

On appeal to the Civil Service Commission (Commission), the appellant notes that he was 14 years old at the time of the 1995 incident. He acknowledges that he exercised poor judgment at that time but states that he has built his life on honor and loyalty since learning from his childhood mistakes. The appellant states that he has worked in the security field since the age of 18 and has been employed in the area of loss prevention with the same company for 14 years. He states that he is currently employed full-time as a multi-unit loss prevention manager. In addition, the appellant states that he and his wife have been together since 1998 and happily married since 2005. He also states that they are raising a child, who is now nine years old. In support, the appellant submits police records regarding the 1995 incident.

In response, the appointing authority submits the documentation it submitted when it disposed of the certification.

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, correction officer, juvenile detention officer, firefighter or judiciary titles and other titles as the Chairperson of the Commission or designee may determine. Additionally, pursuant to *N.J.S.A.* 11A:4-10, an appointing authority may only question an eligible for a law enforcement, firefighter or correction officer title as to any arrest. 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).

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). *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. However, the Commission can consider the circumstances surrounding an eligible’s arrests, the fact that the eligible was involved in such activities and whether they reflect upon the eligible’s character and the eligible’s ability to perform the duties of the position at issue. *See In the Matter of Tracey Shimonis*, Docket No. A-3963-01T3 (App. Div. October 9, 2003). 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.

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 Commission to remove 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. *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 the appellant’s name from an eligible list was in error.

While the Commission is mindful of the high standards that are placed upon law enforcement candidates and personnel, a review of the record in this matter indicates that the appellant’s removal from the subject eligible list is unwarranted. The record reflects that the appellant was only 14 years old when he was adjudicated delinquent on the 1995 charges and still a juvenile at the time of the 1998 arrest. The appellant’s last arrest occurred approximately 15 years before the examination closing date, and the record reflects that the appellant had no additional negative interactions with law enforcement. Moreover, the appellant has indicated rehabilitation. Specifically, he notes that he has worked in loss prevention for many years and is currently employed full-time as a multi-unit loss prevention manager. The appellant also notes that he is raising a child with his wife, to whom he has been married since 2005. Accordingly, the appellant has met his burden of proof, and the appointing authority has not shown sufficient justification for removing his name from the subject eligible list.

ORDER

Therefore, it is ordered that this appeal be granted and the eligible list for Correction Officer Recruit Juvenile Justice Commission (S9999R) 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 27TH DAY OF MARCH, 2018



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