



STATE OF NEW JERSEY

In the Matter of Terence Teel,
Correctional Police Officer (S9988T),
Department of Corrections

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

CSC Docket No. 2019-1451

List Removal Appeal

ISSUED: JUNE 14, 2019 (JET)

Terence Teel appeals the removal of her name from the Correctional Police Officer (S9988T), Department of Corrections, eligible list based on an unsatisfactory criminal record.

The appellant took the open competitive examination for Correctional Police Officer (S9988T),¹ achieved a passing score, and was ranked on the subsequent eligible list. The appellant’s name was certified on October 13, 2016. 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 April 5, 2008, the appellant was charged with Shoplifting – Under-Ringing in violation of *N.J.S.A. 2C:20-11B(5)*. The appellant pled guilty, was sentenced to 10 days in jail (suspended), one-year probation, and ordered to pay \$3,500 in restitution. It is noted that the appellant indicated on his employment application that he completed a Pre-Trial Intervention (PTI) program.

On appeal to the Civil Service Commission (Commission), the appellant asserts, among other things, that the incident occurred more than seven years ago and he provided information pertaining to the Shoplifting charges at the time of pre-employment processing. Moreover, he questions why he is being removed from the list since he completed phase three of pre-employment processing.

¹ It is noted that the Correctional Police Officer (S9988T), Department of Corrections eligible list promulgated on July 23, 2015 and expired on July 22, 2017.

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 in response to the questions on the employment application, the appellant admitted that he was charged with Shoplifting – Under-Ringing and pled guilty. The appointing authority explains that the appellant indicated on the employment application that the incident occurred while he was employed at J.C. Penney's, and he was subsequently terminated from employment as a result of the incident. In addition, the appointing authority states that every candidate is subjected to a four-phase pre-employment process, and based on the appellant's background, it was at the appointing authority's discretion to remove him from the list. 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.

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) (Merit System Board reversed removal of an eligible's name due to length of time that had elapsed since his completion of his PTI). 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 appellant was charged with Shoplifting- Under-Ringing in violation of *N.J.S.A.* 2C:20-11B(5), to which he pled guilty, was sentenced to 10 days in jail (suspended), one-year probation, and ordered to pay \$3,500 in restitution. Although the appellant argues that the incident occurred in April 2008, he has not explained his involvement with the incident or provided any evidence of his rehabilitation. It cannot be ignored that

the appellant was arrested only seven years prior to when he applied for the subject examination, and his name was certified a year and two months after he applied for the subject examination. As such, not enough time has elapsed to show that he has been rehabilitated. Additionally, the employment application clearly notified candidates that their names could be removed as a result of an unsatisfactory criminal record. Moreover, the appellant's participation in pre-employment processing did not guarantee that he would be appointed as a Correctional Police Officer. Rather, the appointing authority utilizes pre-employment processing in part to assist it in determining which candidates will be appointed and which will be removed. The Commission is ever mindful of the high standards that are placed upon law enforcement candidates and personnel. The public expects Correctional Police Officers to present a personal background that exhibits respect for the law and rules. In this regard, it is recognized that a Correctional Police Officer is a law enforcement employee who must help keep order in the State prisons and promote adherence to the law. State Correctional Police Officers, 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). See also *In re Phillips*, 117 N.J. 567 (1990). Accordingly, the appointing authority has presented sufficient cause to remove his name from the eligible list for Correctional Police Officer (S9988T). However, the removal in this matter does not prevent the appellant from applying for any similar positions in the future, as the further passage of time may be sufficient to show that he has been rehabilitated.

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 12th DAY OF JUNE, 2019



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