



STATE OF NEW JERSEY

In the Matter of Allegra Callahan,
Correction Officer Recruit (S9988T),
Department of Corrections

FINAL ADMINISTRATIVE
ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2016-3671

List Removal Appeal

ISSUED: OCT 21 2016 (SLK)

Allegra Callahan, represented by Michael L. Testa, Esq., appeals the Department of Corrections' decision to remove her name from the Correction Officer Recruit (S9988T), Department of Corrections, eligible list on the basis of an unsatisfactory criminal record and unsatisfactory background report.

The appellant took the open competitive examination for Correction Officer Recruit (S9988T), achieved a passing score, and was ranked on the subsequent eligible list. 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 unsatisfactory background. Specifically, on May 4, 2008, the appellant was charged with criminal trespass (a 4th degree offense), conspiracy, and defaces, removes an official traffic sign. The criminal trespass charge was disposed with a six month deferred disposition. Further, she was sentenced to five hours of community service and was required to cooperate with DYFS including attending counseling. Additionally, she was ordered not to have contact with a specific individual, to refrain from visiting a specific address, and not to incur other charges. The two remaining charges from the May 2008 incident were dismissed. Additionally, on June 24, 2008, she was charged with violating a local curfew ordinance in which she paid a fine and costs.

On appeal, the appellant asserts that the appointing authority's position that she has an unsatisfactory criminal record is erroneous as the charges that she received from the May 2008 incident were as a juvenile and therefore are not

criminal in nature. Further, she presents that her charge for violating a local curfew ordinance, which also occurred as a juvenile, was also not a criminal offense. Further, as these incidents occurred when the appellant was 15 years old and almost 8 years ago, she argues that these offenses do not demonstrate that she has a background that adversely relates to the employment sought.

In response, while the appointing authority acknowledges that juvenile offenses might not be considered criminal offenses, it highlights that its employment application advises candidates that being convicted of a 4th degree offense, including juvenile offenses where the candidate has entered into a diversion program, is a reason for being removed from the eligible list. Therefore, it argues that the appellant has a criminal record which adversely relates to the employment sought.

In reply, the appellant presents that in May 2008, when she was 15 years old, she was hanging out with her 17-year-old brother, his girlfriend, and 2 of his friends. She states that one of them had an idea to go to a friend's house that they knew was vacant while it was for sale. To go inside, one of the boys broke a window, climbed inside, and then opened the door to let everyone in and hang out for a while. Then, while walking home, she was arrested and charged with criminal trespass, conspiracy to commit criminal trespass, defacing/removing an official traffic sign, and a municipal ordinance curfew violation. The appellant maintains that she does not know why she was charged with defacing a traffic sign. She represents that the conspiracy and defacing charges were dismissed and the trespassing charge was dismissed after successfully completing 5 hours of community service pursuant to a deferred disposition. Additionally, she pled guilty to a curfew violation.

The appellant contends that the nature of the crime was relatively benign in that no violence was involved, she did not profit from her actions, she did not directly cause any property damage, the broken window was replaced, and nobody was injured. She explains that she was merely tagging along with her older brother and his friends. The appellant indicates that immaturity, peer pressure, ordinary teenage boredom, and adulation of her older brother were the motivations behind her actions and not some more malevolent character defect that would adversely affect her employment. She asserts that she has demonstrated sufficient rehabilitation as she has not been charged with any other criminal or municipal offenses in the eight years since this incident, participated in ROTC while in high school, consistently being employed by a temporary staffing agency without any adverse employment actions, legally and responsibly possessing a firearm, and volunteering the last two years to assist an elderly man who has failing health and is no longer mobile. The appellant argues that in light of her age at the time of the incident, the remoteness of the offense, the relatively minor nature of the offense,

and her upstanding personal record since the incident, her name should be restored to the list.

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 employment 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.

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). Thus, the appellant's juvenile arrest records were properly disclosed to the appointing authority, a law enforcement agency, when requested for purposes of making a hiring decision. However, *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. Accordingly, the disability arising under *N.J.A.C. 4A:4-4.7(a)4* as a result of having a criminal conviction has no applicability in the instant appeal.

Additionally, 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 juvenile diversion program which is similar to the PTI program could still be properly considered in removing his 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:4-4.7(a)11, in conjunction with *N.J.A.C.* 4A:4-6.1(a)9, provides that the name of an eligible may be removed from an eligible, list person for other sufficient reason.

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 this matter, a thorough review of the record indicates that the appellant's removal from the (S9988T) eligible list for Correction Officer Recruit is not warranted. When the appellant was 15 years old, she received charges for criminal trespass, conspiracy, and defaces, removes an official traffic sign criminal trespassing stemming from a May 2008 incident and received a charge for violating a local curfew ordinance from a June 2008 incident. The May 2008 case was referred to a non-adjudicatory diversion program which resulted in the criminal trespass charge being disposed and the other two charges being dismissed. Additionally, the appellant was ordered to pay a fine and costs for the June 2008 curfew violation. As such, the appellant was involved in two minor offenses when she was a 15-year old juvenile and these incidents occurred over 6 years prior to the January 8, 2015 closing date for the subject examination. Further, these were isolated events as the appellant has not been convicted for any criminal activity since the 2008 occurrences and she has demonstrated sufficient rehabilitation. Taking into consideration that the charges against the appellant were minor and the incidents took place in 2008, when she was 15 years old, the totality of the record does not provide a sufficient basis to remove the appellant's name from the subject eligible list.

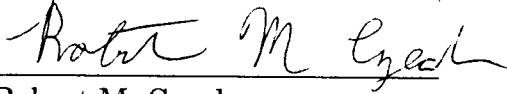
Accordingly, the appellant has met her burden of proof in this matter and the appointing authority has not shown sufficient justification for removing his name from the eligible list for Correction Officer Recruit (S9988T), Department of Corrections.

ORDER

Therefore, it is ordered that this appeal be granted, and the appellant's name restored to the list for Correction Officer Recruit (S9988T), Department of Corrections, 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 19th DAY OF OCTOBER, 2016



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and

Correspondence

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

Attachment

c: Allegra Callahan
Michael L. Testa, Esq.
Elizabeth Whitlock
Veronica Tingle
Joe Hill



State of New Jersey
DEPARTMENT OF CORRECTIONS
CUSTODY RECRUITMENT UNIT
PO BOX 863
TRENTON NJ 08625-0863

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

GARY M. LANIGAN
Commissioner

March 31, 2016

ALLEGRA CALLAHAN

RE: NOTIFICATION OF REMOVAL

Symbol: S9988T; Rank: 6530

Dear Candidate:

This is to inform you that your name has been removed from the above referenced open-competitive list for State Correction Officer Recruit due to:

(X) Security and Background Check: Unsatisfactory Criminal Record: You were charged with 2C:18-3A for criminal trespass (4th degree), 2C:5-2 for conspiracy, and 2C:17-3.1 for defaces, removes an official traffic sign on 5/4/08. The 2C:18-3A charge was disposed, 6 month deferred disposition, community service, cooperate with DYFS, cooperate with counselling. The remaining two charges were dismissed. Unsatisfactory Background Report: You were charged with ordinance 130-1 for curfew and found guilty on 6/24/08.

NJAC 4A:4-4.7 provides for the removal of a prospective employee for the reason noted. Therefore, your name has been removed from the S9988T eligible list.

You may, within 20 days from the date of this notice, appeal this action by writing to the Civil Service Commission at the return address provided below indicating why this action is not warranted. Your appeal must include the certification number, your social security number, and all proofs, arguments, and issues you plan to use to substantiate the issue(s) raised in your appeal.

Please be advised that pursuant to P.L. 2010, c.26, effective July 1, 2010, there shall be a \$20.00 fee for appeals. Please include the required \$20 fee with your appeal. Payment must be made by check or money order only, payable to the NJCSC. Persons receiving public assistance pursuant to P.L. 1947, c.156 (C.44:8-107 et seq.), P.L. 1973, c.256 (C.44:7-85 et seq.) or P.L. 1997, c.38 (C.44:10-55 et seq.) and individuals with established veterans preference as defined by N.J.S.A. 11A:5-1 et seq. are exempt from these fees. Failure to submit the required \$20 fee or evidence of one of the exemptions will result in your appeal not being processed.

Your appeal must be filed with:

Civil Service Commission
Division of Appeals and Regulatory Affairs
Written Record Appeals Unit
PO Box 312
Trenton, NJ 08625-0312

YOU MUST INCLUDE A COPY OF THIS NOTICE WITH YOUR APPEAL and send a copy of your appeal documentation to the Custody Recruitment Unit for our records.

Sincerely,

Custody Recruitment Unit

SS
C:file

