



B-7

STATE OF NEW JERSEY

In the Matter of Donald Zephir,
Correction Officer Recruit (S9988T),
Department of Corrections

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2016-3821

List Removal Appeal

ISSUED: FEB 24 2017 (JET)

Donald Zephir, represented by Jennifer Meyer-Mahoney, Esq., appeals the removal of his name from the Correction Officer Recruit (S9988T), Department of Corrections eligible list on the basis of an unsatisfactory background report.

The appellant took the open competitive examination for Correction Officer Recruit (S9988T), achieved a passing score, and was ranked on the subsequent eligible list. The appellant's name was certified on July 22, 2015. 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 background report. Specifically, the appointing authority asserted that on July 28, 2010 in Hamilton Township, the appellant was charged with Criminal Trespass (4th degree) in violation of *N.J.S.A. 2C:18-3A*. The appellant was found guilty, was sentenced to six months deferred disposition, community service, and restricted association. He was also charged with Theft by Unlawful Taking in violation of *N.J.S.A. 2C:20-3* on July 28, 2010 (dismissed). On October 31, 2010 in Hamilton Township, the appellant was charged with Harassment in violation of *N.J.S.A. 2C:33-4A* (dismissed). It is noted that, on February 10, 2011, a no contact order was put in place which was later dismissed.

On appeal to the Civil Service Commission (Commission), the appellant asserts that when he was 17 years old, he was involved with the wrong friends, and after he had left his job around midnight on July 28, 2010, he joined those friends who had spent the evening breaking into cars and houses. He explains that the Hamilton Police were called and he and his friends were searched and charged with

Theft by Unlawful Taking and Criminal Trespass. The appellant states that his mother persuaded him into talking to the prosecutor and accepting a plea bargain, and it is possible that he would not have been charged if he had hired an attorney at the time. As such, he pleaded guilty to the Criminal Trespass charge and completed probation and community service. Further, the appellant contends that, on October 31, 2010, he was involved in an argument with an ex-girlfriend and a summons for harassment was issued against him when she reported the incident to the School Resource Officer. The appellant adds that the prosecutor did not find probable cause and the charges were dismissed. In addition, the appellant states that juvenile offenses are treated differently from adult offenses, since juveniles do not possess the same capacity to make well-reasoned decisions. The appellant adds that his involvement in the criminal behavior was due to peer pressure, and he no longer involves himself with those friends. As such, he should not now be penalized for his past behavior that occurred when he was a juvenile. Moreover, the appellant maintains that he wants to pursue a career as a Correction Officer and he has been involved in no other incidents since 2010. In support, the appellant provides a letter of recommendation from Vincent B. Wojciechowicz, Director, Education & Health Centers of America.

In response, the appointing authority asserts that the appellant's juvenile offenses provide a sufficient basis to remove his name from the list. The appointing authority adds that it may review juvenile records at its discretion and remove candidates that possess unsatisfactory background histories. In addition, the appointing authority contends that pages 3 and 4 of the employment application notifies all applicants that they can be removed from the list based on an unsatisfactory juvenile record. As such, the appellant's 2010 arrests prevent him from moving forward in the hiring process. Moreover, the appointing authority states that, in order to effectively management the day-to-day operations of a prison system, its goals and objectives include hiring candidates who exhibit respect for the law.

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*.

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). Thus, the appellant's juvenile arrest records were properly disclosed to the appointing authority, when requested for purposes of making a hiring decision. 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. See *In the Matter of Tracey Shimonis*, Docket No. A-3963-01T3 (App. Div. October 9, 2003).

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, it is clear that the appellant's juvenile offenses adversely relate to the employment sought. The record indicates that the appellant was arrested as a juvenile in 2010. Although the appellant has provided some information to show that he has been rehabilitated, and explains that he was involved with the wrong friends and has not been charged with any other incidents since that time, such explanations are not sufficient to explain his involvement in the incidents. It cannot be ignored that the last incident occurred only five years prior to the date his name was certified on the list. As such, not enough time has

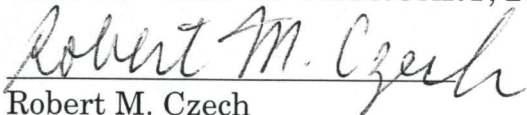
elapsed to show that he has been rehabilitated. Additionally, the employment application clearly notified candidates that their names could be removed as a result of an unsatisfactory juvenile record. The Commission is ever mindful of the high standards that are placed upon law enforcement candidates and personnel. The public expects Correction Officers to present a personal background that exhibits respect for the law and rules. In this regard, it is recognized that a State Correction Officer is a law enforcement employee who must help keep order in the State prisons and promote adherence to the law. State Correction 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 Correction Officer Recruit (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 22nd DAY OF FEBRUARY, 2017



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Chairperson

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