



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

In the Matter of Randy Taysing, Correction Officer Recruit (S9988R) and (S9988T), Department of Corrections

CSC Docket No. 2016-1718 and 2017-736

List Removal Appeals

ISSUED: DEC 28 2017 (CSM)

Randy Taysing, represented by Jeffrey Berezny, Esq., appeals the appointing authority's determinations to remove his name from the Correction Officer Recruit (S9988R) and (S9988T) eligible lists on the basis of an unsatisfactory criminal record, an unsatisfactory background report and failure to complete pre-employment processing. These appeals have been consolidated due to common issues presented.

The appellant's name appeared on the subject eligible lists.¹ In disposing of the certification from the S9988R list in October 2015, the appointing authority removed the appellant's name, contending that he had an unsatisfactory criminal record and an unsatisfactory background report. Specifically, the appellant was charged with criminal mischief that was conditionally disposed of on May 14, 2007 through successful completion of a discharge program and the charge was dismissed on September 21, 2007. It also found that the appellant was charged with receiving/bringing into the State stolen property which was disposed of on May 22, 2007 through an Intake Service Conference and dismissed on June 21, 2007. In disposing of the certification from the S9988T list in August 2016, the appointing authority removed the appellant's name, contending that he had an unsatisfactory criminal record and that he did not complete pre-employment processing. Specifically, the appointing authority cited the criminal charges and dispositions that the appellant received in 2007 and noted that he failed to provide all court dispositions related to his charges on his application.

¹ It is noted that the S9988R list expired on July 22, 2015 and the S9988T list promulgated on July 23, 2015 and expires on July 22, 2017.

On appeal, the appellant states that he was arrested on two occasions when he was 16 years old in 2007 and that these were isolated incidents both of which he asserted his innocence. In this regard, he explains that the receiving/bringing into the State stolen property charge stems from when he was picked up in an automobile by two 18 year-old adults who were charged with shoplifting before he entered their car. Regarding the criminal mischief charge, the appellant states that he was accused of pulling a fire alarm in his high school solely based upon the fact that he was in close proximity to the fire alarm when it was pulled. He emphasizes that both charges were dismissed after he completed the terms of juvenile conditional discharge programs. Since the time of his arrests, the appellant states that he has lived a good life, graduated from high school, and has been gainfully employed for several years. The appellant cites several prior Civil Service Commission (Commission) decisions and argues that these stand for the proposition that non-serious juvenile arrests should not be the basis to remove individuals from lists. Additionally, with respect to his removal from the S9988T eligible list, he asserts that he never failed to complete pre-employment processing as he revealed on his application the two prior juvenile arrests. For this application, he asserts that he "did not possess, nor was able to obtain, despite his diligent effort, copies of any documents related to these charges." He also contends that he contacted the agencies involved in his arrests and was told that they no longer possessed any documents and he maintains that he did not miss any pre-employment processing appointments. Therefore, the appellant argues that he should be restored to the subject lists.

The appointing authority states that the appellant completed a conditional discharge program for a fourth degree criminal mischief charge and completed an additional discharge program for receiving/bringing into the State stolen property in 2007. Given that he has had two arrests, the appointing authority asserts that these are not isolated incidents. Therefore, since these incidents occurred within the last 10 years of having his name certified from the subject lists, the appointing authority contends that he is not a suitable candidate for a law enforcement position. Regarding not completing pre-employment processing for the S9988T application, the appointing authority states that its application asks candidates numerous questions so that it can capture a complete profile of potential candidates to assist in the decision making process regarding an individual's qualifications and integrity for a law enforcement position. Accordingly, the application provides clear and explicit instructions on what must be disclosed and defines all terms to ensure candidates are well aware of what information must be disclosed, how to disclose it and if supporting documentation must be submitted with the application. On his application for S9988T, the appellant did not provide all court dispositions related to his 2007 charges.

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

The presentation to an appointing authority of a pardon or expungement shall prohibit an appointing authority from rejecting an eligible based on such criminal conviction, except for law enforcement, firefighter or correction officer and other titles as determined by the Commission. 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).

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 municipal police department, 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 two occasions. 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).

Participation in a diversionary program, such as Pre-Trial Intervention (PTI), 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 conditional discharge program, like completion of 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). In this regard, a juvenile diversionary program can be treated similarly.

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 removal of 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.

In the matter at hand, the record establishes that the appellant was arrested on two occasions in 2007 and the charges were dismissed later in 2007 after he completed the terms of juvenile conditional discharge programs. While these infractions occurred when he was 16 years old, it cannot be ignored that they occurred within five years from when he applied for the S9988R examination in 2012 and eight years from when he applied for the S9988T examination in 2014. Further, as there is more than one incident, involving different types of alleged misconduct, they cannot be considered "isolated." The appellant also has not evidenced sufficient rehabilitation at this time to consider his restoration to the lists. Although the Commission has on occasion restored the names of eligibles who were removed from law enforcement lists who had juvenile arrests in their background, the individual's age in relation to the issuance of the list and evidence of rehabilitation have been critical factors in those cases. For example, in *In the Matter of Gregory Zalnieratis* (CSC, decided July 29, 2015), the Commission restored the name of an eligible who was charged as a juvenile since he showed significant evidence of rehabilitation by obtaining a Bachelor's degree and being gainfully employed since the time of his arrest. In *In the Matter of Richard Thomas* (CSC, decided September 3, 2014), the Commission restored the name of an eligible to the Correction Officer Recruit list who was charged with receiving stolen property when he was 12 years old who demonstrated rehabilitation by becoming a Police Explorer as a juvenile, working as a Class 2 Special Law Enforcement

Officer, working as an emergency medical technician and serving in the military overseas.

In this case, while several years have passed since the appellant's juvenile arrests, the only evidence he presents of rehabilitation is that fact that he has been gainfully employed for several years. For a law enforcement position, being gainfully employed, without more, is simply not enough to demonstrate sufficient rehabilitation to warrant restoration to the lists. Further, his responses on his two applications are cause for concern. For example, in response to question #46A on his application for S9988R, which asks, "Have you ever had a criminal or arrest record expunged?" the appellant checked "no." He also listed the shoplifting charge and fire alarm incident when he was 16, that it was addressed by the Paramus Police and Paterson Police, respectively, and that he did not recall the disposition of the shoplifting charge and that the disposition for pulling the fire alarm was "disorderly person." However, when responding to that same question on his application for S9988T less than six months later, the appellant checked "yes" to having his record expunged and indicated "my lawyer has it all" in the area where applicants were asked to explain the nature of any charges against them, the date of the incident, age, police contact address, and disposition of the charges. In other words, even though the appellant appeared to believe that his attorney possessed this information, he made no effort to obtain the information and include it with his application. Further, he was clearly aware of the pertinent information to provide in response to this question as he had done so on the application he previously submitted for S9988R but seemingly left it to the appointing authority to contact his lawyer for this information in response to the question on the S9988T application.

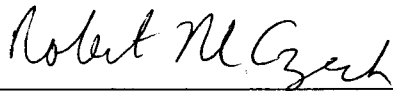
The appellant's response on the S9988T application is indicative of his lack of maturity and inability to follow directions, which is not conducive to the performance of duties of a Correction Officer Recruit. In this regard, the Commission notes that Correction Officer Recruits are law enforcement employees, who, 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 the Matter of Ritchie Ortiz* (MSB, decided June 26, 2002). The public expects Correction Officer Recruits to present a personal background that exhibits respect for the law and the rules. Accordingly, the totality of the record in these cases evidence that the appointing authority reasonably requested the removal of the appellant's name from the subject lists.

ORDER

Therefore, it is ordered that these appeals 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 21ST DAY OF DECEMBER, 2016



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