



STATE OF NEW JERSEY

In the Matter of James L. Taylor,
Correctional Police Officer (S9988T),
Department of Corrections

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

CSC Docket No. 2017-4030

List Removal Appeal

ISSUED: November 21, 2018 (BS)

James L. Taylor appeals his removal from the eligible list for Correctional Police Officer¹ (S9988T), Department of Corrections on the basis of having an unsatisfactory criminal record and falsification of the pre-employment application.

The subject list promulgated on July 23, 2015 containing the names of 7,790 qualified candidates and expired on July 22, 2017. The appointing authority requested the removal of the petitioner’s name from the Correctional Police Officer (S9988T) list due to an unsatisfactory criminal record and falsification of his application. Specifically, the appellant was found guilty of 4th degree firearms/weapons in an educational institution charge in 2003. The appellant was sentenced to six months of probation, 15 hours of community service, and also received a six-month deferred disposition to be monitored by probation. In addition, the appellant failed to disclose on his application that he was charged with possession of a CDS (less than 50 grams of marijuana and 5 grams of hashish) in 2004 as required.

On appeal, the appellant argues that the Civil Service Commission (Commission), in a previous decision, concluded that neither matter rose to the level of having his name removed from the Correction Officer Recruit (S9987M) list. *See In the Matter of James Taylor, Correction Officer Recruit (S9987M), Department of*

¹ Pursuant to *N.J.S.A.* 11A:2-11.1, effective May 1, 2018, the title of Correction Officer Recruit has been retitled Correctional Police Officer.

Corrections (CSC, decided February 12, 2014). In this regard, he states that due to this previous decision, he believed that his 4th degree conviction would not be a factor in determining his suitability for appointment. Additionally, the appellant also believed there was no need for him to disclose the CDS incident on the subject application because it was mentioned in the Commission's prior decision. He provides a copy of his Juvenile Order of Disposition, dated June 15, 2017, indicating that he has met the obligations of deferred disposition for both of his charges. In support of his appeal, the appellant provides character references from Nooge Hartsfield, Professor, Berkeley College, and Melanie Turner, Resource Specialist, Department of Children and Families.

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 of a pardon or an expungement shall prohibit removal from a list, 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. *See N.J.A.C.* 4A:4-4.7(a)4ii; *see also, N.J.S.A.* 2C:52-27(c). *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 his or her name from an eligible list was in error.

N.J.A.C. 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)6, allows the removal of an eligible's name from an employment list when he or she has made a false statement of any material fact or attempted any deception or fraud in any part

of the selection or appointment process. *N.J.A.C.* 4A:4-6.3(b) states in pertinent part that the appellant has the burden of proof in appeals other than medical or psychological disqualification appeals.

In the instant matter, the record reflects that the appellant was arrested and charged with fourth degree possession of a weapon when he was a juvenile. In this regard, 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). However, *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. Accordingly, the disability arising under *N.J.A.C.* 4A:4-4.7(a)4 as a result of having a criminal conviction has no applicability in the instant appeal.

Nonetheless, the appellant’s juvenile offense may be considered among the “other sufficient reasons” to remove him from the subject eligible list if the offense adversely relates to the employment sought. *See e.g., In the Matter of Tracey Shimonis*, Docket No. A-3963-01T3 (App. Div. October 9, 2003). *N.J.A.C.* 4A:4-4.7(a)1 recognizes that an eligible may be removed from an eligible list for any of the causes listed in *N.J.A.C.* 4A:4-6.1 for denying eligibility or appointment, including other sufficient reasons. In this regard, it is recognized that a Correctional Police Officer is a law enforcement employee who must help keep order in the prisons and promote adherence to the law. Correction 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). The public expects Correction Police Officers to present a personal background that exhibits respect for the law and rules.

In the appellant’s case, it appears that, while the charge is a serious offense, the incident was an isolated event, which occurred more than ten years prior to the certification of his name from the subject eligible list. Further, it must be emphasized that the appellant was only 15 years old at the time and the charge was dismissed once he completed six months of probation and 15 hours of community service.

However, the appellant has not asserted that he listed his 2004 possession charge on his application for S9988T. Rather, he only asserts that it was referenced in the prior Commission decision, that there was no disposition of the matter when he filed his application, and that there is no indication of the incident in his

criminal record. Each employment application an individual files requires the applicant to list all such incidents, regardless if was included on a prior application. This is necessary in order for an appointing authority to properly assess the background of each applicant. As such, an applicant must be held accountable for the accuracy of the information submitted on an application for employment and risks omitting or forgetting any information at his or her peril. *See In the Matter of Curtis D. Brown* (MSB, decided September 5, 1991). The Commission notes that its prior decision only referred the appellant's standing the S9987M list and had no bearing on what he was required to disclose on his subsequent application for the S9988T list. The instructions for completing the employment applications for Correctional Police Officer are clear and requires applicants to list all such incidents are required to be listed, regardless of the disposition. In this case, the appellant did not disclose the required information on his application.

The Appellate Division of the New Jersey Superior Court in *In the Matter of Nicholas D'Alessio*, Docket No. A-3901-01T3 (App. Div. September 2, 2003), affirmed the removal of a candidate's name based on his falsification of his employment application and noted that the primary inquiry in such a case is whether the candidate withheld information that was material to the position sought, not whether there was any intent to deceive on the part of the applicant. In this case, the appellant was arrested for possession of marijuana when he was 16 years old, he provided documentation that he successfully met his obligation of deferred disposition nor is it on his criminal record. Under the totality of these circumstances, including the fact that the incident was mentioned in the Commission's prior decision, it is not considered material. Finally, the record does not demonstrate further adverse involvement with the law since that time. Under these circumstances, the Commission does not find sufficient cause to remove the appellant's name from the subject eligible list. However, the appellant is cautioned to ensure that he discloses all information concerning his background on any future application he submits.

However, it is clear that the appointing authority, in its discretion under *N.J.A.C.* 4A:4-4.8, can take a candidate's background into account in deciding whether or not to bypass the candidate on an eligible list. *See In the Matter of William Oakley* (MSB, decided June 20, 2007). In the present case, the appellant's record presents a sufficient basis to bypass him on the eligible list. *See N.J.A.C.* 4A:4-4.8(a)3. Additionally, the subject list expired on July 22, 2017. As noted above, the Commission is ever mindful of the high standards that are placed upon law enforcement candidates and personnel. Further, the Commission observes that the appellant does not possess a vested property interest in the position at issue. The only interest that results from placement on an eligible list is that the candidate will be considered for an applicable position so long as the eligible list remains in force. *See Nunan v. Department of Personnel*, 244 *N.J. Super.* 494 (App. Div. 1990). Accordingly, while the Commission finds insufficient reason to remove

the appellant's name from the Correctional Police Officer (S9988T), Department of Corrections, eligible list, it finds that his background provides sufficient cause to record him as bypassed on the certification.

ORDER

Therefore, it is ordered that this appeal be granted but the appellant's name be recorded as bypassed on the certification.

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 21ST DAY OF NOVEMBER, 2018



Deirdre L. Webster Cobb, Chairperson
Civil Service Commission

Inquiries
And
Correspondence:

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

c. James L. Taylor
Veronica Tingle
Kelly Glenn