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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Conor Jeffery,
Correction Officer Recruit (S9988T),
Department of Corrections

List Removal Appeal

CSC Docket No. 2017-974

ISSUED: APR 21 2017 (HS)

Conor Jeffery, represented by Leonard C. Schiro, Esq., appeals the removal of his name from the eligible list for Correction Officer Recruit (S9988T), Department of Corrections, on the basis of an unsatisfactory criminal record.

The appellant, a non-veteran, took and passed the open competitive examination for Correction Officer Recruit (S9988T), which had a closing date of January 8, 2015. The resulting eligible list promulgated on July 23, 2015 and expires on July 22, 2017. The appointing authority requested the removal of the appellant's name due to an unsatisfactory criminal record. Specifically, the appointing authority asserted that the appellant was charged with simple assault in violation of *N.J.S.A. 2C:12-1A* on November 9, 2010 and underage consumption in violation of *N.J.S.A. 2C:33-15* on November 3, 2014. The simple assault charge was disposed by a juvenile referee through a 12-month deferred disposition. The underage consumption charge was amended to a charge of violating a municipal ordinance for public peace and good order, to which the appellant pled guilty.

On appeal to the Civil Service Commission (Commission), the appellant argues that neither offense warrants removal when considered in its totality. He states that the assault charge stemmed from an incident in elementary school at the age of 14. Both the appellant and the other child involved were found culpable by the juvenile referee. There was no permanent damage, and there has been no allegation of violence before or since this isolated incident. The appellant further states that the second incident, which took place in 2014, was at a Giants football game in East Rutherford, New Jersey, wherein he was alleged to have been

observed with a cup of beer at a parking lot tailgate before the game. He pled guilty to a violation of public peace and good order, which is simply a municipal ordinance violation in East Rutherford.

In response, the appointing authority argues that it is entitled to hold juvenile records against candidates for Correction Officer Recruit. Such records, including entrance into a juvenile diversion program, can still provide a disability to the candidate during preemployment processing. The appointing authority also notes that on his application, the appellant stated, "I was stopped by an alcohol compliance officer while holding a cup of beer." At the time of this incident, the appellant was 18 years old and under the legal age to consume alcohol. The appointing authority states that the appellant's charges in 2010 and 2014 were not isolated events, and the last offense took place a short period of time before the examination. Although all charges have been dismissed, the appointing authority maintains that the appellant has demonstrated a history of behavior in his personal life that is inconsistent with the standards expected of a law enforcement officer.

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 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, correction officer, juvenile detention officer, firefighter or judiciary titles and other titles as the Chairperson of the Commission or designee may determine. Additionally, pursuant to *N.J.S.A. 11A:4-10*, an appointing authority may only question an eligible for a law enforcement, firefighter or correction officer title as to any arrest. 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).

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). 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. However, the Commission can consider the circumstances surrounding an eligible's arrests, the fact that the eligible was involved in such activities and whether they reflect upon the eligible's character and the eligible's ability to perform the duties of the position at issue. See *In the Matter of Tracey Shimonis*, Docket No. A-3963-01T3 (App. Div. October 9, 2003). 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.

Additionally, participation in a Pre-Trial Intervention (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, an eligible's arrest and entry into a juvenile diversionary program, which is similar to the PTI Program, could still be properly considered in removing the eligible's name from an 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).

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 Commission to remove 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.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 the appellant's name from an eligible list was in error.

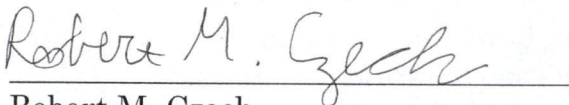
While the Commission is mindful of the high standards that are placed upon law enforcement candidates and personnel, a review of the record in this matter indicates that the appellant's removal from the subject eligible list is unwarranted. In this regard, the record reflects that the appellant was a juvenile of only 14 years at the time of the first incident, and more than four years elapsed between that incident and the examination closing date. The second incident resulted in a charge of violating a municipal ordinance, a very minor offense. Accordingly, based on the totality of the evidence in the record, it is appropriate to restore the appellant's name to the subject eligible list.

ORDER

Therefore, it is ordered that this appeal be granted and the appellant's name be restored to the eligible list for Correction Officer Recruit (S9988T), 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 19TH DAY OF APRIL, 2017



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