



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

In the Matter of G.S., Correctional Police Officer (S9999U), Department of Corrections

List Removal Appeal

CSC Docket No. 2020-52

ISSUED: DECEMBER 23, 2019 (HS)

G.S. appeals the removal of his name from the eligible list for Correctional Police Officer¹ (S9999U), 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 (S9999U), which had a closing date of August 31, 2016. The resulting eligible list promulgated on March 29, 2017 and expires on March 30, 2020.² The appointing authority requested the removal of the appellant's name due to an unsatisfactory criminal record. Specifically, the appointing authority asserted that as a result of a September 8, 2003 incident, the appellant was adjudicated delinquent on a charge of possession of an imitation firearm in violation of N.J.S.A. 2C:39-4e.

On appeal to the Civil Service Commission (Commission), the appellant states that the September 8, 2003 incident, at which time he was a juvenile of 16 years of age, was based on a misunderstanding: the weapon was a toy, but a passerby thought it was a real weapon.³ He states that the ensuing charge was dropped in court. The appellant states that he has been working in law

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 eligible list was extended one year to March 30, 2020.

³ In his preemployment application, the appellant explained that he had been "[a]rrested as a juvenile for having a toy gun. Someone called the police and stated they saw two juveniles with weapons on them. Charges were dismissed."

enforcement since 2013, and this piece of his past has never impeded his chances of being hired or affected his employment in any way. The appellant notes that he holds a Class II Police Officer Certification and has worked for three police departments and the New Jersey Juvenile Justice Commission. He also notes that he currently works for the Cape May County Sheriff's Department.⁴ In support, the appellant provides his juvenile court record from the Family Automated Case Tracking System. The record indicates that the appellant received a deferred disposition on his juvenile charge, and the charge was dismissed on December 3, 2004.

In response, the appointing authority reiterates that it removed the appellant from the subject eligible list because he was adjudicated delinquent on a charge of possession of an imitation firearm in violation of *N.J.S.A. 2C:39-4e*. It contends that "the appellant has failed to explain the incident or elaborate on the reason he was in possession of a toy gun in 2003" and poses the following questions:

Was [the appellant] outside playing cops and robbers with friends? Or perhaps he was terrorizing the neighborhood and chasing unsuspecting individuals down the street? Did he use the toy gun to "pretend" to rob people? Or was he pointing the toy gun at vehicles and its passengers as they drove down the street?

The appointing authority states that based on the information presented and a review of the file documents, it "was provided with only a vague description of the criminal charges and/or incident. Therefore, [it could not] determine the severity of the appellant's actions or ascertain rehabilitation." The appointing authority notes that under its removal criteria, a candidate can be removed from processing if the candidate

HAS BEEN CONVICTED OF ANY OFFENSE WHICH IS A CRIME OF THE 4TH DEGREE OR HIGHER TO INCLUDE, BUT NOT LIMITED TO, ANY SEXUAL OFFENSE OR JUVENILE OFFENSES (INCLUDING 2C:51-2-FORFEITURE OF PUBLIC OFFICE).

The appointing authority maintains that it has a duty to carefully screen candidates. If a candidate's background investigation reveals derogatory information including a conviction of possession of a prohibited weapon/device, then it may preclude that individual from moving forward in the hiring process. Thus, it

⁴ The appellant indicated the following positions, among others, on his preemployment application: "Police Officer" (Special Law Enforcement Officer according to agency records) with Atlantic City (2013-2014); Police Officer with Galloway Township (2014); Police Officer with Berlin Borough (2015-2016); and Youth Worker with the New Jersey Juvenile Justice Commission (2016-2019). Agency records indicate that the appellant is currently employed as a County Correction Officer with the Cape May County Sheriff's Department.

requests that its decision be sustained. In support, the appointing authority submits copies of the appellant's preemployment application⁵ and the appellant's New Jersey Criminal History Detailed Record. The record indicates the appellant's juvenile charge, but the disposition of the charge is indicated as "UNAVAILABLE."

CONCLUSION

Initially, although the appointing authority indicated that the appellant was removed consistent with its own criteria for removal from the hiring process, the Commission emphasizes that it must decide each list removal appeal on the basis of the record presented and is not bound by the criteria utilized by the appointing authority. *See, e.g., In the Matter of Debra Dygon* (MSB, decided May 23, 2000).

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:

- 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.*

⁵ The application indicates that the appellant graduated from high school in 2005, earned a Police Officer Class II certification from the Tony Canale Training Center, and holds a firearm permit.

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 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 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. Contrary to the appointing authority’s contention that the appellant was ultimately adjudicated delinquent on a charge of possession of an imitation firearm, the appellant received a deferred disposition and the charge was dismissed as indicated by the juvenile court record he provides. The appointing authority’s line of questions regarding the circumstances of the underlying incident is unpersuasive as it is merely speculative.⁶ Additionally, the incident occurred approximately 13 years before the examination closing date when the appellant was a juvenile of 16 years of age and represents his only negative interaction with law enforcement. Further, the appellant has proffered evidence of rehabilitation, as he graduated from high school in 2005; completed law enforcement training; holds a firearm permit; and has held a Youth Worker position and various law enforcement positions. 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.

⁶ It is also troubling that the appointing authority chose to take its speculation so far as to suggest, without evidence, that the appellant might have been “terrorizing” the neighborhood, pretending to rob people, or pointing the toy gun at vehicles and their passengers.

ORDER

Therefore, it is ordered that this appeal be granted and the appellant's name be restored to the eligible list for Correctional Police Officer (S9999U), Department of Corrections for prospective employment opportunities.

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 18TH DAY OF DECEMBER, 2019



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