



**STATE OF NEW JERSEY**

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

In the Matter of Alphonso Terrell,  
Correctional Police Officer (S9988V),  
Department of Corrections

List Removal Appeal

CSC Docket No. 2019-3419

**ISSUED: APRIL 17, 2020 (ABR)**

Alphonso Terrell appeals his removal from the Correctional Police Officer (S9988V), Department of Corrections eligible list on the basis of an unsatisfactory criminal background.

The appellant, a non-veteran, applied for and passed the open competitive examination for Correctional Police Officer (S9988V), which had a closing date of May 31, 2017. The subject eligible list promulgated on September 28, 2017 and expired on September 27, 2019. The appellant's name was subsequently certified to the appointing authority. The appointing authority removed the appellant's name from the subject eligible list on the basis of an unsatisfactory criminal background. Specifically, the appointing authority indicated that the appellant, at age 12, was charged with disturbing the peace, in violation of *N.J.S.A. 2C:33-2*; and resisting arrest by using threats and force, in violation of *N.J.S.A. 2C:29-2A*, based upon a November 16, 2005 incident. The appointing authority maintained that the appellant was found guilty of both charges and thereafter completed a juvenile diversionary program.

On appeal to the Civil Service Commission (Commission), the appellant asserts that the appointing authority did not have a sufficient basis to remove his name from the subject eligible list, as it erroneously relied upon its internal standards. In this regard, he states that the appointing authority advised him that it removed his name from the subject eligible list because he was convicted of the above-noted charges and because he entered into a juvenile diversion program within seven years of the promulgation date of the subject eligible list. The

appellant maintains that his record does not satisfy either of the appointing authority's proffered standards. In this regard, he denies that he was convicted of the above-noted charges. Rather, he states that the case against him was dismissed after he completed a juvenile diversionary program. In support, the appellant submits a copy of records from the Superior Court of New Jersey, Chancery Division, Family Part related to juvenile delinquency proceedings regarding the incident in question, including an Intake Conference Summary Report Sheet. These records indicate that the disturbing the peace charge was dismissed on January 5, 2006 and that the resisting arrest charge was diverted through a counseling program. It further noted that on March 17, 2006 the assigned judge approved the closure of the case against the appellant after he completed the counseling program. Additionally, the appellant further contends that because the standard used by the appointing authority is not among the criteria enumerated as a basis for a removal from an eligible list in *N.J.A.C.* 4A:4-6.1, the appointing authority cannot remove his name from the subject eligible list. Moreover, the appellant avers that even if the aforementioned standard was proper, his entry into the juvenile diversion program occurred more than 11 years prior to the promulgation of the subject eligible list, meaning that it was beyond the seven-year timeframe provided thereunder. Finally, he argues that given his age at the time of the underlying incident, the passage of time and his lack of other negative interactions with law enforcement, his name should be restored to the subject eligible list.

In response, the appointing authority contends that the appellant's record is sufficient to support the removal of his name from the subject eligible list. In this regard, it submits that pursuant to its Criteria for Removal, an applicant may be removed from an eligible list if they have been "convicted of any offense which is a crime of the 4<sup>th</sup> degree or higher," including juvenile offenses; or if they "entered into a juvenile diversion program . . . within seven (7) years of the promulgated Civil Service list." The appointing authority asserts that because the appellant was convicted of resisting arrest by using threats and force, a fourth degree crime, and completed a diversionary program, there was a sufficient basis for it to remove his name from the eligible list. The appointing authority further avers that the appellant has not provided sufficient evidence about his rehabilitation to demonstrate that his name should be restored to the subject eligible list. The appointing authority submits copies of records from the Family Automated Case Tracking System (FACTS) related to the charges at issue, including a Case Summary Detail which indicates that the charge of disturbing the peace was "dismissed" on January 5, 2006 and the charge of resisting arrest was "diverted." The FACTS Case Summary Detail further states that juvenile delinquency proceedings were disposed of after a successful diversion of the resisting arrest charge.

It is noted that the appellant, in his pre-employment application, has detailed his employment between September 2011 and the closing date. The appellant stated that he was terminated by Capital One Bank in August 2012 for directing profanity towards a co-worker. The appellant further indicated that he has maintained regular employment since November 2013.

## 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.

*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 or her name from an eligible list was in error.

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 law enforcement agency, 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. It is noted that the record does not evidence that the appellant was convicted for juvenile delinquency or a crime based upon the charges at issue in this case. 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 was arrested following the

underlying incident. 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).

An eligible's arrest and entry into a juvenile diversionary program may be properly considered in removing an eligible's name from an eligible list. Juvenile diversionary programs are similar to the PTI Program. Participation in the PTI Program 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. The Appellate Division has observed that while the PTI Program provides a channel to resolve a criminal charge without the risk of conviction, it has **not** been construed to be a favorable disposition. *See In the Matter of Clifton Gauthier, Rockaway Township, \_\_\_ N.J. Super. \_\_\_* (App. Div. 2019); *See also Grill, supra*. 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, an eligible's arrest and entry into a juvenile diversionary program, which is similar to the PTI Program, could still be properly considered in removing the eligible's name from an 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).

The Commission notes that it must decide each list removal appeal on the basis of the record presented and that it is not bound by the criteria utilized by the appointing authority in the instant matter. *See, e.g., In the Matter of Debra Dygon* (MSB, decided May 23, 2000). Nevertheless, the appointing authority's citation of its internal criteria in this matter is notable, as the Commission is confounded by the appointing authority's reliance on these standards as a basis for removing the appellant's name from the subject eligible list. In this regard, the record does not appear to support the appointing authority's assertion that the appellant was "found guilty" of resisting arrest by using threats and force on December 7, 2005. Although it is undisputed that the appellant was charged with this offense, the appellant stated in his pre-employment application that this charge was diverted and dismissed, and the Intake Conference Summary Report Sheet and FACTS records furnished by the parties in this matter indicate that the juvenile delinquency proceedings against the appellant were dismissed following a successful diversion. In other words, these records do not indicate that the appellant was convicted of any of the charges at issue. Furthermore, the Commission is perplexed by the appointing authority's citation of its standard of entering a juvenile diversion program "within seven years of the promulgat[ion]" of

the subject eligible list, as the record shows that the appellant completed the diversionary program in March 2006, more than 11 years prior to the May 31, 2017 closing date and the September 28, 2017 promulgation date for the subject eligible list.

Moreover, 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. Although the appointing authority argues that it is unable to evaluate the extent of the appellant's rehabilitation because it has insufficient detail about the underlying incident and the appellant's rehabilitation, the Commission finds that there is ample information to evaluate his record 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. It is undisputed that the appellant was charged with disturbing the peace and resisting arrest more than 11 years before the closing date for the subject examination. The appellant was 12 years old at the time of the incident. Additionally, the appointing authority does not assert that the appellant was involved in any other disqualifying incidents since that time. Moreover, a review of the appellant's employment application reveals evidence of rehabilitation, as he listed several of his employers on the application. Although the appellant indicates that he was terminated from one position in August 2012, the appointing authority has not asserted that this termination supports the removal of the appellant's name from the subject eligible list. Other than the 2005 incident, the appointing authority did not provide any other information to show that the appellant's name should be removed from the list. Under the foregoing circumstances, the Commission finds that the appellant's name should be restored to the list. Therefore, there is sufficient justification for restoring the appellant's name to the Correctional Police Officer (S9988V), Department of Corrections eligible list.

### **ORDER**

Therefore, it is ordered that this appeal be granted and the list for Correctional Police Officer (S9988U), Department of Corrections 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 15<sup>TH</sup> DAY OF APRIL, 2020

*Deirdre' L. Webster Cobb*

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