



STATE OF NEW JERSEY

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

In the Matter of M.A., Correctional
Police Officer (S9988A), Department
of Corrections

List Removal Appeal

CSC Docket No. 2020-644

ISSUED: JULY 20, 2020 (ABR)

M.A. 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, a non-veteran, applied for and passed the examination for Correctional Police Officer (S9988A), which had a closing date of January 31, 2019. The subject eligible list promulgated on June 27, 2019 and expires on June 26, 2021.

The appellant's name was subsequently certified to the appointing authority. The appointing authority removed the appellant's name from the subject eligible list on the basis of an unsatisfactory criminal record. Specifically, the appointing authority indicated that the appellant, at age 17, was charged with terroristic threats, in violation of *N.J.S.A. 2C:12-3A*, a third degree crime, based upon an October 29, 2010 incident. The appointing authority stated that the appellant was found guilty and sentenced to one year of probation.

On appeal to the Civil Service Commission (Commission), the appellant states that the terroristic threats charge was based upon an incident that occurred at his

high school when he was 15 years old.¹ Specifically, he states that after a meeting with his high school principal, he stormed out of the office and remarked that he was going to punch the principal in the face. He submits that he was not in the presence of the principal when he made this statement. Rather, he indicates that a secretary in the high school's office heard him make the remark as he was leaving the principal's office. He proffers that after he was subsequently charged with terroristic threats. He states that after his case was resolved, he was required to complete an anger management class and write a letter of apology to his principal. He explains that at the time of the incident he had been struggling with the death of his great-grandmother, who was instrumental in raising him and he expresses regret for what he said. He emphasizes that he has matured since then and that he has not had any other negative interactions with law enforcement. Furthermore, he notes that he previously served as a County Correctional Police Officer with Cape May County until leaving that position for personal reasons.

In response, the appointing authority asserts that the removal of the appellant's name from the subject eligible list was proper in light of his record. In this regard, it notes that under its internal criteria, a candidate may be removed from the eligible list if they have "been convicted of any offense which is a crime of the fourth degree or higher to include, but not limited to . . . juvenile offenses." In support, it submits a copy of Family Automated Case Tracking System (FACTS) records which indicate that the appellant was adjudicated delinquent on the terroristic threats charge in 2011, sentenced to one year of probation, and required to write a letter of apology and complete anger management sessions.

It is noted that the appellant attained a General Educational Diploma (GED) in December 2011. Furthermore, agency records indicate that the appellant was appointed as a County Correctional Police Officer with Cape May County, effective September 14, 2015 and resigned from that position in good standing, effective February 27, 2017.

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;

¹ The Commission notes that the Family Automated Case Tracking System (FACTS) records submitted by the appointing authority in this matter state that the date of the underlying incident was October 29, 2010, meaning that the appellant was actually 17 years old when it occurred.

- d. Whether the crime was an isolated event; and
- e. Evidence of rehabilitation.

The presentation to an appointing authority of a pardon or expungement prohibits 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). The Appellate Division has held that when candidates for law enforcement titles, including the title of Police Officer, present an expungement, the foundation for that expungement is treated as "[t]he equivalent of 'evidence of rehabilitation' in these circumstances." See *In re J.B.*, 386 *N.J. Super.* 512 (App Div. 2006). *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.

Further, 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). *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. However, the Commission can consider the circumstances surrounding an eligible's arrests, the fact that the eligible was involved in such activities and whether they reflect upon the eligible's character and the eligible's ability to perform the duties of the position at issue. See *In the Matter of Tracey Shimonis*, Docket No. A-3963-01T3 (App. Div. October 9, 2003). Thus, the appellant's juvenile arrest record was properly disclosed to the appointing authority, a law enforcement agency, when requested for purposes of making a hiring decision.

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 or her name from an eligible list was in error.

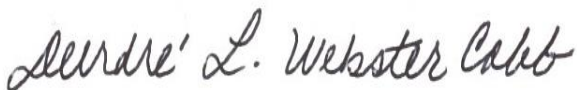
In the instant matter, although the appointing authority has cited its internal criteria as a basis for removing the appellant's name from the subject eligible list, the Commission emphasizes that it must decide each list removal appeal on the basis of the record presented and that it is not bound by the criteria utilized by the appointing authority. *See, e.g., In the Matter of Debra Dygon* (MSB, decided May 23, 2000). 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. In this regard, the record reflects that the appellant was only 17 years old when the underlying incident occurred and it does not appear that he had any other negative interaction with law enforcement thereafter. Furthermore, the incident occurred more than eight years prior to the closing date for the subject examination. Moreover, the appellant has demonstrated other evidence of rehabilitation. In this regard, it is noted that the appellant completed a GED in December 2011 and served as a County Correctional Police Officer with Cape May County from September 2015 to February 2017. 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 appellant's name be restored to the Correctional Police Officer (S9988A), Department of Corrections 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 17TH DAY OF JULY, 2020



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