



STATE OF NEW JERSEY

In the Matter of Zebedee Miller,
Correctional Police Officer (S9988U),
Department of Corrections

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

CSC Docket No. 2019-2747

List Removal Appeal

ISSUED: AUGUST 5, 2019 (SLK)

Zebedee Miller appeals his removal from the eligible list for Correctional Police Officer (S9988U), Department of Corrections on the basis that he possessed an unsatisfactory criminal background.

The appellant took the open competitive examination for Correctional Police Officer (S9988U), which had an August 31, 2016 closing date, achieved a passing score, and was ranked on the subsequent eligible list. In seeking his removal, the appointing authority indicated that the appellant possessed an unsatisfactory criminal background. Specifically, the appointing authority indicated that the appellant pleaded guilty to a third-degree Terroristic Threat charge in 2007 and a third-degree Heroin/Cocaine charge in 2008. These charges were adjudicated delinquent.

On appeal, the appellant requests that the Civil Service Commission (Commission) expunge his juvenile criminal record. The appellant believes that the appointing authority violated his due process rights by considering his juvenile criminal history in making its determination to remove his name from the list. The appellant states that it is his understanding that since he was prosecuted for these charges when he was 16 and 17 years old, the Youth Act of New Jersey prohibits these charges from preventing him from employment as an adult. He also presents that the law for eligibility for expungement following a conviction has been reduced from 10 years to six years. Further, the appellant states that his attorney should

have asked for a hearing in Juvenile Court, as the intent of the Juvenile Court is to not let an adverse ruling negatively impact one as an adult.

In response, the appointing authority asserts that as a law enforcement agency, it is permitted to consider juvenile records. Further, it presents its criteria for removal which include crimes of the fourth degree or higher as a juvenile and conviction (expunged or not) for the sale, possession (over 50 grams) distribution, or manufacturing of CDS. Therefore, it argues that its decision to remove the appellant from the list should be sustained.

CONCLUSION

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. 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).

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, a municipal police department, when requested for purposes of making a hiring decision. 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.

However, it is noted that although it is clear that the appellant was never convicted of a crime, he has been arrested on several occasions. 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).

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.

Initially, although the appointing authority argues that the appellant violated its criteria for removal, the Commission notes that it was 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 Debra Dygon* (MSB, decided May 23, 2000).

Additionally, the appellant requests that the Commission expunge his criminal record. While the appellant may be eligible for an expungement, the Commission does not have the authority to expunge criminal records. Therefore, the appellant needs to seek an expungement in an appropriate forum. Further, in *In the Matter of J.B.*, 386 *N.J. Super.* 512 (App. Div. 2006), the Appellate Division remanded a list removal appeal 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 former Merit System 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. Consequently, if the appellant's record had been expunged, the Commission would consider the expungement as evidence of rehabilitation, but it would not automatically mean that his name would be restored to the list. Moreover, contrary to the appellant's belief, as indicated in the cases above, juvenile criminal records may be considered in determining whether one's background is adverse to a position in law enforcement.

In the instant matter, a review of the record indicates that the appellant was adjudicated delinquent for certain offenses at ages 16 and 17 in 2007 and 2008. Further, a review of the appellant's background report indicates that he is gainfully employed and has not had a negative interaction with the law since 2011 at age 19. While the Commission is aware of the high standards for a Correctional Police Officer, a law enforcement position, the Commission finds that ample time has passed for the appellant to have demonstrated sufficient rehabilitation.

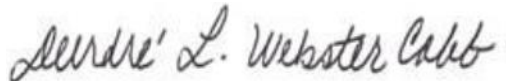
Accordingly, the appellant has met his burden of proof in this matter and the appointing authority has not shown sufficient cause for removing his name from the Correctional Police Officer (S9988U), Department of Corrections eligible list.

ORDER

Therefore, it is ordered that this appeal be granted and the list for Correctional Police Officer (S9988U), 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 31st DAY OF JULY, 2019



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