

B-28 CSC



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Stacy Kievning,
County Correction Officer (C9966M),
Union County

CSC Docket No. 2015-24

List Removal Appeal

ISSUED:

FEB 06 2015

(EG)

Stacy Kievning appeals the decision of the appointing authority to remove her name from the County Correction Officer (C9966M), Union County eligible list due to an unsatisfactory criminal record.

The subject eligible list was promulgated on June 10, 2011 and expired on May 1, 2014. The appellant's name was certified from the subject eligible list on December 6, 2013. This was the last certification of the (C9966M) eligible list before its expiration. In disposing of the certification, the appointing authority removed the appellant based on her criminal record. Specifically, it indicated that the appellant was arrested on May 14, 1993 for shoplifting. She pleaded guilty and paid a \$300 fine and court costs.

On appeal, the appellant argues that the 1993 shoplifting event is the only incident on her criminal record. In this regard, she argues that this arrest took place 21 years ago. The appellant adds that at the time of the incident she was in an abusive relationship and was forced by her boyfriend to push a cart containing unpaid for merchandise out of a store. Additionally, the appellant adds that since this time she obtained a college degree and has held gainful employment in which she was trusted with children, homes and money. Further, the appellant indicates that she has had her criminal record expunged. In support of the contention, she submits an expungement order dated June 18, 2014.

The appointing authority, despite being provided the opportunity, has not provided any further arguments or evidence for the Civil Service Commission (Commission) to review.

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, 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*, 261 *N.J. Super.* 401 (App. Div. 1992).

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 Commissioner. 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).

Additionally, in *In the Matter of J.B.*, 386 *N.J. Super.* 512 (App. Div. 2006), the Appellate Division remanded a list removal appeal for further consideration of the impact of the appellant's expunged arrest on his suitability for a position as a Police Officer. Noting that the former Merit System Board relied heavily on the lack of evidence of rehabilitation since the time of arrest, the Appellate Division found that "[t]he equivalent of 'evidence of rehabilitation' is supplied in these circumstances by the foundation for an expungement." See *N.J.S.A.* 2C:52-3 and *N.J.S.A.* 2C:52-8.

A thorough review of the record indicates that the appellant's removal from the (C9966M) eligible list for County Correction Officer is not warranted. The appellant's arrest occurred in 1993, approximately 21 years ago. Additionally, the appellant presents that she had her criminal record expunged. However, the appellant's expungement is of no moment since it was not obtained until after the appointing authority had requested her removal from the eligible list. *See In the Matter of Martin V. Carluccio* (MSB, decided May 21, 2008). Regardless, the record reveals this was the only time the appellant has been arrested, and it occurred 21 years ago. The Commission is mindful of the high standards that are placed upon law enforcement candidates and personnel. The public expects County Correction Officers to present a personal background that exhibits respect for the law and rules. However, taking into consideration that the appellant's arrest was an isolated incident 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 her criminal record.

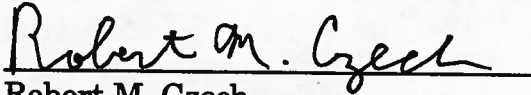
However, it is clear that the appointing authority, in its discretion under *N.J.A.C. 4A:4-4.8*, could take the appellant's background into account in deciding whether or not to bypass the appellant on the eligible list. Further, the Commission notes that the appellant did not possess a vested property interest in the position at issue. The only interest that results from placement on an eligible list is that the candidate will be considered for an applicable position so long as the eligible list remains in force. *See Nunan v. Department of Personnel*, 244 *N.J. Super.* 494 (App. Div. 1990). Moreover, given the high standards placed on law enforcement personnel, the appellant's 1993 arrest would present sufficient cause to bypass her name for appointment from the list. Since the appellant missed no further employment opportunities as she was removed from the last certification issued from the eligible list before its expiration, the only remedy provided is the amendment of the certification to indicate that her name was bypassed for appointment.

ORDER

Therefore, it is ordered that the appellant's appeal of the removal of her name from the list for County Correction Officer (C9966M), Union County be granted, and the December 6, 2013 certification of the subject eligible list be amended to indicate that the appellant was bypassed for appointment.

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 4TH DAY OF FEBRUARY, 2015



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