

B-9



STATE OF NEW JERSEY

In the Matter of Richard Thomas,  
Correction Officer Recruit (S9988R),  
Department of Corrections

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

CSC Docket No. 2014-2799

List Removal Appeal

ISSUED: SEP 05 2014 (SLK)

Richard Thomas appeals the attached decision of the Division of Classification and Personnel Management (CPM), which found that the appointing authority had presented a sufficient basis to remove the appellant's name from the Correction Officer Recruit (S9988R), Department of Corrections, eligible list on the basis of an unsatisfactory criminal record and falsification of his employment application.

The appellant took the open competitive examination for Correction Officer Recruit (S9988R),<sup>1</sup> achieved a passing score, and was ranked on the subsequent eligible list. The appellant's name was certified on May 22, 2013. In disposing of the certification, the appointing authority requested the removal of the appellant's name from the eligible list on the basis of an unsatisfactory criminal record and falsification of his employment application. Specifically, in 2001, the appellant was charged with a 3<sup>rd</sup> degree 2C:20-7-Receiving Stolen Property and failing to disclose this charge on his employment application. The appellant appealed to CPM. CPM found that the appointing authority had sufficiently documented and supported its request to remove the appellant's name from the subject eligible list.

On appeal to the Civil Service Commission (Commission), the appellant states that in 2001, when he was 12 years old and without his knowledge, his cousin had broken into an office building in Galloway Township. Thereafter, he went to his cousin's home and his cousin told the detectives at his house that he had given

<sup>1</sup> It is noted that the Correction Officer Recruit (S9988R) eligible list expires on May 22, 2015.

the appellant 5 blank CDs, which his cousin had stolen unbeknownst to him. The detectives took him to his parent's home to explain to them what had happened. The appellant presents that apparently his parents had worked out an agreement for him to tour a jail as part of a Scared Straight Program. The appellant asserts that to the best of his knowledge he was never charged as a juvenile with any type of crime. Therefore, he did not knowingly omit the charge from his application as he was not aware that he was formally charged. He indicates that he believes that the program was designed to teach him his mistake and encourage him to make better choices with whom he associates. In fact, he highlights that he later became a Police Explorer as a juvenile with the Galloway Police. He reiterates that he was not purposely omitting this information from his application. He stresses that he was 12 years old at the time of the incident, he was unfamiliar with the law of the State at that time, and that he would never withhold information from his application in order to cover up his involvement with the Galloway Police as a juvenile. He apologizes for omitting this information and wishes to be reinstated to the list. He emphasizes that he has had an exemplary record since the time of the occurrence which his employers can attest, including his employment as a Class II Special Law Enforcement Officer with the Wildwood Crest Police.

It is noted that although given the opportunity, the appointing authority did not respond.

## CONCLUSION

*N.J.S.A. 11A:4-11* and *N.J.A.C. 4A:4-4.7(a)4* provide that an eligible's name may be removed from an employment list when an eligible has a criminal record which includes a conviction for a crime which adversely relates to the employment sought. The following factors may be considered in such determination:

- a. Nature and seriousness of the crime;
- b. Circumstances under which the crime occurred;
- c. Date of the crime and age of the eligible when the crime was committed;
- d. Whether the crime was an isolated event; and
- e. Evidence of rehabilitation.

Further, it is well established that municipal police departments may maintain records pertaining to juvenile arrests, provided that they are available only to other law enforcement and related agencies, because such records are necessary to the proper and effective functioning of a police department. *Dugan v. Police Department, City of Camden*, 112 N.J. Super. 482 (App. Div. 1970), cert. denied, 58 N.J. 436 (1971). Thus, the appellant's juvenile arrest records were properly disclosed to the appointing authority, a law enforcement agency, when requested for purposes of making a hiring decision. While an arrest is not an

admission of guilt, it may warrant removal of an eligible's name where the arrest adversely relates to the employment sought. *See In the Matter of Tracey Shimonis*, Docket No. A-3963-01T3 (App. Div. October 9, 2003).

Additionally, participation in the PTI Program is neither a conviction nor an acquittal. *See N.J.S.A. 2C:43-13(d)*. *See also Grill and Walsh v. City of Newark Police Department*, Docket No. A-6224-98T3 (App. Div. January 30, 2001); *In the Matter of Christopher J. Ritoch* (MSB, decided July 27, 1993). *N.J.S.A. 2C:43-13(d)* provides that upon completion of supervisory treatment, and with the consent of the prosecutor, the complaint, indictment or accusation against the participant may be dismissed with prejudice. In *Grill, supra*, the Appellate Division indicated that the PTI Program provides a channel to resolve a criminal charge without the risk of conviction; however, it has not been construed to constitute a favorable termination. Furthermore, while an arrest is not an admission of guilt, it may warrant removal of an eligible's name where the arrest adversely relates to the employment sought. Thus, the appellant's arrest and entry into the PTI program could still be properly considered in removing his or her name from the subject eligible list. *Compare In the Matter of Harold Cohrs* (MSB, decided May 5, 2004) (Removal of an eligible's name reversed due to length of time that had elapsed since his completion of his PTI).

Moreover, *N.J.A.C. 4A:4-4.7(a)1*, in conjunction with *N.J.A.C. 4A:4-6.1(a)6*, allows the Commission to remove an individual from an eligible list when he or she has made a false statement of any material fact or attempted any deception or fraud in any part of the selection or appointment process. *N.J.A.C. 4A:4-6.3(b)*, in conjunction with *N.J.A.C. 4A:4-4.7(d)*, provides that the appellant has the burden of proof to show by a preponderance of the evidence that an appointing authority's decision to remove his or her name from an eligible list was in error.

In this matter, a thorough review of the record indicates that the appellant's removal from the (S9988R) eligible list for Correction Officer Recruit is not warranted. With respect to the appellant's alleged unsatisfactory criminal history, in 2001, when the appellant was 12 years old, he was charged with 3<sup>rd</sup> degree 2C:20-7-Receiving Stolen Property. The appellant explains that his cousin, without his knowledge, broke into an office building and stole some CDs. When the police investigated the matter, his cousin said that he had given the CDs to him. This incident resulted in the appellant entering into a diversion agreement program where he was not to have any contact with his cousin and he was ordered to tour a jail. In other words, the appellant was involved in a minor offense when he was a 12 year old juvenile, and the incident was 12 years prior to the closing date. Further, this was an isolated event as the appellant has not had any criminal involvement with the police since the occurrence. Also, in reviewing his employment application, he has demonstrated rehabilitation as evidenced by his employment with a police department, working as an emergency medical

technician, and his service as a military veteran including deployment overseas. *See In the Matter of Richard A. Rizzolo*, Docket No. A-0589-03T5 (App. Div. December 8, 2004) (The Appellate Division upheld the restoration of an eligible to a Fire Fighter eligible list, based on significant evidence of rehabilitation since the appellant's arrests in 1989 and 1990. The Appellate Division specifically noted the appellant's successful completion of the Pre-Trial Intervention program after his 1990 arrest, his gainful employment since 1988, his marriage, his involvement in the community and the positive statement of his employer).

Further, the appointing authority requested the removal of the appellant's name from the subject eligible list for failing to disclose the charges on his employment application. In *In the Matter of Nicholas D'Alessio*, Docket No. A-3901-01T3 (App. Div. September 2, 2003), in falsification cases, the court noted that the primary inquiry in such a case is whether the candidate withheld information that was material to the position sought, not whether there was any intent to deceive on the part of the applicant. As stated above, the information omitted from the appellant's application, in and of itself, would not constitute sufficient cause to remove his name from the subject eligible list. Also, based on the submission from the appellant, it appears that he was not aware that he was formally charged with a juvenile offense. He explains that his parents had worked out an agreement to tour a jail as part of a Scared Straight Program, and to the best of his knowledge, he was not formally charged. Thus, the omission of this information did not amount to the falsification of a material fact from his application and did not support the removal of his name from the eligible list. *See In the Matter of Giuseppe Tubito* (CSC, decided April 9, 2014) (One time careless action of a nine year old that led to him being criminally charged did not reflect adversely on his character 20 years later to make him an unsuitable candidate for employment). *See also, In the Matter of Julio Rivera* (MSB, decided February 11, 2004) (Eligible name restored to list who neglected to disclose that he was suspended from school for two or three days when he was 12 years old), *In the Matter of Daniel Labazzo* (MSB, decided September 25, 2002); *In the Matter of Marlon Chiles* (MSB, decided September 6, 2006). The Commission is mindful of the high standards that are placed upon law enforcement candidates and personnel. The public expects Correction Officers to present a personal background that exhibits respect for the law and rules. *See Moorestown v. Armstrong*, 89 N.J. Super. 560 (App. Div. 1965), *cert. denied*, 47 N.J. 80 (1966). However, taking into consideration that the appellant's charge was an isolated minor incident that occurred in 2001 while a juvenile at age 12, and the totality of the evidence in the record, the appointing authority has not presented a sufficient basis to remove the appellant's name from the subject eligible list based on his criminal record or falsification of his application.

Accordingly, the appellant has met his burden of proof in this matter and the appointing authority has not shown sufficient justification for removing his name

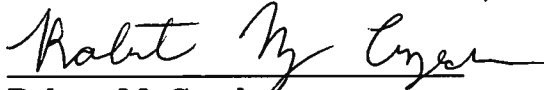
from the eligible list for Correction Officer Recruit (S9987M), Department of Corrections.

### ORDER

Therefore, it is ordered that this appeal be granted, and the appellant's name restored to the list for Correction Officer Recruit (S9987M), Department of Corrections, for prospective employment opportunities only.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 3<sup>rd</sup> DAY OF SEPTEMBER, 2014



Robert M. Czech  
Chairperson  
Civil Service Commission

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#### Attachments

c: Richard Thomas  
James Mulholland  
Kenneth Connolly

