



STATE OF NEW JERSEY

In the Matter of David Greenwald,  
Correction Officer Recruit (S9987M),  
Department of Corrections

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

CSC Docket No. 2014-2858

List Removal Appeal

ISSUED: JUL 30 2014 (SLK)

David Greenwald, represented by Michael L. Prigoff, Esq., appeals the removal of his name from the eligible list for Correction Officer Recruit (S9987M), Department of Corrections (DOC), on the basis of an unsatisfactory criminal record.

By way of background, the appellant appeared with a rank at 2388 on certification JU11M1 that was issued to the appointing authority on June 10, 2011. The subject eligible list promulgated on June 10, 2011 and expired on June 9, 2013. In disposing of the certification, the appointing authority requested the removal of the appellant's name, contending that he had an unsatisfactory criminal record. In support of its request, the appointing authority provided a copy of the appellant's criminal investigation background report which indicated that he was charged with *N.J.S.A. 2C:29-3b, Purposely Hindering Own Prosecution*, in 2004 and received 30 hours of community service in Union County as part of a deferred disposition. The appellant appealed the matter of the removal of his name to the Division of Classification and Personnel Management (CPM), which referred the matter to the Civil Service Commission (Commission) for direct review.

On appeal, the appellant presents that the sole basis for the appointing authority's requested removal was a single 4<sup>th</sup> degree disorderly persons offense for *Hindering Apprehension* committed in October 2009 when he was a juvenile at age 16. He highlights that he was never convicted of this charge and he has had no other criminal charges. The appellant also explains that the charge was deferred

for six months during which he completed community service and the charge was dismissed. Moreover, he asserts that the charge is unsubstantial and unrelated to the position sought. In this regard, he states that while in high school, he was driving in the evening when there should have been an adult in the car, stopped by the police, and, due to the stress of the situation, when the Police Officer asked him his name, he stated Eric Greenwald instead of David Greenwald. He submits a certification where he acknowledges that it was a "stupid thing to do" and after the Police Officer verified his correct name, he was charged with a violation. Further, the appellant maintains that no crime was committed and, at best, he was charged with a disorderly persons offense. Additionally, he notes that he was 16 years old and in high school at the time of the incident and that the event occurred more than nine years ago. Further, he highlights that this was an isolated event as no other criminal charges have been brought against him either before or since this incident. The appellant cites several examples of rehabilitation including winning numerous wrestling championships in high school, serving as a Cub and Boy Scout, working at a treatment center helping troubled teenagers, working full-time for the past two years as a Sales Consultant for a car dealership, and that he recently got married. Therefore, he maintains that he is completely rehabilitated, that this was an isolated minor offense which took place as a teenager, and that this incident should not be used to prevent him from serving in the subject title.

It is noted that although given the opportunity, the appointing authority did not respond.

## 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 employment 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.

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). 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. 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. 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, the appellant's arrest and entry into the PTI program could still be properly considered in removing his or her name from the subject 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).

A thorough review of the record indicates that the appellant's removal from the (S9987M) eligible list for Correction Officer Recruit is not warranted. Although the appellant was arrested and charged with Hindering Apprehension, the incident occurred when he was 16 years old almost seven years prior to the list being certified. Moreover, he has completed 30 hours of community service as part of a deferred disposition of the charges and the appellant has had no other convictions or adverse encounters with law enforcement in his record. Further, the appellant has provided evidence of rehabilitation including excelling in high school athletics, serving as a Cub and Boy Scout, working in a treatment center helping troubled teenagers, working full-time as a Sales Consultant, and recently getting married. See *In the Matter of Richard A. Rizzolo*, Docket No. A-0589-03T5 (App. Div. December 8, 2004) (The Appellate Division upheld the restoration of an eligible to a Fire Fighter eligible list, based on significant evidence of rehabilitation since the appellant's arrests in 1989 and 1990. The Appellate Division specifically noted the appellant's successful completion of the Pre-Trial Intervention program after his 1990 arrest, his gainful employment since 1988, his marriage, his involvement in the community and the positive statement of his employer). The Commission is mindful of the high standards that are placed upon law enforcement candidates and personnel. The public expects Correction Officers to present a personal background that exhibits respect for the law and rules. See *Moorestown v. Armstrong*, 89 *N.J. Super.* 560 (App. Div. 1965), *cert. denied*, 47 *N.J.* 80 (1966). Taking into

consideration that the appellant's arrest and conviction was an isolated minor incident that occurred in 2004 while a juvenile at age 16, and the totality of the evidence in the record, the appointing authority has not presented a sufficient basis to remove the appellant's name from the subject eligible list based on his criminal record. Nevertheless, the appellant's background does provide a basis for which the appointing authority could bypass his name for appointment.

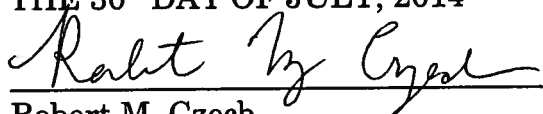
Accordingly, the appellant has met his burden of proof in this matter and the appointing authority has not shown sufficient justification for removing his name from the eligible list for Correction Officer Recruit (S9987M), Department of Corrections.

ORDER

Therefore, it is ordered that this appeal be granted, but the appellant's name be recorded as bypassed.

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 30<sup>th</sup> DAY OF JULY, 2014



Robert M. Czech  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Henry Maurer  
Director  
Division of Appeals and Regulatory Affairs  
Civil Service Commission  
Written Record Appeals Unit  
P.O. Box 312  
Trenton, New Jersey 08625-0312

Attachment

c: David Greenwald  
Michael L. Prigoff, Esq.  
James Mulholland  
Kenneth Connolly



CHRIS CHRISTIE  
Governor  
KIM GUADAGNO  
Lt. Governor

State of New Jersey  
DEPARTMENT OF CORRECTIONS  
CUSTODY RECRUITMENT UNIT  
PO Box 863  
TRENTON NJ 08625-0863

GARY M. LANIGAN  
Commissioner

February 5, 2013

DAVID M GREENWALD  
105 PARKVIEW DR  
UNION NJ 07083

**RE: NOTIFICATION OF REMOVAL**  
Symbol: S9987M; Rank: 02388

Dear Candidate:

This is to inform you that your name has being removed from the above referenced open competitive list for Correction Officer Recruit due to:

(X) Security and Background Check: Unsatisfactory Criminal Record-You were charged with and found guilty of 2C:29-3b-Purposely Hindering Own Prosecution in 2004.


NJAC 4A:4-4.7 provides for the removal of a prospective employee for the reason noted. Therefore, your name has been removed from the list.

Please be advised that in accordance with NJ Civil Service Commission rules you may appeal this action, in writing, for administrative review within twenty (20) days of receipt of this notice. Your appeal should include any documentation and/or written material which indicates your removal is not warranted.

Your appeal should be sent to:

Assistant Director, Classification and Personnel Management  
NJ Civil Service Commission  
PO Box 313  
Trenton, NJ 08625-0313

**PLEASE INCLUDE A COPY OF THIS NOTICE WITH YOUR APPEAL**

Sincerely,  
  
Sara M. Bellani  
Personnel Assistant/Custody Recruitment Unit

SMB  
C: File