

STATE OF NEW JERSEY

In the Matter of J. S.,
Correctional Police Officer (S9988A),
Department of Corrections

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2020-2227

List Removal Appeal

ISSUED: JUNE 19, 2020 (JET)

J. S. 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 and an unsatisfactory background report.

The appellant took the open competitive examination for Correctional Police Officer (S9988A), Department of Corrections, 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 on the basis of an unsatisfactory criminal record and an unsatisfactory background report. Specifically, the appointing authority asserted that on February 16, 2005 the appellant was arrested as a juvenile and charged with Criminal Trespass – Research Facility in violation of *N.J.S.A. 2C:18-3A* (4th degree) (dismissed), for which he completed a diversionary program. Additionally, the appointing authority alleged that between March 15, 2004 and May 2, 2008, the appellant was charged with numerous municipal code violations, including, but not limited to, Smoking on School Grounds, Curfew Violation, Dog Running at Large, No License for Dog and Underage Possession of Alcohol. Several of these infractions were dismissed while for others, the appellant was found guilty and paid fines.

On appeal to the Civil Service Commission (Commission), the appellant asserts, among other things, that the incidents occurred between when he was 16 and 19 years old, and since that time, he has not been involved in any further infractions. The appellant explains that his mother was sick, and his father worked long hours and he passed away unexpectedly in 2006. The appellant states that, as a result of

such circumstances, he was often left unsupervised and, as a result, he became involved in the aforementioned infractions. The appellant states he has learned from his mistakes and he maintains an interest in an appointment to the subject position.

Despite being provided with the opportunity, the appointing authority did not provide a response or any additional information regarding the appeal.

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).

Initially, the Commission is not bound by the 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).

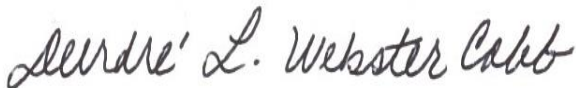
In this matter, the record reflects that the appellant was arrested as a juvenile in 2005 and charged with Criminal Trespass – Research Facility in violation of N.J.S.A. 2C:18-3A (4th degree) (dismissed). Additionally, he was charged with various municipal code infractions between 2004 and 2008. In this matter, all of the appellant's infractions either occurred while he was a juvenile or were violations of various municipal codes. Many of those violations were dismissed. Moreover, all of these infractions are significantly remote in time and the appellant has no other more recent negative interactions with the law. Accordingly, given the nature of the infractions and the length of time from his last infraction, the Commission does not find a basis for the removal of his name from the eligible list.

ORDER

Therefore, it is ordered that this appeal be granted.

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
17TH DAY OF JUNE, 2020



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