



STATE OF NEW JERSEY

In the Matter of Kevin Cruz,  
Correction Officer Recruit (S9988T),  
Department of Corrections

FINAL ADMINISTRATIVE  
ACTION  
OF THE  
CIVIL SERVICE COMMISSION

CSC Docket No. 2016-3601

List Removal Appeal

ISSUED: **OCT 21 2016** (SLK)

Kevin Cruz, represented by Steven B. Bitterman, Esq., appeals the Department of Corrections' decision to remove his name from the Correction Officer Recruit (S9988T), Department of Corrections, eligible list on the basis of an unsatisfactory criminal record and falsification of his application.

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 falsification of his application. Specifically, in 2008, the appellant was charged with simple assault and possession of a weapon for unlawful purpose. He pled guilty to the simple assault charge which resulted in the charge being adjudicated delinquent, a 6 month deferred disposition, a no contact order being put in place, restitution reserved, and him serving 10 hours of community service. The possession of the weapon charge was dismissed. Additionally, the appellant indicated on his employment application that he was employed at Costco from November 2012 to February 2013. However, on his Candidate Chronological Data Sheet, he indicated that he was employed at Costco from 2011 to 2012.

On appeal, the appellant acknowledges that he was charged with simple assault and possession of a weapon for unlawful purpose. The appellant explains that when he was 15 years old, he and several other children from the neighborhood

were using a BB gun in front of his home. When the parent of one of the children learned of their behavior, she reported the incident to the police. The appellant certifies that, at the time of the incident, he had never been in any trouble of any kind. He asserts that this is an isolated incident as he has not had any other involvement in the criminal justice system. He highlights that he expects to graduate from community college and has submitted applications to attend universities that offer Bachelor's degrees. With respect to the falsification allegation, he admits that he erroneously indicated on his application that he was employed by Costco from 2012 to 2013 when he was in fact employed by Costco from November 2011 to February 2012. He maintains that he never intended to mislead the appointing authority as demonstrated by the fact that he did not stand to gain in any way from giving the impression that he had worked at Costco from 2012 to 2013.

In response, the appointing authority provides that its employment criteria, as stated in its employment application, advised the appellant that participation in a diversionary program would automatically disqualify him for the position. In reference to the falsification charge, it indicates that it is the goal of the appointing authority to capture a complete profile of potential candidates to assist it in the decision making process regarding an eligible's qualification and integrity for a position in the subject title, which is a highly visible and sensitive position in law enforcement. It presents that the appellant was inconsistent in the information that he provided.

In reply, the appellant argues that the appointing authority's position that his involvement in a juvenile diversion program automatically disqualifies him for a position in the subject title contradicts *N.J.S.A. 4A:4-4.7(a)(4)* which provides the factors that should be considered in order to determine if one's criminal record is adversely related to the employment sought. Specifically, the appellant reiterates that this was an isolated incident that happened when he was 15 years old and he has not been in trouble with the law since that incident. He maintains that he has demonstrated further rehabilitation by graduating high school, expecting to graduate from community college, and submitting applications for universities with Bachelor's programs. He also reiterates that his mistake on his application regarding the employment dates was an honest mistake and he did not have anything to gain by this mistake.

## 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.

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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)1, in conjunction with N.J.A.C. 4A:4-6.1(a)6, allows the Civil Service 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.

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. With respect to the appellant's juvenile history, in 2008, when he was 15 years old, the appellant was charged with simple assault and possession of a weapon for unlawful purpose. The appellant explains that he and other children were using a BB gun in front of his home and a parent of one of the children called the police. The appointing authority has not disputed the appellant's description of this incident. The case was referred to a non-adjudicatory diversion program and the simple assault charge was disposed and the possession of a weapon for unlawful purpose charge was ultimately dismissed. As such, the incident was a minor offense when he was a 15-year old juvenile and the incident occurred approximately 7 years prior to the January 8, 2015 closing date for the subject examination. Further, this was an isolated event as the appellant has not been convicted for any criminal activity since the occurrence. Also, he asserts that he has been rehabilitated as evidenced by his high school graduation, his expected community college graduation, and his applications to attend universities that offer Bachelor degree programs and the appointing authority has not disputed this claim. *See In the Matter of Richard A. Rizzolo*, Docket No. A-0589-03T5 (App. Div. December 8, 2004) (The Appellate Division upheld the restoration of an eligible to a Fire Fighter eligible list, based on significant evidence of rehabilitation since the appellant's arrests in 1989 and 1990). Taking into consideration that the charge against the appellant was minor and the incident took place in 2008, when he was 15 years old, the totality of the record would not provide a sufficient basis to remove the appellant's name from the subject eligible list.

With regard to the falsification allegation, the primary inquiry regarding the removal of a candidate's name based on the falsification of his or her employment application 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. *See In the Matter of Nicholas D'Alessio*, Docket No. A-3901-01T3 (App. Div. September 2, 2003). In this matter, the appellant made a minor mistake when he indicated on his application that he was employed at Costco from November 2012 to February 2013 when he actually was employed by Costco from November 2011 to February 2012. It is also noted that, on his Candidate Chronological Data Sheet, he did indicate that he was employed by Costco from 2011 to 2012. The appointing authority has not presented any evidence that there was something regarding his employment at Costco that was adverse to the position sought. As such, the appellant did not potentially have anything to gain by this mistake and his error was not material to the position sought. This is further evidenced by the fact that the appellant did indicate the correct years of his employment with Costco on his Candidate Chronological Data Sheet and therefore the appointing authority had

sufficient information to research the appellant's employment history. *See In the Matter of Lance Williams* (CSC, decided May 7, 2014)

Accordingly, the appellant has met his 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.

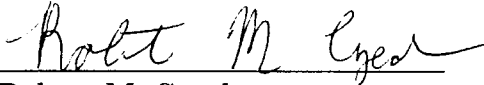
**ORDER**

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 19<sup>th</sup> DAY OF OCTOBER, 2016

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Chairperson  
Civil Service Commission

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