

STATE OF NEW JERSEY

:

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of J.D., Correctional Police Officer (S9988V), Department of Corrections

:

CSC Docket No. 2019-1279

List Removal Appeal

ISSUED: May 1, 2020 (EG)

J.D. appeals the decision of the appointing authority to remove his name from the Correctional Police Officer (S9988V), Department of Corrections eligible list on the basis of an unsatisfactory criminal record.

The subject eligible list was promulgated on September 28, 2017 and expired on September 27, 2019. In disposing of a certification from the subject eligible list, the appointing authority removed the appellant based on his criminal record. Specifically, it indicated that the appellant was charged with possession of a controlled dangerous substance (CDS) and possession of drug paraphernalia in 2000, for which he entered into a conditional discharge program. In 2001 he was charged with possession of a CDS and possession of drug paraphernalia with intent to use, and was found guilty of a 3rd degree felony. Further, as a juvenile the appellant was charged with disorderly conduct in 1994 and entered into a diversion program.

On appeal, the appellant argues that 2000 and 2001 arrests occurred nearly 20 years ago and were both expunged. In support of this contention, the appellant submits documentation indicating his arrests were expunged. Additionally, the appellant asserts that he was young and immature and has since turned his life around. Specifically, he states that he has earned a certification in programming, maintained employment, purchased a home, married and has three children.

In response, the appointing authority reiterates the appellant's criminal history and argues that he is not a suitable candidate for Correctional Police

Officer. In support of its contentions the appointing authority submits a copy of the appellant's application and his criminal record. Moreover, the appointing authority states that it strives to select candidates who exhibit a good work ethic and respect for the law as this is imperative to effectively manage the day-to-day operations of a correctional system, and argues that the appellant is not a suitable candidate.

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).

Additionally, although an eligible's arrest and/or conviction for a disorderly persons offense cannot give rise to the disability arising under N.J.A.C. 4A:4-4.7(a)4, the fact that an eligible was involved in such activity may reflect upon the eligible's character and ability to perform the duties of the position at issue. See In the Matter of Joseph McCalla, Docket No. A-4643-00T2 (App. Div. November 7, 2002) (Appellate Division affirmed the consideration of a conviction of a disorderly persons offense in removing an eligible from a Police Officer eligible list). Here, while the appellant was arrested as a juvenile for a disorderly persons offense, the offense did not rise to the level of a crime. Nevertheless, the appellant's arrest and participation in a diversion program could still be considered in light of the factors

noted in N.J.S.A. 11A:4-11 and N.J.A.C. 4A:4-4.7(a)4 to determine whether it adversely related to the employment sought.

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. Although, the appellant's arrest in 2001 led to a conviction, it occurred more than 15 years before the promulgation of the subject list, when the appellant was a young adult of 21 years of age. It is also noted that with regard to the appellant's arrest in 2000, the charges were dismissed upon his completion of the requirements for conditional discharge. The last charge against the appellant was for a disorderly Further, there is evidence of persons offense when he was 14 years old. rehabilitation in the record, as the appellant has earned a certification in programming, maintained employment, purchased a home, started a family, and obtained an expungement covering all of his charges as an adult. The foundation for an expungement, it should be noted, 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 the appellant's appeal of the removal of his name from the list for Correctional Police Officer (S9988V), Department of Corrections be granted, and the list be revived so that the appellant's name may be certified 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 29^{TH} DAY OF APRIL , 2020

Devrare' L. Webster Calib

Deirdré L. Webster Cobb Chairperson

Civil Service Commission

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

c: J.D. Elizabeth Whitlock Veronica Tingle Kelly Glenn