



STATE OF NEW JERSEY

In the Matter of Santiago
Barreneche, Correctional Police
Officer (S9999U), Department of
Corrections

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

CSC Docket No. 2019-1690

List Removal Appeal

ISSUED: JUNE 14, 2019 (JET)

Santiago Barreneche appeals the removal of his name from the Correctional Police Officer (S9999U), Department of Corrections, eligible list, based on an unsatisfactory criminal record.

The appellant took the open competitive examination for Correctional Police Officer (S9999U), achieved a passing score, and was ranked on the subsequent eligible list. The appellant’s name was certified on May 4, 2018. 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. Specifically, the appointing authority asserted that on August 18, 2005, the appellant was charged as a 12-year-old juvenile with Theft by Unlawful Taking (4th degree) in violation of *N.J.S.A. 2C:20-3* (dismissed), which was disposed of by a diversionary program that the appellant completed.

On appeal to the Civil Service Commission (Commission), the appellant asserts, among other things, that he completed a diversionary program and the charges against him were dismissed.

In response, the appointing authority maintains that the appellant’s name should be removed from the eligible list due to an unsatisfactory criminal record. Specifically, the appointing authority asserts that, although the appellant completed a diversionary program and the charges against him were dismissed, it has the authority to remove candidates who have been convicted of any offense which is a 4th degree crime or higher, including juvenile offenses. The appointing

authority adds that the appellant was aware of the removal criteria as he signed the employment application which indicates such information. Moreover, the appointing authority asserts that its goals are to select candidates who exhibit respect for the law in order to effectively manage the day-to-day operations of a prison system.

CONCLUSION

N.J.S.A. 11A:4-11, in conjunction with *N.J.A.C.* 4A:4-4.7(a)4, provides 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. In addition, when the eligible is a candidate for a public safety title, an arrest unsupported by a conviction may disqualify the candidate from obtaining the employment sought. See *Tharpe, v. City of Newark Police Department*, 261 *N.J. Super.* 401 (App. Div. 1992). In this regard, the Commission must look to the criteria established in *N.J.S.A.* 11A:4-11 and *N.J.A.C.* 4A:4-4.7(a)4 to determine whether the appellant's criminal history adversely relate to the position of Correctional Police Officer. 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 employment 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, supra*. In *In the Matter of J.B.*, 386 *N.J. Super.* 512 (App. Div. 2006), the Appellate Division remanded a list removal appeal to the former Merit System Board (Board) for further consideration of the impact of the appellant's expunged arrest on his suitability for a position as a Police Officer. Noting that the Board relied heavily on the lack of evidence of rehabilitation since the time of arrest, the Appellate Division found that "[t]he equivalent of 'evidence of rehabilitation' is supplied in these circumstances by the foundation for an expungement. See *N.J.S.A.* 2C:52-3 and *N.J.S.A.* 2C:52-8.

Further, it is well established that municipal police departments may maintain record 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.

Moreover, pursuant to N.J.S.A. 2C:36A-1, under a Conditional Discharge, termination of supervisory treatment and dismissal of the charges shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of disqualifications or disabilities, if any, imposed by law upon conviction of a crime or disorderly person offense but shall be reported by the clerk of the court to the State Bureau of Identification criminal history record information files. *See State v. Marzolf*, 79 N.J. 167 (1979) (Drug offense which has resulted in supervision and discharge was part of the defendant’s personal history to be revealed for purposes of sentencing for subsequent drug offenses, but such record was not to be given the weight of a criminal conviction). Thus, the appellant’s arrest and Conditional Discharge could still properly be considered in removing his name from the subject eligible list.

In this matter, a review of the record reflects that the appointing authority’s request to remove the appellant was not justified. The appellant argues that he was a juvenile at the time of the 2005 incident and the charges against him were dismissed. Although the appointing authority can properly consider the juvenile charges in this matter, the incident occurred in 2005, which is 13 years prior to when his name was certified on the subject list and 11 years prior to when he applied for the subject examination. Additionally, the appellant is now an adult and he has not been involved in any other disqualifying incidents since that time. As such, since the incident occurred 11 years prior to when he applied for the subject examination, in the absence of any evidence to the contrary, enough time has now passed to consider that the appellant has been rehabilitated. Moreover, a review of the appellant’s employment application reveals evidence of rehabilitation, as he listed several of his employers on the application and there is no evidence that he was terminated from any of those jobs. He also lists several personal references on his employment application. Other than the 2005 incident, the appointing

authority did not provide any other information to show that the appellant's name should be removed from the list. Given the facts and under these circumstances, the Commission finds that the appellant's name should be restored to the list. Therefore, there is sufficient justification for restoring the appellant's name to the Correctional Police Officer (S9999U), Department of Corrections eligible list.

One final comment is warranted. The appointing authority appears to be relying upon its own standards in determining whether to remove candidates from an eligible list. The Commission is not bound in any way by these standards. Rather, the Commission reviews each matter based on the particular facts and circumstances presented to determine whether the standards found in *N.J.A.C. 4A:4-4.7(a)* are met.

ORDER

Therefore, it is ordered that this appeal be granted and the appellant be considered 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 6th DAY OF JUNE, 2019



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