



STATE OF NEW JERSEY

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

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

CSC Docket No. 2020-530

List Removal Appeal

ISSUED: MAY 22, 2020 (JET)

S.K. appeals the removal of his name from the Correctional Police Officer (S9999U), Department of Corrections, eligible list on the basis of an unsatisfactory background report and an unsatisfactory criminal record.

The appellant took the examination for Correctional Police Officer, achieved a passing score, and was ranked on the subsequent eligible list. The appellant's name was certified to the appointing authority on October 16, 2018. In disposing of the certification, the appointing authority requested the removal of the appellant's name from the eligible list on the basis of an unsatisfactory background report and an unsatisfactory criminal record. Specifically, the appointing authority asserted that: in 2002, the appellant was charged with Shoplifting in violation of *N.J.S.A. 2C:20-11c(4)* which was dismissed via completion of by a diversionary program; in 2004, with Theft by Unlawful Taking in violation of *N.J.S.A. 2C:20-3a*; in 2012, with Simple Assault in violation of *N.J.S.A. 2C:12-1a(1)* (dismissed); and in 2016, with Disorderly Conduct by Improper Behavior in violation of *N.J.S.A. 2C:33-2A(1)* (dismissed). It is noted that the S9999U list expired on March 30, 2019.

On appeal to the Civil Service Commission (Commission), the appellant asserts that he regrets his involvement in the 2004 incident and the matter was expunged. Further, he maintains that he was not involved in the 2012 Simple Assault charge and the matter was dismissed. Moreover, the appellant explains that in 2016, while celebrating at a 4th of July party, he was issued a summons which was later dismissed.

In response, the appointing authority maintains that the appellant's name should be removed from the list. Specifically, the appointing authority asserts that the appellant did not provide a sufficient explanation for his involvement in the incidents. Moreover, the appointing authority contends that its hiring criteria includes removing candidates who have been convicted of a 4th degree crime or higher.

CONCLUSION

N.J.S.A. 11A:4-11, in conjunction with *N.J.A.C.* 4A:4-4.7(a)4, provides 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. In addition, when the eligible is a candidate for a public safety title, an arrest unsupported by a conviction may disqualify the candidate from obtaining the employment sought. See *Tharpe, v. City of Newark Police Department*, 261 *N.J. Super.* 401 (App. Div. 1992). In this regard, the Commission must look to the criteria established in *N.J.S.A.* 11A:4-11 and *N.J.A.C.* 4A:4-4.7(a)4 to determine whether the appellant's criminal history adversely relate to the position of Correctional Police Officer. 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, firefighter or correction officer and other titles as determined by the Commission. It is noted that the Appellate Division of the Superior Court remanded the matter of a candidate's removal from a Police Officer employment 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, supra*.

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, when requested for purposes of making a

hiring decision. 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).

Additionally, participation in the PTI Program is neither a conviction nor an acquittal. However, 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); *Grill and Walsh v. City of Newark Police Department*, Docket No. A-6224-98T3 (App. Div. January 30, 2001); *See also N.J.S.A. 2C:43-13(d)*. 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. *In Grill, supra*, the Appellate Division indicated that the PTI Program provides a channel to resolve a criminal charge without the risk of conviction; however, it has not been construed to constitute a favorable termination. 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, the appellant's arrest and entry into the PTI program could still be properly considered in removing his name from the subject eligible list.


In this matter, the record indicates that the appellant was arrested in 2002, completed a diversionary program, arrested in 2004 for Unlawful Taking, and arrested in 2012 and 2016 which were dismissed. Additionally, the record reflects that he has not been charged with any other incidents since that time. Initially, the Commission is not bound by criteria utilized by the appointing authority and must decide each list removal on the basis of the record presented. *See In the Matter of Victor Rodriguez* (MSB, decided July 27, 2005). *See also, In the Matter of Debra Dygon* (MSB, decided May 23, 2000). In this matter, the 2002 and 2004 incidents are remote in time and are not an impediment to the appellant's ability to perform the duties of a Correctional Police Officer. However, more problematic are the 2012 and 2016 infractions. While these instances were dismissed, the recency of these occurrences are indications of poor judgment, which is not acceptable for a Correctional Police Officer candidate. In this regard, candidates seeking a position as a Correctional Police Officer are held to a higher standard. Correctional Police Officers hold highly visible and sensitive positions within the community and the standard for an applicant includes good character and an image of utmost confidence and trust. *See Moorestown v. Armstrong*, 89 N.J. Super. 560 (App. Div. 1965), *cert. denied*, 47 N.J. 80 (1966). *See also In re Phillips*, 117 N.J. 567 (1990). The public expects Correctional Police Officers to present a personal background that exhibits respect for the law and rules. Accordingly, under the circumstances, the appellant's background is currently adverse to the position. However, with the further passage of time and no further infractions, such a background will be insufficient to be used to remove the appellant's name from future similar lists.

ORDER

Therefore, it is ordered that this appeal be denied.

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
20TH DAY OF MAY, 2020



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