person; ...

6. At hearing, Petitioner testified that he had a sexual relationship with a 15 year old female for approximately three months in Connecticut and that Petitioner was more than two years older than the female. Petitioner's testimony was credible.

7. The events described by Petitioner occurred sometime prior to June 28, 2001, the date the New Haven Department of Police Service dispatched an officer to respond to a call by the female's mother.

8. In Connecticut, at all relevant times, sexual assault in the 2nd degree is a class C felony for which nine months of the sentence imposed may not be suspended or reduced by the court.

9. Notwithstanding Petitioner's entry of a plea of guilty for 2nd degree sexual assault and subsequent pardon, the undersigned finds that Petitioner committed a felony, to wit 2nd degree sexual assault, in the State of Connecticut.

FAILURE TO REGISTER

10. Individuals convicted of 2nd degree sexual assault in Connecticut are required to register with the Sex Offender Registry Unit (hereinafter "the unit"), and respond to address verification forms within ten days of the date such form was mailed to the offender by the Unit pursuant to Sections 54-251 through Sections 54-255 of the C.G.S.

11. Pursuant to C.G.S. § 54-254(b) (1999),

Any person who violates the provisions of this section shall be guilty of a class D felony, except that, if such person violates the provision of this section by failing to notify the Commissioner of Emergency Services and Public Protection without undue delay of a name change, address or status or other reportable event, such person shall be subject to such penalty if such failure continues for five business days.

12. Respondent's Exhibits 3 and 5 state that Petitioner failed to remain registered or respond to the Unit in a timely manner on January 30, 2008, and December 14, 2008. However, while admitted into evidence without objection, these statements contain uncorroborated hearsay and should be given little weight. While Respondent may aver that the Petitioner's probation violations of February 26, 2002, for which Petitioner was pardoned, are corroborating evidence, it is unclear from the record whether the violations are related to the sexual offender registry.

13. Petitioner testified that he remained registered at all relevant times and mailed the address verification forms in a timely manner. Petitioner's testimony was credible. Accordingly, the undersigned finds that Respondent has not met its burden of proof that Petitioner committed a felony for failure to register on or about January 30, 2008, or December 14, 2008.

PARDON

14. On October 7, 2020, Petitioner was granted a Certificate of Pardon by the State of Connecticut covering the aforesaid "crimes." The Pardon granted "a full, complete, absolute and unconditional pardon" for the specified crimes. The Pardon "does hereby forever acquit, release and discharge" Petitioner and enjoins all officers to respect the Pardon. The Pardon, nor the letter to Petitioner which accompanied it, is a proclamation of innocence of any crimes.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over this contested case pursuant to N.C.G.S. 150B, Article 3A, following a request from Respondent under N.C.G.S. § 150B-40(e) for an Administrative Law Judge to hear this contested case. In such cases the Tribunal sits in place of the agency and has the authority of the presiding officer in a contested case under Article 3A. The Tribunal makes a proposal for decision, which contains findings of facts and conclusions of law. Respondent makes the final agency decision. N.C.G.S. § 150B-42.

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

3. It is not necessary for the Tribunal to make findings on every fact presented at the hearing, but rather those which are material for resolution of the present dispute. Flanders v. Gabriel, 110 N.C. App. 438, 440, 429 S.E.2d 611, 612, (1993), affirmed, 335 N.C. 234, 436 S.E.2d 588 (1993).

4. To the extent the Findings of Fact contain Conclusions of Law, or vice versa, they should be so considered without regard to the given labels. Matter of V.M., 273 N.C. App. 294, 848 S.E.2d 530 (2020).

5. 12 NCAC 10B .0301 provides that "Every justice officer employed or certified in North Carolina shall: (10) not have committed or been convicted of a crime or crimes specified in 12 NCAC 10B .0307; ..."

6. 12 NCAC 10B .307(a)(1) includes "a felony" as a crime an applicant shall not have committed.

7. 12 NCAC 10B .0204(a)(1) provides that the Commission shall revoke or deny the certification of a justice officer when the Commission finds that the applicant for certification . . . "has committed or been convicted of a felony."

8. The sanction for the commission of a felony is contained in 12 NCAC 10B .0205(1)(a) which currently states that when the Commission denies the certification of a justice officer, the period of sanction shall be permanent where the cause of sanction is commission or conviction of a felony.

9. While Petitioner's convictions were pardoned; N.C.G.S. § 17E-12 provides that the Commission may act regarding an application for detention officer certification unless the person has received an unconditional pardon of innocence. The pardon paperwork provided by Petitioner does not constitute an unconditional pardon of innocence and therefore, the Commission may act in this matter.

PROPOSAL FOR DECISION

Because the Respondent proved by a preponderance of the evidence that the Petitioner committed a felony—second-degree sexual assault in Connecticut—the rules require a denial of certification notwithstanding the later pardon. The Committee's probable cause decision aligns with 12 NCAC 10B .0204(a)(1), 12 NCAC 10B .0205(1)(a), and N.C.G.S. 17E-12, and is therefore legally correct.

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this Proposal for Decision, to submit proposed Findings of Fact and to present oral and written arguments to the agency. N.C.G.S. § 150B-40(e).

The agency that will make the final decision in this contested case is the North Carolina Sheriffs' Education and Training Standards Commission.

A copy of the final agency decision or order shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency and a copy shall be furnished to any attorney of record. N.C.G.S. § 150B-42(a).

SO ORDERED.

This the 7th day of October, 2025.



William W Peaslee
Administrative Law Judge


CERTIFICATE OF SERVICE

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 N.C. Admin. Code 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center which will subsequently place the foregoing document into an official depository of the United States Postal Service.

Andrew Nail
Swindell Law Firm, PC
andrew@fgslaw.com
Attorney For Petitioner

J. Joy Strickland
NC Department of Justice
jstrickland@ncdoj.gov
Attorney For Respondent

This the 7th day of October, 2025.



Ntombizodwa Mukondiwa
Paralegal
N. C. Office of Administrative Hearings
1711 New Hope Church Road
Raleigh, NC 27609-6285
Phone: 984-236-1850