



STATE OF NEW JERSEY

In the Matter of Damion Dolphy,
Correctional Police Officer (S9999U),
Department of Corrections

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

CSC Docket No. 2020-184

List Removal Appeal

ISSUED: FEBRUARY 14, 2020 (JET)

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

The appellant took the open competitive examination for Correctional Police Officer (S9999U),¹ achieved a passing score, and was ranked on the subsequent eligible list. The appellant’s name was certified on October 16, 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 in Palisades Interstate Park on August 1, 2005, the appellant was charged with Possession of a Controlled Dangerous Substance (CDS) - Marijuana - less than 50 grams in violation of *N.J.S.A. 2C:35-10A(4)*, for which he was found guilty, sentenced to one year of probation, and 10 days confinement at Bergen County Jail.

On appeal to the Civil Service Commission (Commission), the appellant explains that the documentation provided by the appointing authority pertaining to the 2005 incident is incorrect. The appellant asserts that the 2005 incident only involved one rolled marijuana cigarette that weighed less than one gram. In addition, the appellant contends that the appointing authority incorrectly indicates that he was sentenced to 10 days in jail. In this regard, the appellant states that the 10 day jail sentence was suspended at the time he was placed on one year of

¹ It is noted that the S9999U list expired on March 30, 2019.

probation. The appellant adds that he completed probation without any violations and was authorized to end the term earlier than expected. The appellant adds that he was a young man at the time of the 2005 incident and he continues to pursue a career in law enforcement. Moreover, the appellant asserts that he used to have the wrong friends, has learned from his experiences and has matured since the 2005 incident. In support, the appellant provides a March 7, 2006 Municipal Court Order from Bergen County indicating that he was placed on one year of probation and the 10 day jail sentence was suspended.

In response, the appointing authority asserts that, although the documentation provided by the appellant on appeal shows that the 10 day jail sentence was suspended, it maintains that the appellant was properly removed as he was found guilty of the 2005 charge. The appointing authority explains that law enforcement candidates must be able to follow the rules in order to ensure a safe and secure environment, and the appellant's background is inconsistent with those standards. 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 Correction Officer Recruit. 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*.

Additionally, *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 an appointment.

In this matter, the record indicates that the appellant was found guilty in 2005 of possession of less than 50 grams of marijuana. The appointing authority argues that its pre-employment processing criteria requires it to remove the appellant based on his background. However, the appellant states that he has learned from his experiences and explains that he has not been charged with any other infractions since 2005. The Commission is not bound by criteria utilized by the appointing authority and must decide each list removal on the basis of the record presented. See *In the Matter of Victor Rodriguez* (MSB, decided July 27, 2005). See also, *In the Matter of Debra Dygon* (MSB, decided May 23, 2000). In this matter, the record reflects that the last incident occurred 15 years ago, and the appellant has not been involved with any further infractions since 2005. As such, the incident was an isolated event, and, given his otherwise clean criminal record, sufficient time has elapsed to show that the appellant has been rehabilitated. Accordingly, under the circumstances, the appointing authority has not demonstrated that the appellant's background constitutes sufficient cause to remove his name from the subject eligible list.

ORDER

Therefore, it is ordered that this appeal be granted and the list for Correctional Police Officer (S9999U), Department of Corrections, be revived in order for the appellant to be considered for appointment at the time of the next certification 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 12th DAY OF FEBRUARY, 2020



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher Myers
Director
Division of Appeals
& Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: Damion Dolphy
Veronica Tingle
Elizabeth Whitlock
Kelly Glenn