



STATE OF NEW JERSEY

In the Matter of L.J.,
Correctional Police Officer (S9988A),
Department of Corrections

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

CSC Docket No. 2020-2524

List Removal Appeal

ISSUED: AUGUST 26, 2020 (JET)

L.J. 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), achieved a passing score, and was ranked on the subsequent eligible list. The appellant's name was certified on January 8, 2020. In disposing of the certification, the appointing authority requested the removal of the appellant's name from the eligible list. Specifically, the appointing authority asserted that on February 22, 1991, the appellant was charged with Manufacturing, Distributing or Dispensing Controlled Dangerous Substances (CDS) in violation of *N.J.S.A. 2C:35-5A(1)* (dismissed), Conspiracy in violation of *N.J.S.A. 2C:5-2* (dismissed), and Criminal Sale of a Controlled Dangerous Substance In or Near School Property in violation of *N.J.S.A. 2C:35-7* (third degree), for which he was found guilty, served 90 days in prison, and completed five years of probation.

On appeal to the Civil Service Commission (Commission), the appellant asserts that the above listed infraction did not involve the sale of a CDS of 50 grams or greater. Rather, the appellant contends that he was found guilty of a one-time sale of \$10 to \$15 dollars of a CDS. The appellant adds that the incident occurred 30 years ago, he has not been involved with any similar incidents, and he has matured since that time. Moreover, the appellant states that his records pertaining to the infraction were destroyed, and he provides a letter in support from the Burlington County

Prosecutor's Office, indicating that his records were destroyed in compliance with the State Records Retention and Disposition Schedule.

In response, the appointing authority asserts that it has discretion to remove candidates who have been convicted of a third degree crime, and the appellant's background meets such criteria. The appointing authority explains that law enforcement candidates must be able to follow the rules in order to ensure a safe and secure environment, and the appellant's background is inconsistent with those standards. Moreover, the appointing authority asserts that its goals are to select candidates who exhibit respect for the law in order to effectively manage the day-to-day operations of a 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).

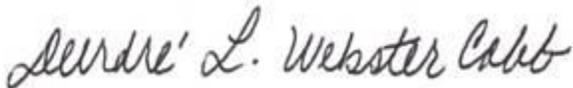
In this matter, the record indicates that the appellant was arrested in 1991 and found guilty of Criminal Sale of a Controlled Dangerous Substance In or Near School Property (third degree). Additionally, the record reflects that he has not been charged with any other incidents since that time. Initially, 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 appellant's involvement in the 1991 incident was an isolated event, is remote in time, and since he has not been involved in any further incidents, such information is not an impediment to his ability to perform the duties of a Correctional Police Officer. Given the amount of time that has elapsed since the date of the incident and his lack of involvement with any further legal impediments, the Commission is satisfied that the appellant has been rehabilitated. Accordingly, under the circumstances, the appointing authority has not demonstrated that the appellant's criminal record constitutes sufficient cause to remove 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 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 19TH DAY OF AUGUST 2020



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