



**STATE OF NEW JERSEY**

In the Matter of Jeffrey Carmona,  
Correctional Police Officer (S9999A),  
Department of Corrections

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

CSC Docket No. 2022-1587

List Removal Appeal

**ISSUED: APRIL 11, 2022**

Jeffrey Carmona, represented by Eric J. Marcy, Esq., appeals the decision to remove his name from the Correctional Police Officer (S9999A), Department of Corrections eligible list on the basis of an unsatisfactory background report and falsification of the employment application.

The appellant took the open competitive examination for Correctional Police Officer (S9999A), Department of Corrections, which had an August 31, 2019 closing date, achieved a passing score, and was ranked on the subsequent eligible list. The list is set to expire on May 14, 2022. His name was certified (S20A01) and he was ranked as the 8855<sup>th</sup> candidate. In seeking his removal, the appointing authority indicated that the appellant falsified his application and he had an unsatisfactory background report. Specifically, the appointing authority’s removal letter indicated that the appellant had an unsatisfactory background due to a 2002 obstructing the administration of law disorderly persons offense, a 2003 parking after dark charge, a 2004 obstructing the administration of law charge, and 2007 third and fourth degree possession and intent to distribute marijuana charges, which led to pre-trial intervention (PTI). Additionally, the appointing authority indicated that the appellant falsified his application by failing to list all previous addresses and by indicating that he never used or possessed illegal drugs.

On appeal, the appellant explains that it was difficult for him to accurately account for all address, and any omission was unintentional. He asserts that when

he was asked on his application the question “Have you ever used or possessed illegal drugs?” and he answered “No,” he was unsure how to answer this question. The appellant presents that he was charged with possession and intent to distribute marijuana; however, he maintains that he was innocent as he was simply in the wrong place at the wrong time. He states that the warrants originally executed were intended for others and not him. The appellant acknowledges that he should not have entered the house that day and he takes responsibility for that lapse in judgment. He presents that he accepted a “plea agreement” as he did not fully understand the impact until the current background check. The appellant emphasizes that the Judge explained that if he accepted the agreement, that all charges would be dropped after successfully completing PTI. He claims that his counsel failed to clearly explain that there was a “guilty plea” attached to the PTI agreement. He asserts that he was not attempting to inaccurately portray his situation to the appointing authority. Concerning the other charges, the appellant indicates that these charges occurred when he was young, and he lacked the maturity and realization of the potential consequences of his actions at that time. While the appellant acknowledges that these charges do not positively represent him, he asserts that they charges do not accurately reflect who he is today and how much he has matured.<sup>1</sup>

In response, the appointing authority states that while it may have considered that the appellant could not have remembered every juvenile residence and may have overlooked disorderly persons offenses and violations of local ordinances as a young adult, it cannot overlook that he entered into PTI for third and fourth degree crimes as this behavior is inconsistent with behavior that is expected of law enforcement. It highlights that its criteria clearly state that entering into a PTI program for a fourth degree or higher crime will result in removal.

In reply, the appellant clarifies that when he agreed to enter the PTI program, he did not admit to being guilty, did not plead guilty and the charges were dismissed after he successfully completed the six-month PTI program. Further, he emphasizes that he was not in possession of drugs, he was not convicted of possessing illegal drugs, and the drug test that he took during the pre-employment process came back negative. The appellant states that, as reflected in the search warrant affidavit which he submits, he was not the target of the investigation or the search warrant that led to the drug charges in question as his brothers were the targets as only they are mentioned in the search warrant. He indicates that, unfortunately, he was visiting his brothers at the time the search warrant was executed. The appellant presents that according to the appointing authority’s criteria, that to be removed from the list, one must have entered a PTI program within seven years of the promulgated eligible list. However, in this case, the subject charges took place 15 years ago and he entered the PTI program 14 years ago. Additionally, the appellant indicates that he disclosed that he entered the PTI program on his application. He asserts that PTI is used by both the guilty and the innocent and the fact that his matter was dismissed after only

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<sup>1</sup> The appellant’s initial appeal submission was filed *pro se*.

six-months, the shortest period allowable for a PTI program, indicates that he was not the target of the Prosecutor's investigation. The appellant highlights that he was 23 at the time of the arrest and he is now 37, and has demonstrated rehabilitation by living a law-abiding life since the arrest. Moreover, he submits many letters of reference from law enforcement and other responsible members of the community in support of his desire to be a law enforcement officer. In addition to attesting to the appellant's character, the letters highlight his gainful employment and work ethic over the last 15 years, and he is now a father and dedicated family man. The appellant presents that the Judge advised him that if he successfully completed the PTI program, if he was ever asked if he was convicted of a crime, he can answer, "No."

### CONCLUSION

*N.J.A.C.* 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)6, allows the Civil Service Commission (Commission) to remove an eligible's name from an employment list when he or she has made a false statement of any material fact or attempted any deception or fraud in any part of the selection or appointment process.

Further, the Appellate Division of the New Jersey Superior Court, in *In the Matter of Nicholas D'Alessio*, Docket No. A-3901-01T3 (App. Div. September 2, 2003), affirmed the removal of a candidate's name based on his falsification of his employment application and noted that the primary inquiry in such a case is whether the candidate withheld information that was material to the position sought, not whether there was any intent to deceive on the part of the applicant.

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

Participation in the PTI program is neither a conviction nor an acquittal. See *N.J.S.A.* 2C:43-13(d). See also *Grill and Walsh v. City of Newark Police Department*, Docket No. A-6224-98T3 (App. Div. January 30, 2001); *In the Matter of Christopher J. Ritoch* (MSB, decided July 27, 1993). *N.J.S.A.* 2C:43-13(d) provides that upon completion of supervisory treatment, and with the consent of the prosecutor, the complaint, indictment or accusation against the participant may be dismissed with prejudice. In *Grill, supra*, the Appellate Division indicated that the PTI program

provides a channel to resolve a criminal charge without the risk of conviction; however, it has not been construed to constitute a favorable termination. Furthermore, 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. Thus, the appellant's arrest and entry into the PTI program could still be properly considered in removing his or her name from the subject eligible list. *Compare In the Matter of Harold Cohrs* (MSB, decided May 5, 2004) (Removal of an eligible's name reversed due to length of time that had elapsed since his completion of his PTI).

*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.

Initially, it is noted that it is the Commission and not the appointing authority that sets the standard for removal from an eligible list. *See In the Matter of Joseph Hutsebaut* (CSC, decided April 19, 2017) and the Commission is in no way bound by any criteria it may utilize. *See In the Matter of Debra Dygon* (MSB, decided May 23, 2000).

In this matter, the record indicates that the appellant had a history of negative interactions with the law from 2002 to 2007, including 2007 charges for intent to possess and distribute marijuana. However, while the charges against the appellant were not trivial, these interactions were not so serious as to prevent the appellant from disposing the drug-related charges by successfully completing a PTI program. Further, the record indicates that the appellant's last charge was in March 2007, which was over 12 years prior to the August 31, 2019 closing date. Additionally, the appellant presents letters of reference which indicate that he is a father and has held employment since this charge. Further, he presents that he has not been charged with a crime since his last charge, which the appointing authority has not disputed. Therefore, under these circumstances, the Commission finds that the appellant has demonstrated sufficient rehabilitation. *See In the Matter of Robert Merten* (MSB, decided December 1, 2004).

Regarding falsification, the appointing authority alleges that the appellant falsified his application by answering "No" in response to a question asking if he ever used or possessed illegal drugs. However, there is nothing in the record that indicates that the appellant ever used or possessed illegal drugs as the appellant's entry into a PTI program for the drug-related charges is not a conviction or otherwise an admission that he used or possessed illegal drugs. Further, the appellant denies that he ever used or possessed illegal drugs and the appointing authority has not presented any evidence that he used or possessed illegal drugs. It is also noted that the appellant did disclose the drug charges and his entry into the PTI program elsewhere on his application. Therefore, the Commission finds that the appellant did

not falsify his application by answering “No” to this question. Concerning the appellant’s failure to recall all juvenile residences, this is not information omitted from his application, in and of itself, that constitutes sufficient cause to remove his name from the subject eligible list. Thus, the omission of this information does not amount to the falsification of a material fact from his application and does not support the removal of his name from the eligible list. *See In the Matter of Giuseppe Tubito* (CSC, decided April 9, 2014). Therefore, under these circumstances, the Commission finds that the appellant has demonstrated sufficient rehabilitation and has not falsified his application and his name should be restored to the subject list for prospective employment opportunities only.

Accordingly, the appellant has met his burden of proof in this matter and the appointing authority has not shown sufficient cause for removing his name from the Correctional Police Officer (S9999A), Department of Corrections eligible list, eligible list.

### ORDER

Therefore, it is ordered that this appeal be granted and if the appellant’s name is not certified to the appointing authority by the May 14, 2022 expiration date, the list for Correctional Police Officer (S9999A), Department of Corrections be revived at the time of the next certification in order for the appellant to be considered 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 6<sup>TH</sup> DAY OF APRIL 2022

*Deirdre' L. Webster Cobb*

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