



STATE OF NEW JERSEY

In the Matter of Nicholas Bellucci,
Sheriff's Officer (S9999R), Essex
County

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2017-3325

List Removal Appeal

ISSUED: **OCT 06 2017** (SLK)

Nicholas Bellucci, represented by Jennifer Meyer-Mahoney, Esq., appeals the removal of his name from the eligible list for Sheriff's Officer (S9999R), Essex County, on the basis of an unsatisfactory criminal record.

By way of background, the appellant appeared in the 13th position on certification OL161164 that was issued to Essex County on October 7, 2016. In disposing of the certification, Essex County requested the removal of the appellant's name, contending that he had an unsatisfactory criminal record. Specifically, the appointing authority asserted that the appellant was not able to possess a weapon under *N.J.S.A. 2C:39-7* because he had previously been convicted of aggravated assault in 2000.

On appeal, the appellant states that he was removed from the subject list due to an expunged conviction resulting from a fist fight when he was 19 years old. He asserts that this single incident should not prevent him from becoming a Sheriff's Officer at age 37. The appellant highlights that he was a star athlete in high school and is a college graduate who was on the Dean's List while also working a full-time job. He indicates that except for a brief period during the recent recession, he has been continuously employed including working in an administrative capacity for the Nutley Police Department. The appellant submits a letter of recommendation from the former Director of Public Safety for Nutley. He presents that he has worked for his local Assemblyman, been a volunteer Fire Fighter, and has an excellent driving record and credit rating. The appellant states that he has worked in various sales

positions throughout his career, which required him to build relationships, work independently, and develop excellent people skills. He acknowledges that he should not have swung back when another individual picked a fight with him and he pled guilty to a third degree aggravated assault charge in violation of *N.J.S.A. 2C:12-1B(1)*. Thereafter, he completed his probation in only 18 months by carefully complying with its terms and his 100 hours of community service. The appellant presents that his conviction was expunged in 2012 as he demonstrated that he had been rehabilitated and had no further contact with the criminal justice system. He asserts that an expunged conviction does not bar someone from a career in law enforcement nor does it bar someone from possessing a weapon under State or federal law. The appellant highlights that the Civil Service Commission (Commission) already addressed this issue by granting his appeal of the removal of his name from the Sheriff's Officer (S9999M) eligible list on certification OL121325, but permitting the appointing authority to bypass him. *See In the Matter of Nicholas Bellucci* (CSC, decided June 4, 2014). He argues that the appointing authority is disregarding the Commission's prior decision in its attempt to remove him solely based on his expunged conviction when the Commission already decided that this action was not warranted. Therefore, the appellant believes that the Commission should order the appellant be appointed and that he be awarded seniority and placed on the same salary step as those hired from the certification which he was erroneously removed.

In response, the appointing authority states that although the appellant's conviction of aggravated assault in the third degree was expunged, under *N.J.S.A. 2C:52-27(c)*, an expunged criminal record shall continue to be a disability to a person seeking employment in law enforcement. Further, it argues that *N.J.S.A. 2C:39-7, Certain Persons Not to Have Weapons*, bars the appellant from having a weapon.

In reply, the appellant asserts that the appointing authority's understanding of the law that the appellant is barred from carrying a firearm and therefore ineligible for a position in law enforcement is incorrect. He cites cases that stand for the position that an expunged conviction does not automatically bar one from carrying a firearm or becoming a law enforcement officer.

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.

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, correction officer, juvenile detention officer, firefighter or judiciary titles and other titles as the Chairperson of the Civil Service Commission or designee may determine. 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).

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 the instant matter, Essex County has not substantiated its request to remove the appellant's name from the Sheriff's Officer (S9999R) eligible list. Under State law, an expunged conviction for a qualifying crime will not trigger such a prohibition on possession of a firearm. See *N.J.S.A. 2C:36A-1* and *N.J.S.A. 2C:52-27*. Similarly, an expunged conviction for a qualifying crime will not trigger the federal prohibition on possession of a firearm unless the expungement expressly provides that the individual may not possess a firearm. See 18 *U.S.C. sec. 921(a)(20)*. Moreover, under State law, while such an expungement will remove the prohibition for such an individual to possess a firearm, it does not eradicate the fact of the conviction and can be used as *prima facie* but rebuttable evidence that the individual lacks good character and precludes the individual from possessing a firearm unless he or she rebuts that evidence. See *In re Application for Pistol Permit*, 130 *N.J. Super.* 21, 27-29 (Co. Ct. 1974). Thus, the appellant's removal from the eligible list may still be warranted under the criteria enumerated in *N.J.S.A. 11A:4-11* and *N.J.A.C. 4A:4-4.7(a)4*. See *In the Matter of Ronnie Roy Wine* (MSB, decided September 10, 1998). However, in *In the Matter of Nicholas Bellucci, supra*, the Commission already addressed this issue and found that the appellant's removal was not warranted based on his expunged conviction, but permitted the appellant's name to be recorded as bypassed. The Commission found that the appellant demonstrated sufficient rehabilitation and it noted that the appointing authority did not submit any response in that matter for the Commission to consider. Further, in this matter, the appointing authority has not submitted any new reason for the appellant's removal.

However, the appellant is not entitled to an appointment. In this regard, individuals whose names merely appear on a list do not have a vested right to appointment. See *In re Crowley*, 193 *N.J. Super.* 197 (App. Div. 1984), *Schroder v.*

Kiss, 74 N.J. Super. 229 (App. Div. 1962). The only interest that results from placement on an eligible list is that the candidate will be considered for an applicable position so long as the eligible list remains in force. See *Nunan v. Department of Personnel*, 244 N.J. Super. 494 (App. Div. 1990). In this case, while the appointing authority was incorrect in its interpretation of the law underlying expungement and possession of a weapon, there is no evidence of bad faith or invidious motivation. Further, a review of the records indicates that the appellant cannot be bypassed on certification OL161164. Thus, since the S9999R eligible list expired on March 22, 2017, it is appropriate to revive that list at the time of the next certification to allow the appellant to be considered for prospective appointment.

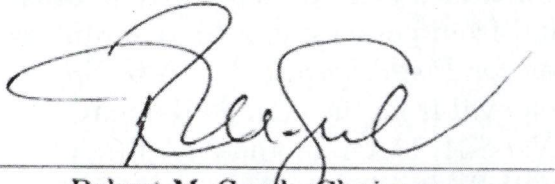
Accordingly, the appellant has met his burden of proof in this matter and the appointing authority has not shown sufficient justification for removing his name from the eligible list for Sheriff's Officer (S9999R), Essex County.

ORDER

Therefore, it is ordered that this appeal be granted and the list for Sheriff's Officer (S9999R), Essex County be revived in order for the appellant to be considered for appointment at the time of the next certification 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 4th DAY OF OCTOBER, 2017



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