

STATE OF NORTH CAROLINA  
COUNTY OF LENOIR

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
22 DOJ 01376

William Perry Petitioner,  v.  North Carolina Criminal Justice Education and Training Standards Commission Respondent.	<b>PROPOSAL FOR DECISION</b>
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**THIS CASE CAME ON FOR HEARING** on August 19, 2022, before Samuel K. Morris, Administrative Law Judge, in Jacksonville, North Carolina. This case was heard after Respondent requested, under N.C.G.S. § 150B-40(e), for the designation of an Administrative Law Judge to preside at the hearing of a contested case under Article 3A, Chapter 150B of the North Carolina General Statutes.

**APPEARANCES**

Petitioner: William Perry  
1503 George Avenue  
Kinston, North Carolina 28501

Respondent: Robert J. Pickett  
Attorney for Respondent  
North Carolina Department of Justice  
Law Enforcement Liaison Section  
9001 Mail Service Center  
Raleigh, North Carolina 27699-9001

**ISSUE**

Whether Respondent's proposed suspension of Petitioner's correctional officer certification for the commission of the misdemeanor offense of Resisting Officer, in violation of N.C. Gen. Stat. § 14-223, is supported by a preponderance of the evidence?

**RULES AT ISSUE**

12 NCAC 09G .0504(d)(3)  
12 NCAC 09G .0102(10)

**BASED UPON** careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents, exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned Administrative Law Judge (“ALJ”) makes the following Findings of Fact. In making these Findings of Fact, the ALJ has weighed the evidence presented and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witnesses, any interests, bias, or prejudice the witnesses may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable and whether the testimony is consistent with all other believable evidence in this case.

### **FINDINGS OF FACT**

1. Petitioner, William Perry (“Petitioner”) and Respondent, the NC Criminal Justice Education and Training Standards Commission (“Respondent” or “Commission”) are properly before this Tribunal in that jurisdiction exists; venue is appropriate; Petitioner received by mail the proposed suspension letter mailed by Respondent dated March 3, 2022 (Respondent’s Ex. 3); both parties received notice of hearing; and no party has otherwise objected.

2. The Commission asserts authority granted under Chapter 17C of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 09G, to certify correctional officers and to revoke, suspend, or deny such certification under appropriate circumstances.

3. Petitioner was first awarded probationary certification as a corrections officer by Respondent on October 19, 2020. (Respondent’s Ex. 11).

4. By letter dated March 3, 2022, Petitioner was notified that the Commission found probable cause existed to believe that his correctional officer certification should be suspended. The basis for the suspension was his alleged commission of resisting an officer on June 5, 2021. (Respondent’s Ex. 3).

5. Petitioner timely requested an administrative hearing, and the Commission thereafter requested the assignment of an administrative law judge to hear the contested case.

6. On June 5, 2021, at approximately 9:20 p.m., Petitioner was traveling northbound on NC 11 in Winterville, North Carolina. During this time, Officer William Ellis (hereinafter “Officer Ellis”), a patrol officer with the Winterville Police Department, was assisting a North Carolina state trooper conducting a DWI stop on

NC 11. Officer Ellis was the only Winterville Police Officer present at the DWI stop, and the only officer who heard the sound that prompted the stop discussed below.

7. During the DWI stop, a Dodge Charger, dark in color, passed the stop traveling north on NC 11. As the Charger passed Officer Ellis, Officer Ellis believed that the driver put his vehicle in neutral and revved the motor. The noise was extremely loud—one of the loudest vehicles he had ever heard—causing Officer Ellis to believe that the car had an aftermarket exhaust system.

8. Shortly thereafter, Officer Ellis left the DWI stop and caught up with the suspected vehicle a few miles down the road and initiated the stop of the vehicle.

9. After initiating the stop, Officer Ellis exited his patrol car, approached the suspected vehicle, and introduced himself. Petitioner, the driver, was unaccompanied. Officer Ellis asked Petitioner to produce his driver's license and explained the reason for the stop.

10. Officer Ellis's testimony and the body camera footage credibly establish that Petitioner immediately protested the basis for the stop. Petitioner became belligerent and passively confrontational, using obscene language and an elevated and hostile tone. During the stop, Petitioner refused to provide his driver's license.

11. Throughout the stop, Petitioner asserted that his car was equipped with its factory exhaust system and argued with Officer Ellis that the sound Officer Ellis had heard was caused by his car downshifting. Petitioner continued to refuse Officer Ellis's orders to provide his driver's license.

12. Officer Ellis remained polite, professional, and respectful throughout the stop and ordered Petitioner several more times to provide his driver's license.

13. Petitioner demanded to see Officer Ellis's supervisor, Sergeant Edwin Santiago. When Sergeant Santiago arrived on the scene, Petitioner continued to refuse to provide his driver's license, maintaining the same tone and demeanor as he had before. Thereafter, Officer Jordan Crews, also with Winterville Police, arrived as another backup officer.

14. During the stop, the officers explained to Petitioner that the place to contest the charge was in court and that Petitioner would be arrested if he did not provide his license. The officers informed Petitioner that they did not want to arrest him but that they would if he did not produce his driver's license.

15. Nonetheless, Petitioner continued to protest the basis for the stop and refused to produce his driver's license.

16. The Officers then removed the Petitioner from the car. The Officers testified that this removal was forceful in that Petitioner passively resisted them in refusing to get out of the car, not moving his body to ease the exit, and by tensing up while officers handcuffed him.

17. Throughout the stop, Petitioner used obscene language and an elevated tone. He did not, however, act out toward the responding officers with any physical aggression or attempt to flee. In addition, Sergeant Santiago testified that "once he was taken into custody, everything stopped."

18. Petitioner was ultimately arrested and charged with resisting a public officer in violation of N.C.G.S. § 14-223. (Respondent's Ex. 6).

19. Petitioner testified that this stop occurred on the evening of his birthday and that he was upset, that he protested the stop because he did not believe there was a legitimate basis for the traffic stop, and that two other cars were traveling alongside him as he passed the DWI stop, and those cars were louder than his.

20. According to Petitioner, his automobile is a factory 392 Dodge Charger Scat Pack, which he referred to as a muscle car, and that to the extent his vehicle made a louder than normal operating noise, it would have been due to a downshift from his slowing down while passing the initial DWI stop.

21. Approximately two and a half hours after this stop, after his release from custody, Petitioner was stopped again by Winterville Police, this time by Officer Crews, who had assisted with the prior stop. Officer Crews issued Petitioner additional citations related to the exhaust and window tint. The subject matter of that stop is outside the scope of this proceeding. Nonetheless, Petitioner complied with Officer Crews during the subsequent stop.

22. Petitioner's unchallenged testimony is that all the citations issued to him that evening were dismissed. (Respondent's Ex. 7). The dismissal includes a handwritten note which reads: "Admitting responsibility in companion cases [.]". No substantive testimony from either party was offered to explain this statement.

23. Petitioner has been a correctional officer for approximately two years with no prior or subsequent disciplinary issues. He has no criminal convictions and has not been arrested or received a citation of any kind since the events occurring on or about June 5, 2021.

24. Petitioner acknowledged with remorse that he did not provide his driver's license when requested by Officer Ellis. (Respondent's Ex. 1; Respondent's Ex. 2).

25. Though Petitioner's testimony as to the basis for the stop stems from Petitioner's misapprehension of the law, his factual testimony overall and his testimony as to his mental state and beliefs at the time of the stop were credible.

26. Nonetheless, the Undersigned finds that based on the video cam footage and credible officer testimony, sufficient evidence exists to support the commission's decision to suspend Petitioner's certification.

27. At the hearing, Petitioner did not evince beyond his own presentation and testimony regarding his character, reputation, or job performance. Petitioner presented a document to be admitted into the record which he claims evidenced that his car was equipped with a stock exhaust system. However, Petitioner did not subsequently file that document with this tribunal, despite having been told to do so. Nonetheless, as explained below, whether Petitioner's exhaust system was stock or not is irrelevant to this proceeding.

28. After the hearing, Petitioner submitted his proposed decision. With this filing, Petitioner submitted five letters from Reggielette R. Coley, Correctional Captain III with Maury Correctional Institution, Dominique Sherman, Correctional Housing Unit Manager, Sergeant James Brady with Maury Correctional Institution, Sergeant Tonya Lee, and Michael Bishop, Correctional Case Manager, each of which lauded Petitioner's satisfactory job performance and that losing him as a correctional officer "would be a tremendous detriment to Maury Correctional and DPS as a whole."

29. On November 4, 2022, the Undersigned Ordered Respondent to file any objections to the admission of the attachments to Petitioner's Proposal for Decision on or before November 10, 2022, if Respondent had any objections. Respondent has filed no objection to the same and, therefore, the attachments have been admitted.

30. Ultimately, the Tribunal made reasonable inferences and findings on the evidence presented, to include the mostly unopposed, generally unflappable, and seemingly credible testimony of the Petitioner.

### **CONCLUSIONS OF LAW**

1. The Office of Administrative Hearings has jurisdiction of this contested case pursuant to the North Carolina General Statutes. This matter is in the

appropriate forum and venue, and this action was filed in a timely manner and appropriate fashion.

2. To the extent that the Findings of Fact contain Conclusions of Law, or that the Conclusions or Law are Findings of Fact, they should be so considered without regard to the given labels. *See Barnette v. Lowe's Home Ctrs, Inc.*, 247 N.C. App. 1, 5, 785 S.E.2d 161, 165 (2016).

3. An ALJ need not make findings as to every fact which arises from the evidence and need only find those facts which are material to the resolution of the dispute. *Flanders v. Gabriel*, 110 N.C. App. 438, 440, 429 S.E.2d 611, 612 (1993).

4. All parties have been correctly designated and there is no question as to misjoinder or nonjoinder and the notice of hearing was proper.

5. The North Carolina Rules of Evidence, as found in Chapter 8C of the General Statutes, shall govern in all contested case proceedings, except as provided otherwise in Title 26, Chapter 3 of the North Carolina Administrative Code and N.C. Gen. Stat. § 150B-29. 26 NCAC 03 .0122.

6. Although Respondent contends that the burden is wholly on Petitioner, citing *Overcash v. N.C. Dep't. of Env't & Natural Resources*, 179 N.C. App 697, 635 S.E.2d 442 (2006), “the burden of proof is on Respondent when proposing to suspend or revoke a certification.” *Shenika Janay Barefield v. NC Criminal Justice Education and Training Standards Commission*, 15 DOJ 00053 (N.C.O.A.H., October 15, 2015) (citing *Leiphart v. North Carolina School of the Arts*, 80 N.C. App. 339, 348, 342 S.E.2d 914, 921-22 (1986)). The party with the burden of proof in a contested case must establish the facts required by a preponderance of the evidence.

7. Under 12 NCAC 09G .0504(d)(3), “[t]he Commission may, based on the evidence for each case, suspend, revoke, or deny the certification of a corrections officer, as defined in 12 NCAC 09G .0102(4) when the Commission finds that . . . the certified officer: (3) [has] committed or been convicted of a misdemeanor as defined in 12 NCAC 09G .0102 after certification[.]”

8. There is no dispute as to whether Petitioner was convicted of a misdemeanor: he was not. At issue is whether Petitioner “committed” the misdemeanor of resisting an officer.<sup>1</sup>

9. A person has “committed” an offense when he has been found by Respondent or an administrative body to have “performed the acts necessary to satisfy the elements of a specified offense.” 12 NCAC 09G .0102(1).

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<sup>1</sup> The “commission” of an offense is distinct from the “conviction” of an offense. *Compare* 12 NCAC 09G .0102(1) *with* 12 NCAC 09G .0102(2) (defining “Convicted” or “Conviction”).

10. “‘Misdemeanor’ for corrections officers means those criminal offenses not classified under the laws, statutes, or ordinances as felonies.” 12 NCAC 09G .0102(10). The regulatory class of offenses falling within the definition of misdemeanor is broad, with some offenses being worse than others.<sup>2</sup> “Misdemeanor” includes the offense of “Resisting Officers” under N.C.G.S. § 14-223. 12 NCAC 09G .0102(10)(w).

11. During a traffic stop, a motorist is legally required to provide his driver’s license upon an officer’s request. N.C.G.S. § 20-29; *State v. Thompson*, 281 N.C. App. 291, 868 S.E.2d 157 (2022). Refusing to do so will support a conviction for resisting a public officer. *State v. Friend*, 237 N.C. App. 490, 768 S.E. 2d 146 (2014).

12. Pursuant to N.C. Gen. Stat. § 14-223(a) “[i]f any person shall willfully and unlawfully resist, delay or obstruct a public officer in discharging or attempting to discharge an official duty, the person is guilty of a Class 2 misdemeanor.”

13. It is well settled that a traffic stop is a lawful investigatory detention so long as it is supported by reasonable suspicion. *See, e.g., State v. Heien*, 366 N.C. 271, 281, 737 S.E.2d 351, 358 (2012). Reasonable suspicion exists when the officer can point to specific facts and rational inferences from those facts, as viewed through the eyes of a reasonable officer, in light of his training and experience, that would lead him to believe that criminal activity is afoot. *State v. Parker*, 137 N.C. App. 590, 597, 530 S.E.2d 297, 302 (2000) (citing *State v. Battle*, 109 N.C.App. 367, 370, 427 S.E.2d 156, 158 (1993) (quoting *Terry v. Ohio*, 392 U.S. 1, 30, 88 S.Ct. 1868, 1884, 20 L.Ed.2d 889, 911 (1968))).

14. Reasonable suspicion is a lower standard than probable cause and only requires the officer to provide minimal factual support for their belief. *State v. Smathers*, 232 N.C. App. 120, 123, 753 S.E. 2d 380, 382–83 (2014). Even if the officer is mistaken about the facts or the law supporting reasonable suspicion, that will not invalidate the reasonable suspicion so long as his belief is reasonable. *State v. Wiles*, 270 N.C. App. 592, 598, 841 S.E. 2d 321, 326 (2020); *Heien v. North Carolina*, 574 U.S. 54, 135 S. Ct. 530, 190 L. Ed. 2d 475 (2014). An officer’s subjective motivation in making a stop is not considered. *Whren v. United States*, 517 U.S. 806, 813, 116 S. Ct. 1769, 135 L. Ed. 2d 89 (1996).

15. Section 20-128 of the North Carolina General Statutes provides, *inter alia*, that

“[n]o person shall drive a motor vehicle on a highway unless such motor vehicle is equipped with a muffler, or

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<sup>2</sup> Compare 12 NCAC 09G .0102(10)(ffff) (Criminally negligent hunting; no bodily disfigurement) with 12 NCAC 09G .0102(10)(hhhh) (Criminally negligent hunting; death results).

other exhaust system of the type installed at the time of manufacture, in good working order and in constant operation to prevent excessive or unusual noise . . .”

N.C.G.S. § 20-128.

16. Officer Ellis had reasonable suspicion to stop Petitioner’s car due to the loud sounds he heard coming from it. The stop was thus lawful. Petitioner, therefore, had an obligation to provide his driver’s license and by willfully and unlawfully refusing to do so, Petitioner resisted a public officer.

17. Petitioner’s explanation about the causes of the sounds coming from the vicinity of his car or that his car did not have an aftermarket exhaust system, though credible, does not change the analysis of the case or remove his obligation to provide his driver’s license. An officer’s reasonable mistake of fact will not invalidate reasonable suspicion. *State v. Wiles*, 270 N.C. App. 592, 598, 841 S.E. 2d 321, 326 (2020); *Heien v. North Carolina*, 574 U.S. 54, 135 S. Ct. 530, 190 L. Ed. 2d 475 (2014). Petitioner did not contest that a loud noise came from the vicinity of his car, thus providing reasonable suspicion to stop his car.

18. The preponderance of the evidence substantiates the allegation that Petitioner, in refusing to surrender his driver’s license, committed the specified offense of resisting an officer in violation of N.C.G.S. § 14-223, a Class B misdemeanor offense.

19. Respondent has met its burden of proving Petitioner committed a Class B misdemeanor offense while holding certification as a correctional officer.

20. To the extent that extenuating circumstances are relevant to the Commission, the Tribunal notes and finds that the following extenuating circumstances exist:

- a. Petitioner has never had any other incidents, at least up to the allegation at issue in this contested case.
- b. Petitioner has no criminal convictions.
- c. Petitioner’s resistance was characterized by the officers as passive rather than active.
- d. Petitioner has expressed remorse for what appears to be an isolated incident.
- e. Petitioner has tendered letters as to his work record and good character from Reggielette R. Coley, Correctional Captain III with Maury Correctional Institution, Dominique Sherman, Correctional Housing Unit Manager, Sergeant James Brady with Maury Correctional Institution, Sergeant Tonya Lee, and Michael Bishop, Correctional Case Manager.



21. The undersigned notes pertinent language in 12 NCAC 09G .0504(d)(3):

“The Commission **may** suspend, revoke, or deny the certification of a corrections officer when the Commission finds that the applicant for certification or the certified officer: (3) for correctional officers as defined in 12 NCAC 09G .0102(3), have committed or been convicted of a misdemeanor as defined in 12 NCAC 09G .0102 after certification.”

12 NCAC 09G .0504(d)(3) (emphasis added).

22. “The use of the word ‘may’ generally connotes **permissive or discretionary** action and **does not mandate or compel** a particular act.” *Brock and Scott Holding, Inc. v. Stone*, 203 N.C. App. 135, 137, 691 S.E.2d 37, 39 (2010) (quoting *Campbell v. First Baptist Church of the City of Durham*, 298 N.C. 476, 483, 259 S.E.2d 558, 563 (1979)) (emphases added); see *Wallace Connell Ransom v. NC Sheriffs' Education and Training Standards Commission*, 2013 WL 8116064, 12 DOJ 05141; *Clarke v. NC Water Treatment Facility Operators' Certification Board*, 19 WTO 07049 (August 27, 2020) (“‘May,’ by contrast, is intended to convey that the power granted should be exercised with discretion”).

23. As noted above, Petitioner has expressed remorse for what appears to be an isolated incident and has tendered five witnesses as to his character and value to Maury Correctional. Such mitigating and extenuating circumstances weigh heavily in favor of extending this benefit to Petitioner.

24. To any extent the Commission might be inclined to reject this proposed decision, and therefore find itself faced with a choice to exercise, or not, its discretion, then the undersigned posits, if not here then when? For the use of the word “may” to have meaning and purpose in this context, Petitioner should be allowed the benefit of such discretion. See, e.g., *Robert Glenn Russel v. NC Criminal Justice Education and Training Standards Commission*, 2022 WL 888026, 21 DOJ 03252 (Dills).

25. Likewise, the Undersigned respectfully reminds the Commission that, although speaking to an officer’s character, the employing agency of a law enforcement officer is generally in the best position to observe and determine an officer's individual character, competence, and fitness to serve in a law enforcement capacity. *Luke Thomas Marcum v. North Carolina Criminal Justice Education and Training Standards Commission*, 2016 WL 6830998, 15 DOJ 07702.

26. This ruling is based upon a preponderance of the evidence after a full and complete hearing, and there is substantial evidence justifying the adoption of this Tribunal’s proposal for decision.

27. Pursuant to N.C.G.S. § 150B-40(e), the Tribunal is to place itself in the role of the Commission, and after a just and lawful hearing; considerations of appropriate findings; applicable law; and extenuating circumstances, propose a just and final decision for due deliberation by the Commission. Mindful of these principles, the Tribunal submits the following proposal.

28. The Undersigned finds that based on the video cam footage and credible officer testimony sufficient evidence exists to support the commission's decision to suspend Petitioner's certification.

### **PROPOSAL FOR DECISION**

BASED ON the foregoing Findings of Fact and Conclusions of Law, the undersigned proposes that the Commission suspend Petitioner's justice officer certification for a period of no less than three years but further recommends that the Commission **STAY** the suspension for three years on the condition that the Petitioner not violate any federal or state law and shall remain in compliance with the rules established by the Commission.

### **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 Criminal Justice Education and Training Standards Commission.

The Commission or its counsel will file a copy of its final decision, referencing this case number, with the Office of Administrative Hearings.

**SO ORDERED.**

This the 21st day of November, 2022.



The Honorable Samuel K Morris  
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 NCAC 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 who subsequently will place the foregoing document into an official depository of the United States Postal Service:

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This the 21st day of November, 2022.



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