



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE
ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Jeremy Mawhinney,
Sheriff's Officer (S9999R), Atlantic
County

CSC Docket No. 2016-1805

List Removal Appeal

ISSUED: NOV 30 2016
(CSM)

Jeremy Mawhinney appeals the removal of his name from the eligible list for Sheriff's Officer (S9999R), Atlantic County on the basis of an unsatisfactory background report.

The appellant's name appeared as a disabled veteran eligible on the subject list that expires on May 1, 2016. On March 17, 2015, the appellant's name was certified (OL150344) in the 1st position. In disposing of the certification, the appointing authority requested the removal of the appellant's name, contending that he had an unsatisfactory background report. Specifically, the appointing authority compared an application (dated June 19, 2014) the appellant had filed in response to a prior certification issued from the subject list (OL140724) to the application (dated April 29, 2015) he filed for the subject certification and found a number of inconsistencies between the two documents. It stated that the appellant did not disclose that he applied, withdrew or discontinued the selection process for certain other law enforcement agencies, nor did he disclose juvenile arrests, adult criminal activity, and violations of motor vehicle law on the first application, but disclosed these matters on his second application, and that these matters evidenced that he has an unsatisfactory background.

The appointing authority's investigation found that the appellant indicated on his first application that he never withdrew or was rejected from the selection process for any other law enforcement agency, but he did apply to and was rejected from several law enforcement organizations, such as the Maryland State Police, that pre-dated the June 19, 2014 application. With respect to his juvenile and adult

criminal record, the appellant failed to indicate on his first application but specified on his second application the following charges and violations: criminal mischief in 1999, simple assault in 2003, and possession of a weapon in 2003. simple assault (2 times) in 2005, theft of gas in 2005, receiving stolen property in 2005 for which he completed PTI, simple assault in 2006 and harassment in 2012. Additionally, the appellant did not indicate on his first application, but indicated on his second application the following motor vehicle charges and violations: failure to observe traffic device, unsafe operation of a vehicle, leaving the scene of an accident, going the wrong way down a one-way street in 2006 and two violations for unsafe operation of a vehicle in 2005.

On appeal to the Civil Service Commission (Commission), the appellant states that the appointing authority has not proven that the versions of what happened contained in the various police reports for the incidents in which he was involved are truthful. Rather, except for one simple assault charge that occurred in 2005, all of the charges against him were dismissed. The appellant also explains that the reason for the inconsistencies between his two applications to the Sheriff's Office was based on advice he received from the Police Sergeant who performed the background investigation for his employment as a Special Class 2, Police Officer with the North Wildwood Police Department in 2013. Specifically, the appellant claims that when that background investigation was being performed, the Police Sergeant questioned why he did not disclose any and all of the charges, arrests, expungements and traffic tickets he received on his application to North Wildwood. In response, the appellant stated that he indicated that he received advice from lawyers, Police Officers and personnel within the court system of Atlantic County not to list any of the issues since he had paperwork explaining the dismissal of all these issues. The appellant indicates that he was hired by North Wildwood and the Police Sergeant advised him that he would meet with him the next time he filled out an application for a law enforcement position. Thereafter, in 2014, he applied for the subject position with the appointing authority and he met with the Police Sergeant who had offered to assist him with his application. The appellant claims that the Police Sergeant told him that as a background investigator, he gets upset if an applicant discloses something that is not searchable or able to be located and questioned why anyone would put something down on an application that does not exist or cannot be located. The appellant also states this Police Sergeant told him that "all juvenile stuff gets erased as if it never happened" and to "consider it a free pass." As such, the appellant states that he followed this "advice," when he filled out the first application for Sheriff's Officer with the appointing authority, but ended up withdrawing his application because the Sheriff's Office told him he was going to be disqualified for failure to disclose his juvenile record, parole violations, and high school disciplinary records.

The appellant reiterates that all of the adult charges against him were dismissed and he was only found guilty of one juvenile charge. Further, he notes

that North Wildwood permitted him to work with a falsified application and he questions why the Sheriff's Office permitted him to withdraw his prior application only to permit him to file another one the next year. The appellant explains his version of events regarding his various encounters with law enforcement and contends that other individuals who work for the Sheriff's Office have two or more DUI/DWIs. The appellant also states that he called the other police departments to which he applied and was informed his application was no longer on file after a year. Therefore, he questions why he would indicate on an application that he applied for other law enforcement positions with different agencies who will only advise a background investigator that they have no record of him applying.

Although provided the opportunity, the appointing authority did not submit any additional information or argument for the Commission to review.

CONCLUSION

N.J.A.C. 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)9, allows the removal of an eligible's name from an eligible list for other sufficient reasons. Removal for other sufficient reasons includes, but is not limited to, a consideration that based on a candidate's background and recognizing the nature of the position at issue, a person should not be eligible for appointment.

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 eligible 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.

The presentation to an appointing authority of a pardon or expungement shall prohibit an appointing authority from rejecting an eligible based on such criminal conviction, except for law enforcement, firefighter or correction officer and other titles as determined by the Commission. It is noted that the Appellate Division of the Superior Court remanded the matter of a candidate's removal from a Police Officer eligible list to consider whether the candidate's arrest adversely related to the employment sought based on the criteria enumerated in *N.J.S.A.* 11A:4-11. See *Tharpe v. City of Newark Police Department*, 261 *N.J. Super.* 401 (App. Div. 1992).

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 municipal police department, when requested for purposes of making a hiring decision. However, N.J.S.A. 2A:4A-48 provides that a conviction for juvenile delinquency does not give rise to any disability or legal disadvantage that a conviction of a "crime" engenders. Accordingly, the disability arising under N.J.A.C. 4A:4-4.7(a)4 as a result of having a criminal conviction has no applicability in the instant appeal. However, it is noted that although it is clear that the appellant was never convicted of a crime, he has been arrested on several occasions. 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). As such, the appellant's explanation that the Police Sergeant in North Wildwood advised him not to indicate his juvenile arrests on his application for another law enforcement position is dubious.

In the matter at hand, the record evidences that the appellant has been arrested or has had multiple adverse contacts with law enforcement either as a juvenile or an adult from 1999 to 2012. Although the appellant attempts to explain his version of the various incidents and claims that he was only found guilty of simple assault when he was a minor, he neglects the fact that he was also charged in 2005 for receiving stolen property for which he received PTI. 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, as stated earlier, even as an adult, 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 name from the subject eligible list. Compare, *In the Matter of Harold Cohrs* (MSB, decided May 5, 2004).

The Commission notes that Sheriff's Officers are law enforcement employees, who, like municipal Police Officers, hold highly visible and sensitive positions within the community, and the standard for an applicant includes good character

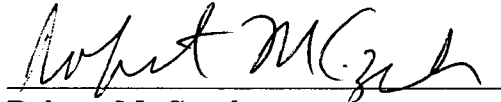
and an image of utmost confidence and trust. *See Moorestown v. Armstrong*, 89 N.J. Super. 560 (App. Div. 1965), *cert. denied*, 47 N.J. 80 (1966). The public expects Sheriff's Officers to present a personal background that exhibits respect for the law and the rules. In this case, even after completing the PTI program, he had additional adverse encounters with law enforcement in 2006 and another contact in 2012, only three years prior to the list being certified. The appellant's multiple adverse encounters with law enforcement going as far back as 1999, as well as the numerous inconsistencies between the two different applications he submitted to the appointing authority, are indicative of his exercise of poor judgment, which is not conducive to the performance of duties of a Sheriff's Officer. Accordingly, given the totality of the circumstances, the appointing authority has presented sufficient cause to remove the appellant's name from the subject list eligible list.

ORDER

Therefore, it is ordered that this appeal be denied.

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 23RD DAY OF NOVEMBER, 2016



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