



STATE OF NEW JERSEY

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

In the Matter of R.W., Correctional
Police Officer (S9988A), Department
of Corrections

List Removal Appeal

CSC Docket No. 2020-1734

ISSUED: JUNE 19, 2020 (HS)

R.W. appeals the removal of his name from the eligible list for Correctional Police Officer¹ (S9988A), 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 (S9988A), which had a closing date of January 31, 2019. The resulting eligible list promulgated on June 27, 2019 and expires on June 26, 2021. 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 November 28, 2002 incident, when the appellant was 15 years old, he was adjudicated delinquent on February 18, 2003 on charges of burglary of a structure, Fla. Stat. § 810.02(1); false imprisonment, Fla. Stat. § 787.02(2); and grand theft, Fla. Stat. § 812.014(2)(c)1. The appellant was placed on probation, from which he was ultimately terminated honorably.

On appeal to the Civil Service Commission (Commission), the appellant acknowledges that his mistake was a terrible and naïve decision but maintains that his juvenile charges do not represent the person he is today.

In response, the appointing authority indicates that it stands with its original decision to remove the appellant's name from the eligible list. In support, the

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.

appointing authority submits a copy of the appellant's preemployment application and court records. It is noted that according to the appellant's preemployment application and agency records, he earned his GED in 2010 and has been employed in various positions dating back to 2005. For example, the appellant was employed as a Loss Prevention Officer with a supermarket company from August 2008 to September 2016; Safety Service Patrol Apprentice with the State from March 2017 to March 2019; and Safety Service Patrol Operator with the State since March 2019.²

In reply, the appellant argues that it is unfair to debar someone who is trying to make the best of himself despite a choice made as a young juvenile. In support, the appellant provides a Certificate of Commendation recognizing his graduation from the 2015 Bergen County Sheriff's Citizen Police Academy Training Program and a character reference letter from J.M., also a Safety Service Patrol Operator with the State. J.M. states that he trained the appellant for a period of time and has been working alongside the appellant for the past three years. J.M. also states that the appellant possesses admirable professionalism and ability to maintain composure under pressure; exceptional communication skills; and strong attention to detail.

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:

- 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

² Per the job specification, a Safety Service Patrol Apprentice who successfully completes the 24-month training period becomes eligible for advancement to Safety Service Patrol Operator, in accordance with *N.J.A.C.* 4A:3-3.7. Per the job specification, a Safety Service Patrol Operator independently performs work involved in clearing highways of incidents, which includes: transportation accidents; assistance of disabled motorists; removal of debris; tagging abandoned vehicles; and performing minor repairs of motor vehicles.

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).

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 2002 incident underlying the appellant's adjudication of delinquency occurred more than *16 years* before the examination closing date when he was a juvenile of 15 years of age and represents his only negative interaction with law enforcement. Further, the appellant has proffered ample evidence of rehabilitation as he completed the terms of his probation honorably; earned his GED in 2010; has been employed in various positions since 2005; and participated in the 2015 Bergen County Sheriff's Citizen Police Academy Training Program. Of particular note is the appellant's State service. In this regard, he completed the 24-month training period as a Safety Service Patrol Apprentice and advanced to Safety Service Patrol Operator, a position in which he currently serves the public performing safety-sensitive work. 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 appellant's name be restored to the eligible list for Correctional Police Officer (S9988A), 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
17TH DAY OF JUNE, 2020

Deirdre' L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

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