



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of R.B., Correctional
Police Officer (S9988V), Department
of Corrections

List Removal Appeal

CSC Docket No. 2019-3575

ISSUED: NOVEMBER 8, 2019 (HS)

R.B. appeals the removal of his name from the eligible list for Correctional Police Officer¹ (S9988V), Department of Corrections on the basis of an unsatisfactory criminal record.

The appellant, a non-veteran, took and passed the open-competitive examination for Correctional Police Officer (S9988V), which had a closing date of May 31, 2017. The resulting eligible list promulgated on September 28, 2017 and expired on September 27, 2019. The appointing authority requested the removal of the appellant’s name due to an unsatisfactory criminal record. Specifically, the appointing authority asserted that the appellant was arrested for riot in violation of *N.J.S.A. 2C:33-1* on August 10, 1996, for which he was found guilty and received a fine;² arrested for engaging in prostitution in violation of *N.J.S.A. 2C:34-1b(1)*, a disorderly persons offense, on July 11, 1997, for which he was found guilty and sentenced to 15 days in jail;³ arrested for assault in violation of *N.J.S.A. 2C:12-1* on July 11, 2000, which was dismissed; arrested for sexual assault in violation of *N.J.S.A. 2C:14-2*, endangering the welfare of a child in violation of *N.J.S.A. 2C:24-4*

¹ Pursuant to *N.J.S.A. 11A:2-11.1*, effective May 1, 2018, the title of Correction Officer Recruit has been retitled to Correctional Police Officer.

² The grade of this charge is not clearly indicated in the record. It is, however, noted that the appellant listed the charge in response to question 54 of the preemployment application, “Have you ever been ticketed, arrested or charged with a violation of a city or local ordinance of the Disorderly Persons Offense Act?” and the conviction occurred in municipal court. The appellant was 18 years old at the time of the arrest.

³ The appellant was 19 years old at the time of the arrest.

and criminal sexual contact in violation of *N.J.S.A. 2C:14-3* on August 3, 2000, which were dismissed;⁴ arrested for assault in violation of *N.J.S.A. 2C:12-1a(1)* on or about December 26, 2001, which was dismissed; arrested for failure to register as a sex offender in violation of *N.J.S.A. 2C:7-2a* and failure to provide notification of an address change in violation of *N.J.S.A. 2C:7-2d* on or about January 3, 2002, which were dismissed; and arrested for harassment in violation of *N.J.S.A. 2C:33-4c* on or about December 9, 2003, which was dismissed.⁵

On appeal to the Civil Service Commission (Commission), the appellant states that he served no jail time for his prostitution charge and only paid a fine. He maintains that since then, he has been an outstanding career-driven person and has chosen to pursue a career in law enforcement. Specifically, he states that he has been a Humane Law Enforcement Officer (HLEO) for years. In support, he submits his certifications of completion for the following courses: Basic Course for Humane Law Enforcement Officers Phase One, April 27, 2017 – June 17, 2017, issued by the Ocean County Police Academy; HLEO – Use of Force Course, June 19, 2017 – June 23, 2017, issued by the New Jersey Division of Criminal Justice; and HLEO – Firearms Training Course, July 17, 2017 – July 21, 2017, issued by the New Jersey Division of Criminal Justice.⁶

In response, the appointing authority stands with its original decision to remove the appellant's name from the eligible list. It asserts that the appellant is subject to community supervision for life and must report his address to law enforcement agencies due to the incident that led to the charge of endangering the welfare of a child.⁷

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 that includes a conviction for a crime that adversely relates to the employment sought. The following factors may be considered in such determination:

⁴ The appellant had originally pled guilty to endangering the welfare of a child with the sexual assault and criminal sexual contact charges being dismissed. As a result, in 2001, he was sentenced to three years of probation and community supervision for life. In 2008, the appellant filed an amended petition for post-conviction relief, which the Law Division of the Superior Court denied. The appellant appealed to the Appellate Division of the Superior Court, which remanded the matter in 2012 for further proceedings. On remand, the State moved to dismiss the indictment, and the Law Division granted the application.

⁵ In 2013, the appellant was granted an expungement covering all the aforementioned charges.

⁶ According to the appellant's preemployment application, he has been employed in various positions since 1998, earned his GED in 1999, and holds four firearm permits issued in 2014 and 2016.

⁷ The appointing authority also claims that the appellant did not disclose his name change on his preemployment application. However, the appellant clearly disclosed the change in his responses to questions 30 and 32 on page 12 of his preemployment application.

- 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).

Additionally, although an eligible's arrest and/or conviction for a disorderly persons offense cannot give rise to the disability arising under *N.J.A.C.* 4A:4-4.7(a)4, the fact that an eligible was involved in such activity may reflect upon the eligible's character and ability to perform the duties of the position at issue. See *In the Matter of Joseph McCalla*, Docket No. A-4643-00T2 (App. Div. November 7, 2002) (Appellate Division affirmed the consideration of a conviction of a disorderly persons offense in removing an eligible from a Police Officer eligible list). Here, as the appellant was convicted for at least one disorderly persons offense, the offense did not rise to the level of a crime. Nevertheless, the appellant's conviction could still be considered in light of the factors noted in *N.J.S.A.* 11A:4-11 and *N.J.A.C.* 4A:4-4.7(a)4 to determine whether it adversely related to the employment sought.

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 his 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 appellant's arrests for riot and prostitution, though they led to convictions, occurred more than 19 years before the examination closing date, when the appellant was a young adult of 18 and 19 years of age respectively. All other charges were dismissed. Although the appointing authority claims that the appellant is still subject to community supervision for life and must report his address to law enforcement agencies due to the incident that led to the charge of endangering the welfare of a child, this is not the case since the charge was ultimately dismissed. Further, there is evidence of rehabilitation in the record, as the appellant has been employed in various positions since 1997, earned a GED and certifications in the area of humane law enforcement, holds four firearm permits, and obtained an expungement covering all his charges. The foundation for an expungement, it should be noted, is the equivalent of evidence of rehabilitation. *See In the Matter of J.B.*, 386 N.J. Super. 512 (App. Div. 2006). Accordingly, based on the totality of the record in this matter, 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 Correctional Police Officer (S9988V), Department of Corrections be revived in order for R.B. 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 6TH DAY OF NOVEMBER, 2019



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