



STATE OF NEW JERSEY

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

In the Matter of J.P., Correctional
Police Officer (S9988U), Department
of Corrections

List Removal Appeal

CSC Docket No. 2019-2973

ISSUED: SEPTEMBER 27, 2019 (HS)

J.P. appeals the removal of his name from the eligible list for Correctional Police Officer¹ (S9988U), Department of Corrections on the basis of an unsatisfactory criminal record.

The appellant, a non-veteran, took and passed the open competitive examination for Correctional Police Officer (S9988U), which had a closing date of August 31, 2016. The resulting eligible list promulgated on March 30, 2017 and expired on June 18, 2019. The appointing authority requested the removal of the appellant’s name due to an unsatisfactory criminal record. Specifically, the appointing authority asserted that the appellant was charged with third-degree theft in violation of *N.J.S.A. 2C:20-3a* on April 25, 2007, which was resolved through the Pre-Trial Intervention (PTI) Program.²

On appeal to the Civil Service Commission (Commission), the appellant acknowledges that he made a “stupid mistake” in high school, but his dream now is to become a Correctional Police Officer and role model for his children.

In response, the appointing authority states that since a law enforcement title is at issue here, the appellant’s expungement did not prohibit it from rejecting him. The appointing authority requests that the appellant’s removal from the

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

² All records concerning the charge were expunged in 2017.

subject eligible list be sustained. In support, it submits the appellant's preemployment application, among other documents.

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 that includes a conviction for a crime that 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).

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 his 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 appellant's theft charge was filed more than nine years before the examination

closing date when he was 19 years old, and the charge was resolved via PTI. Further, the appellant obtained an expungement, and the foundation for an expungement is the equivalent of evidence of rehabilitation. *See In the Matter of J.B.*, 386 N.J. Super. 512 (App. Div. 2006). Accordingly, based on the totality of the record in this matter, the appellant has met his burden of proof and the appointing authority has not shown sufficient justification for removing his name from the subject eligible list.

ORDER

Therefore, it is ordered that this appeal be granted and the eligible list for Correctional Police Officer (S9988U), Department of Corrections be revived in order for J.P. 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 25TH DAY OF SEPTEMBER, 2019



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