

B-115



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Raechel Morgan,
Corrections Officer Recruit (S9988T),
Department of Corrections

List Removal Appeal

CSC Docket No. 2016-3736

ISSUED: DEC 12 2016

(ABR)

Raechel Morgan appeals the decision of the appointing authority to remove her name from the Correction Officer Recruit (S9988T), Department of Corrections eligible list on the basis of an unsatisfactory criminal record.

The appellant took the open competitive examination for Correction Officer Recruit (S9988T), which had a closing date of January 8, 2015, achieved a passing score and was ranked as a non-veteran on the subsequent eligible list. The eligible list promulgated on July 23, 2015 and expires on July 22, 2017. In disposing of the certification, the appointing authority requested the removal of the appellant's name due to an unsatisfactory criminal record. Specifically, the appointing authority asserted that the appellant was charged with possession of 50 grams or less of marijuana in violation of *N.J.S.A. 2C:35-10(a)(4)* in May 2009, which was diverted through a juvenile diversion program and the charge was ultimately dismissed in July 2009.

On appeal to the Civil Service Commission (Commission), the appellant, citing *N.J.A.C. 4A:4-4.7(a)(4)(i)*, argues that an appropriate review of the factors does not support her removal. The appellant stresses that the incident that gave rise to the aforementioned criminal charge occurred approximately seven years before the date of her appeal in April 2016. She emphasizes that she was only 13 years old and in middle school when the incident occurred. The appellant states that after completing the juvenile diversion program, she graduated from high school, pursued an Associate's degree in Criminal Justice and anticipates to continue on to earn a Bachelor's degree. The appellant also states that she has

maintained employment with Wawa, Inc. since 2013 and that her exemplary performance has been repeatedly recognized by her employer and has resulted in two promotions. Finally, she maintains that she does not use marijuana and that the 2009 incident was her only contact with law enforcement.

In response, the appointing authority argues that it appropriately removed the appellant's name from the eligible list on the basis of an unsatisfactory criminal record. In the instant matter, it maintains that the appellant was charged with possession of 50 grams or less of marijuana in violation of *N.J.S.A. 2C:35-10(a)(4)* in 2009. The appointing authority submits a copy of the appellant's Application for Employment and notes that her explanation of the charge appears on page 17 thereof. Specifically, she stated that "[o]n May 5, 2009, at the age of 13 years of age, I was found to be in possession of CDS marijuana less than 50 grams at Folsom Elementary School. I was taken into custody by [a State Trooper and questioned at the] Police Barracks in Buena, NJ. I was suspended [for] the remainder of the school year and ordered [to take] a drug test (which I passed)," and claimed that her record was expunged. The appointing authority also provides a copy of the juvenile delinquency complaint, which indicates that the appellant was arrested for possessing a small plastic candy lollipop bottle with raw marijuana inside. The appointing authority also submits the appellant's case history from the Family Automated Case Tracking System. The appointing authority stresses that, as a recognized law enforcement agency, it is allowed to review and use juvenile records when evaluating a candidate's suitability for employment and states that it gives applicants clear information about the grounds for removal from the hiring process. It argues that a juvenile violation of the law clearly relates to the employment the appellant seeks and that a person with a criminal record is not suitable for a law enforcement position. It maintains that, in the instant matter, it considered all relevant facts and circumstances before seeking to remove the appellant's name from the subject eligible list, including the fact that she was only 13 years old at the time of the offense.

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.

The presentation to an appointing authority of a pardon or expungement prohibits 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. 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).

Further, 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). *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. However, the Commission can consider the circumstances surrounding an eligible's arrests, the fact that the eligible was involved in such activities and whether they reflect upon the eligible's character and the eligible's ability to perform the duties of the position at issue. See *In the Matter of Tracey Shimonis*, Docket No. A-3963-01T3 (App. Div. October 9, 2003). 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.

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. 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, 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).

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.

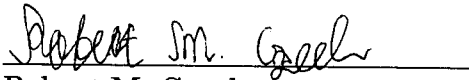
While the Commission is mindful of the high standards that are placed upon law enforcement candidates and personnel, a review of the record in this matter demonstrates that the appellant's removal from the subject eligible list is unwarranted. The appointing authority contends that the aforementioned juvenile charge demonstrates that the appellant is not suited for the Correction Officer Recruit position she seeks. However, as noted above, the Commission must consider the factors set forth under *N.J.S.A.* 11A:4-11 and *N.J.A.C.* 4A:4-4.7(a)4 when determining whether the appellant's juvenile arrest record supports her removal from the subject eligible list. Here, the appellant was only 13 years old when she was arrested for marijuana possession. The underlying incident involved the appellant possessing a small plastic candy lollipop bottle with raw marijuana inside and the charge does not appear to be of a serious nature. The marijuana possession charge was ultimately dismissed in July 2009 after the appellant successfully completed a juvenile diversion program and passed a drug test. The incident was an isolated event and there is no evidence that the appellant has had any other contact with law enforcement since July 2009. Approximately five-and-a-half years passed between the dismissal of the aforementioned charge and the January 2015 closing date for the subject examination. The appellant has provided other evidence of her rehabilitation, including her graduation from high school in 2013, enrollment in an Associate's degree program in Criminal Justice and more than two years of full-time employment with Wawa Inc., where she has received two promotions. Accordingly, the foregoing demonstrates that the appellant has met her burden of proof in this matter and the appointing authority has not shown sufficient grounds to remove the appellant's name from the eligible list for Correction Officer Recruit (S9988T), Department of Corrections.

ORDER

Therefore, it is ordered that this appeal be granted and that the appellant's name be restored to the Correction Officer Recruit (S9988T), Department of Corrections 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 7TH DAY OF DECEMBER, 2016



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