



STATE OF NEW JERSEY

In the Matter of J [REDACTED] V [REDACTED]
Correctional Police Officer (S9988A),
Department of Corrections

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2020-1122

List Removal Appeal

ISSUED: JANUARY 31, 2020 (JET)

J [REDACTED] V [REDACTED] appeals the removal of his name from the Correctional Police Officer (S9988A), Department of Corrections eligible list on the basis of an unsatisfactory criminal record.

The appellant took the open competitive examination for Correctional Police Officer (S9988A), achieved a passing score, and was ranked on the subsequent eligible list. The appellant's name was certified on July 4, 2019. In disposing of the certification, the appointing authority requested the removal of the appellant's name from the eligible list. Specifically, the appointing authority asserted that on April 2, 2014, the appellant was charged with Disorderly Conduct – Improper Behavior in violation of *N.J.S.A. 2C:33-2A(2)* (dismissed). It is noted that the appellant received a conditional discharge as a result of his participation in a diversionary program.

On appeal to the Civil Service Commission (Commission), the appellant asserts that he made a mistake when he was 15 years old and the charges against him were dismissed. The appellant contends that it is his dream to become a law enforcement officer as his father served as a Correction Officer for over 24 years. The appellant adds that the disorderly conduct was the result of defacing some boxes with graffiti when he was in high school. He adds that he is now employed at a community correction facility as a Resident Supervisor, where he is responsible for supervising 450 offenders after they have been released from State correctional facilities. Moreover, the appellant states that, if he is provided the opportunity, he

would serve as a Correctional Police Officer with honor and integrity. The appellant provides letters of recommendation in support of his appeal.

In response, the appointing authority asserts that it has discretion to remove candidates when their record includes a conviction of a disorderly persons offense within seven years of their name appearing on the list. The appointing authority explains that law enforcement candidates must be able to follow the rules in order to ensure a safe and secure environment, and the appellant's background is inconsistent with those standards. Moreover, the appointing authority asserts that its goals are to select candidates who exhibit respect for the law in order to effectively manage the day-to-day operations of a prison system.

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 Correctional Police Officer. 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).

Moreover, pursuant to N.J.S.A. 2C:36A-1, under a Conditional Discharge, termination of supervisory treatment and dismissal of the charges shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of disqualifications or disabilities, if any, imposed by law upon conviction of a crime or disorderly person offense but shall be reported by the clerk of the court to the State Bureau of Identification criminal history record information files. See *State v. Marzolf*, 79 N.J. 167 (1979) (Drug offense which has resulted in supervision and discharge was part of the defendant's personal history to be revealed for purposes of sentencing for subsequent drug offenses, but such record was not to be given the weight of a criminal conviction). Thus, the appellant's arrest and Conditional Discharge could still properly be considered in removing his name from the subject eligible list.

In this matter, the record indicates that the appellant was arrested as a juvenile in 2014, completed a diversionary program and received a conditional discharge. Additionally, the record reflects that he has not been charged with any other incidents since that time. Initially, the Commission is 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 Victor Rodriguez* (MSB, decided July 27, 2005). See also, *In the Matter of Debra Dygon* (MSB, decided May 23, 2000). In this matter, since the 2014 incident was an isolated minor incident, it occurred when the appellant was a minor, is remote in time and the appellant has not been involved in any further incidents, such information is not an impediment to his ability to perform the duties of a Correctional Police Officer. Moreover, the appellant has demonstrated rehabilitation based on his employment record. Additionally, the Commission found in a prior decision that the 2014 juvenile charges, in and of themselves, could not be used to remove the appellant from future Correctional Police Officer lists. See *In the Matter of J. [REDACTED] V. [REDACTED], Correctional Police Officer (S9988V), Department of Corrections (CSC*, decided April 24, 2019).¹ Accordingly, under the circumstances, the appointing authority has not demonstrated that the appellant's criminal record constitutes sufficient cause to remove his name from the subject eligible list.

¹ The Commission directs the Department of Corrections to ensure it does not rely on these charges in any potential future list removals for this appellant.

ORDER

Therefore, it is ordered that this appeal be granted and the appellant's name be restored to the eligible list 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 29th DAY OF JANUARY, 2020

Deirdre L. Webster Cobb

Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

c: J [REDACTED] V [REDACTED]
Veronica Tingle
Elizabeth Whitlock
Kelly Glenn