



**STATE OF NEW JERSEY**

In the Matter of I.Y.,  
Correctional Police Officer (S9988A),  
Department of Corrections

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

CSC Docket No. 2020-1404

List Removal Appeal

**ISSUED: MAY 22, 2020 (JET)**

I.Y. appeals the removal of his name from the Correctional Police Officer (S9988A), Department of Corrections eligible list on the basis of an unsatisfactory criminal record.

The appellant took the open competitive examination for Correctional Police Officer (S9988A), Department of Corrections, achieved a passing score, and was ranked on the subsequent eligible list. The appellant's name was certified on July 4, 2019. In disposing of the certification, the appointing authority requested the removal of the appellant's name from the eligible lists on the basis of an unsatisfactory criminal record. Specifically, the appointing authority asserted that in 2011, the appellant was arrested as a juvenile and charged with Conspiracy in violation of *N.J.S.A. 2C:5-2* (4<sup>th</sup> degree) and Theft by Unlawful Taking in violation of *N.J.S.A. 2C:20-3* (4<sup>th</sup> degree), for which he entered into a six-month deferred disposition and completed 15 months of community service. The appointing authority also indicated that in 2013, the appellant was arrested as a juvenile and charged with Theft by Unlawful Taking-Movable Property in violation of *N.J.S.A. 2C:20-3A* (3<sup>rd</sup> degree), for which he was found delinquent and completed a one-year intensive juvenile program. The appointing authority further stated that in 2016, the appellant was arrested in Bridgeton and charged with Possession of Less than 50 grams of Marijuana in violation of *N.J.S.A. 2C:35-10A(4)*, for which he paid a fine and completed a conditional discharge.

On appeal to the Civil Service Commission (Commission), the appellant asserts, among other things, that he was a juvenile at the time the 2011 and 2013 incidents occurred, and he completed a conditional discharge for the 2016 matter. The appellant states that he complied with all of the court's requirements and expeditiously paid his fines. In addition, the appellant explains that he has learned from his mistakes, as he is now a father and is currently employed in a State position. Moreover, the appellant maintains that he is still interested in the subject position.

In response, the appointing authority maintains that the appellant's criminal background is sufficient to remove his name from the eligible list. The appointing authority asserts that the appellant's criminal background, which includes Theft by Unlawful Taking and additional recent violations of the law, preclude him from moving forward with the appointment process. In this regard, the appointing authority explains that its hiring criteria requires the removal of candidates who have entered into a conditional discharge agreement as a result of any criminal offense, including a disorderly persons offense or petty disorderly persons offense, within seven years of the certification date of the subject list. Moreover, the appointing authority asserts that its goals are to select candidates who exhibit respect for the law and who uphold the day-to-day operations of the prison system.

## 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).

Moreover, pursuant to *N.J.S.A. 2C:36A-1*, under a Conditional Discharge, termination of supervisory treatment and dismissal of the charges shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of disqualifications or disabilities, if any, imposed by law upon conviction of a crime or disorderly person offense but shall be reported by the clerk of the court to the State Bureau of Identification criminal history record information files. See *State v. Marzolf*, 79 *N.J.* 167 (1979) (Drug offense which has resulted in supervision and discharge was part of the defendant's personal history to be revealed for purposes of sentencing for subsequent drug offenses, but such record was not to be given the weight of a criminal conviction). Thus, the appellant's arrest and Conditional Discharge could still properly be considered in removing his name from the subject eligible list.

In this matter, the record reflects that the appellant was arrested as a juvenile in 2011 and charged with Conspiracy and Theft by Unlawful Taking, arrested as a juvenile in 2013 and charged with Theft by Unlawful Taking – Movable Property, and arrested in 2016 and charged with Possession of Less than 50 grams of Marijuana, for which he completed a conditional discharge. Additionally, the record reflects that he has not been charged with any other incidents since that time. Initially, the Commission is not bound by the 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, although the 2011 and 2013 incidents occurred some years ago, the appointing authority was authorized to consider the appellant's juvenile record

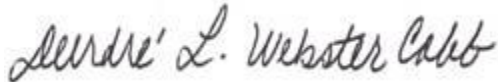
during the appointment process. However, more problematic is the 2016 infraction. Although that matter was disposed by a conditional discharge, the recency of that matter is an indication of continued poor judgement, which is not acceptable for a Correctional Police Officer candidate. In this regard, 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). Accordingly, there is sufficient basis to remove the appellant from the Correctional Police Officer (S9988A) eligible list. However, the removal in this matter does not prevent the appellant from applying for any similar positions in the future, as the further passage of time without further infractions may be sufficient to show that he has been rehabilitated.

### 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 20<sup>TH</sup> DAY OF MAY, 2020



Deirdre L. Webster Cobb  
Chairperson  
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