



STATE OF NEW JERSEY

In the Matter of Jerome Johnson,
Correction Officer Recruit (S9988T),
Department of Corrections

FINAL ADMINISTRATIVE
ACTION OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2016-1997

List Removal Appeal

ISSUED: **NOV 29 2016** (SLK)

Jerome Johnson appeals the attached determination of the Department of Corrections removing his name from the eligible list for Correction Officer Recruit (S9988T), Department of Corrections, on the basis of an unsatisfactory criminal record and falsification of application.

The appellant, a veteran, took the open competitive examination for Correction Officer Recruit (S9988T), achieved a passing score, was ranked 174 on the subsequent eligible list, and his name was certified. 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. Specifically, the appellant was charged with *N.J.S.A. 2C:33-2A*, Improper Behavior/Disorderly Conduct which was conditionally modified with a Guilty Plea to an amended offense of 3-22.2 Discretion of Police Officer on January 27, 2011 and the appellant failed to disclose, as required, being charged with *N.J.S.A. 2C:20-7*, Receiving/Bringing Into State Stolen Property. This charge was conditionally disposed on August 8, 1997 and listed as "Diverted."

On appeal, the appellant states that he did not disclose the Receiving/Bringing into State Stolen Property charge because he was told that this incident would not go on his record because it was not his fault. The appellant

explains that while working at McDonalds in high school, a coworker offered him to use his bike, which was stolen, to get home from work. However, the appellant maintains that he did not know that the bike was stolen. The appellant also presents that his background has been checked before and this incident had not appeared on his records. He reiterates that he was only aware of the disorderly conduct offense.

In response, the appointing authority presents that the appellant was initially charged with Improper Behavior/Disorderly Conduct in 2011 and this charge was conditionally modified with a Guilty Plea to an amended Discretion of Police Officer offense. Additionally, it states that in 1997 the appellant was charged with Receiving/Bringing into State Stolen Property and this charge was conditionally disposed through a successful diversionary program. The appointing authority asserts that the appellant failed to disclose this charge and therefore falsified his application.

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 Commission to remove an individual from an eligible 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.

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.

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. However, it is noted that although it is clear that the appellant was never convicted of a crime, he has been arrested on more than one occasion. 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).

In the instant matter, the appointing authority has presented a valid basis to remove the appellant's name from the subject list. In 1997, the appellant, while in high school, was charged with Receiving/Bringing into State Stolen Property and the charge was conditionally disposed through a diversion program. Thereafter, the appellant, in 2011 at age 30, was charged with Disorderly Conduct and pled guilty to the amended offense, Discretion of Police Officer. Although provided the opportunity, the appellant did not provide any response or explain the nature or seriousness of the Disorderly Conduct charge and the circumstances under which the crime occurred. It is also noted that the appellant was 30 years old at the time of the 2011 incident and that incident was only four years prior to the subject examination closing date. Additionally, the appellant has failed to provide evidence of rehabilitation.

With respect to the appellant's falsifying his application, 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. On page 18 of his employment application, the appellant was required to disclose all charges that were dismissed as a result of a successful completion of a diversionary program. The information that the appellant did not disclose is considered material. Therefore, even if he did not steal the bike as he claims, as the appellant successfully completed a diversionary program, he knew about the charge and had an obligation to disclose it.

Consequently, the totality of the appellant's background, which includes multiple adverse interactions with law enforcement, demonstrates that at minimum he lacks the judgment necessary for a law enforcement position. In this regard, it is recognized that a Correction Officer Recruit is a law enforcement employee who must help keep order in the prisons and promote adherence to the law. Correction Officers, like municipal Police Officers, hold highly visible and sensitive positions within the community and the standard for an applicant includes good character and an image of utmost confidence and trust. *See Moorestown v. Armstrong*, 89 N.J. Super. 560 (App. Div. 1965), cert. denied, 47 N.J. 80 (1966). *See also In re Phillips*, 117 N.J. 567

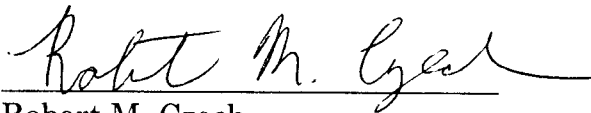
(1990). The public expects Correction Officers to present a personal background that exhibits respect for the law and rules. Accordingly, the appellant has not met his burden of proof in this matter and the appointing authority has shown sufficient cause for removing his name from the Correction Officer Recruit (S9988T) eligible list.

ORDER

Therefore, it is ordered that this appeal be denied.

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 23rd DAY OF NOVEMBER, 2016



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

Attachment

c: Jerome Johnson
Elizabeth Whitlock
Jennifer Rodriguez
Kelly Glenn



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

CHRIS CHRISTIE
Governor

GARY M. LANIGAN
Commissioner

KIM GUADAGNO
Lt. Governor

November 20, 2015

JEROME JOHNSON
[REDACTED]

RE: NOTIFICATION OF REMOVAL
Symbol: S9988T; Rank: 174

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: A charge of 2C:33-2A (1), Improper Behavior/Disorderly Conduct was conditionally modified with a Guilty Plea to an amended offense of 3-22.3, Discretion of Police Officer on 1/27/2011 (Within last 10 years). Falsification of Application: Applicant failed to disclose, as required, being charged with 2C:20-7, Receiving/Bringing Into State Stolen Property. This charge was conditionally disposed on 8/8/1997 through Successful Divers and listed as "Diverted".

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.

JEROME JOHNSON
SYMBOL: S9988T, RANK: 174
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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

JM
C:file