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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Gregory Zalnieratis,  
Correction Officer Recruit (S9988R),  
Department of Corrections

List Removal Appeal

CSC Docket No. 2015-1908

ISSUED: **AUG 03 2015** (HS)

Gregory Zalnieratis appeals the attached decision of the Division of Classification and Personnel Management<sup>1</sup> (CPM), which found that the appointing authority had presented a sufficient basis to remove the appellant's name from the Correction Officer Recruit (S9988R), Department of Corrections eligible list on the basis of an unsatisfactory criminal record.

The appellant took the open competitive examination for Correction Officer Recruit (S9988R), which had a closing date of January 2013, achieved a passing score and was ranked as a non-veteran on the subsequent eligible list. The eligible list promulgated on May 23, 2013 and expired July 3, 2015.<sup>2</sup> The appellant's name was certified to the appointing authority on May 23, 2013. In disposing of the certification, the appointing authority requested the removal of the appellant's name due to an unsatisfactory criminal record. Specifically, the appointing authority asserted that on March 9, 2007, the appellant was charged with theft by unlawful taking in violation of *N.J.S.A. 2C:20-3*. The appointing authority also asserted that on April 21, 2007, the appellant was charged with criminal mischief in violation of *N.J.S.A. 2C:17-3b(2)* and defiant trespasser in violation of *N.J.S.A. 2C:18-3b*. All three charges were diverted through the Juvenile Conference Committee (JCC) and ultimately dismissed. The theft by unlawful taking charge was dismissed on April 13, 2007, and the criminal mischief and defiant trespasser

<sup>1</sup> Now the Division of Agency Services.

<sup>2</sup> In *In the Matter of Correction Officer Recruit (S9988R)* (CSC, decided June 3, 2015), the Civil Service Commission revived and extended the eligible list until a new list became available.

charges were dismissed on May 9, 2007. In support, it submitted portions of the appellant's preemployment application<sup>3</sup> and documentation from the Family Automated Case Tracking System. The appellant appealed to CPM. CPM found that the appointing authority had sufficiently documented and supported its request to remove the appellant's name from the subject eligible list.

On appeal to the Civil Service Commission (Commission), the appellant states that he was not convicted or charged with a criminal offense. Rather, as a juvenile, he was interviewed in front of a committee based on a complaint that had been made, and as a result, he was not convicted or charged with a criminal offense. The appellant argues that *N.J.A.C. 4A:4-4.7* states that one must have a conviction or a criminal record, neither of which he has, in order to be removed from an eligible list, and therefore, his removal from the subject eligible list was in error. Finally, the appellant states that he has earned a bachelor's degree in Criminal Justice with a 3.8 GPA through hard work and argues that he is being held back from his dream of working in law enforcement. In support, the appellant submits the JCC's criteria for dismissal of complaints. He also submits the JCC reports, which indicate that the theft by unlawful taking charge was dismissed after the appellant fulfilled his obligations as set by the JCC and that the criminal mischief and defiant trespasser charges were dismissed with a lecture.

In response, the appointing authority states that it considers how close in time to the application date the criminal incidents occurred. In the instant matter, it maintains that the appellant was charged in 2007 with theft by unlawful taking, defiant trespasser and criminal mischief, and he applied for the subject examination by the closing date of January 14, 2013. The appointing authority also asserts that the appellant's juvenile record was not expunged and that the charges were only dismissed in 2007, approximately six years before he filed his application. Citing *N.J.S.A. 2A:4A-60(a)(12)*, the appointing authority argues that as a recognized law enforcement agency, it is permitted to review and use juvenile records to assess a candidate's suitability for employment. It contends that a juvenile or adult criminal record, whether sealed or expunged, will still provide a disability to a candidate seeking any type of position as a law enforcement officer. It also argues that under

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<sup>3</sup> On his application, the appellant explained the circumstances surrounding the charges. Regarding the theft by unlawful taking charge, the appellant explained that at age 15, he and his friends passed by a sign company with a junkyard of old signs and saw a picnic table at the back of the junkyard. Believing that the table was garbage, the appellant and his friends took the table. Regarding the criminal mischief and defiant trespasser charges, the appellant explained that two of his friends decided to spray-paint the foundation of a wall behind a store. The appellant met his friends after they had spray-painted the wall. Witnesses observed one of the appellant's friends spray-painting but also observed the appellant later walking past the wall with his friends. The appellant was called to the police department for questioning, and both of his friends stated that the appellant was not present when the wall was spray-painted. On his application, the appellant also noted his graduation from high school, attainment of a bachelor's degree and employment at a nursing home (October 2009 to March 2012), hospital (since March 2012) and post office (since July 2014).

its own criteria for removal from the hiring process, a candidate who has participated in a juvenile diversion program is automatically disqualified from consideration. In the appellant's case, the appointing authority avers that his juvenile violation of the law clearly relates to the employment sought and thus, he is not a suitable candidate.

## CONCLUSION

Initially, although the appointing authority indicated that the appellant was removed consistent with its own criteria for removal from the hiring process, the Commission emphasizes that it must decide each list removal appeal on the basis of the record presented and is not bound by the criteria utilized by the appointing authority. *See, e.g., In the Matter of Debra Dygon* (MSB, decided May 23, 2000).

*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 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, an eligible's arrests and entries into juvenile diversionary programs, which are 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. The record reflects that when the appellant was only 15 years old, he was charged with theft by unlawful taking, criminal mischief and defiant trespasser. Regarding the theft by unlawful taking charge, the appellant explained on his preemployment

application that he and his friends took a picnic table from a junkyard believing that the table was garbage. Regarding the criminal mischief and defiant trespasser charges, the appellant explained that his friends spray-painted the wall of a store. Although the appellant was observed walking past the wall, it does not appear that the appellant was directly involved in the spray-painting. Thus, the appellant's actions during each incident do not appear to have been serious. While it is true that the appellant's charges in 2007 involve two separate incidents, the incidents took place only about six weeks apart and all charges were dismissed in 2007 with the criminal mischief and defiant trespasser charges being dismissed with a lecture. Moreover, the appellant has demonstrated rehabilitation as evidenced by his graduation from high school, attainment of a bachelor's degree and employment with a nursing home (October 2009 to March 2012), hospital (since March 2012) and post office (since July 2014). Accordingly, the appellant has met his burden of proof, and the appointing authority has not shown sufficient justification for removing his name from the eligible list for Correction Officer Recruit (S9988R), Department of Corrections.

### ORDER

Therefore, it is ordered that this appeal be granted, the eligible list for Correction Officer Recruit (S9988R), Department of Corrections be revived and the appellant's name be certified 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 29<sup>TH</sup> DAY OF JULY, 2015

A handwritten signature in cursive script, reading "Robert M. Czech", is written over a horizontal line.

Robert M. Czech  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Henry Maurer  
Director  
Division of Appeals and Regulatory Affairs  
Written Record Appeals Unit  
Civil Service Commission  
P.O. Box 312  
Trenton, NJ 08625-0312

Attachment

- c. Gregory Zalnieratis  
James Mulholland  
Kenneth Connolly



Chris Christie  
Governor  
Kim Guadagno  
Lt. Governor

STATE OF NEW JERSEY  
CIVIL SERVICE COMMISSION  
DIVISION OF CLASSIFICATION & PERSONNEL MANAGEMENT  
P. O. Box 313  
Trenton, New Jersey 08625-0313

Robert M. Czech  
Chair/Chief Executive Officer

December 19, 2014

Gregory Zalnieratis

**Title:** Correction Officer Recruit  
**Symbol:** S9988R  
**Jurisdiction:** Department of Corrections  
**Certification Number:** JU13D01  
**Certification Date:** 05/23/13

**Initial Determination:** Removal – Unsatisfactory Criminal Record

This is in response to your correspondence contesting the removal of your name from the above-referenced eligible list.

The Appointing Authority requested removal of your name in accordance with *N.J.A.C. 4A:4-4.7(4)*, which permits the removal of an eligible candidate's name from the eligible list if the eligible has a criminal record which adversely relates to the employment sought.

After a thorough review of our records and all the relevant material submitted, we find that there is not a sufficient basis to restore your name to the eligible list. Therefore, the Appointing Authority's request to remove your name has been sustained and your appeal is denied.

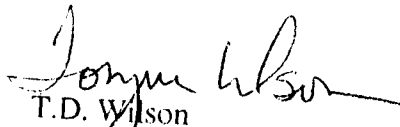
Please be advised that in accordance with Civil Service Rules, you may appeal this decision to the Division of Appeals & Regulatory Affairs (DARA) within 20 days of the receipt of this letter. You must submit all proofs, arguments and issues which you plan to use to substantiate the issues raised in your appeal. Please submit a copy of this determination with your appeal to DARA. You must put all parties of interest on notice of your appeal and provide them with copies of all documents submitted for consideration.

Please be advised that pursuant to P.L. 2010, c.26, effective July 1, 2010, there shall be a \$20 fee for appeals. Please include the required \$20 fee with your appeal. Payment must be made by check or money order only, payable to the NJ CSC. Persons receiving public assistance pursuant to P.L. 1947, c. 156 (C.44:8-107 et seq.), P.L. 1973, c.256 (C.44:7-85 et seq.), or P.L. 1997, c.38 (C.44:10-55 et seq.) and individuals with established veterans preference as defined by N.J.S.A. 11A:5-1 et seq. are exempt from these fees.

Address all appeals to:

Henry Maurer, Director  
Appeals & Regulatory Affairs  
Written Record Appeals Unit  
PO Box 312  
Trenton, NJ 08625-0312

Sincerely,

  
T.D. Wilson  
Human Resource Consultant  
State Certification Unit

For Joe M. Hill Jr. Assistant Director  
Division of Classification & Personnel Management

C James J. Mulholland, Director  
File