

B-21



STATE OF NEW JERSEY

In the Matter of Rene Marte,
Correction Officer Recruit (S9988R),
Department of Corrections

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2015-1163

List Removal Appeal

ISSUED: ~~MAR~~ - 6 2015 (SLK)

Rene Marte appeals the attached decision of the Division of Classification and Personnel Management¹ (CPM), which found that the appointing authority had presented a sufficient basis to remove the appellant's name from the Correction Officer Recruit (S9988R), Department of Corrections, eligible list on the basis of an unsatisfactory criminal record.

The appellant took the open competitive examination for Correction Officer Recruit (S9988R),² achieved a passing score, and was ranked on the subsequent eligible list. The appellant's name was certified on May 22, 2013. In disposing of the certification, the appointing authority requested the removal of the appellant's name from the eligible list on the basis of an unsatisfactory criminal record. Specifically, the appellant was charged with simple assault on June 9, 2005. The charge was conditionally disposed through a successful completion of a diversionary program on July 8, 2005 and was dismissed on December 19, 2007. The appellant appealed the matter to CPM, which found that the appointing authority sustained its request to remove his name from the list.

On appeal to the Civil Service Commission (Commission), the appellant submits a letter from the Superior Court of New Jersey – Vicinage 13 – Somerset County, which states that the charges against him were dismissed. The appellant presents that on the date of the incident in question, June 9, 2005, he was 13 years

¹ Now known as the Division of Agency Services.

² It is noted that the Correction Officer Recruit (S9988R) eligible list expires on May 22, 2015.

old and was not directly involved the fight between two of his friends. The appellant explains that the matter was heard by the Vice-Principal of his school, that he never attended court, and the case against him was dismissed when the other defendants stated that he was not involved.

In response, the appointing authority states that the appellant was charged with fighting on March 12, 2004, criminal mischief and simple assault on December 15, 2004, assault on June 9, 2005, and fighting on September 29, 2005. The appointing authority maintains that the June 9, 2005 incident resulted in the appellant's participation in a diversion program and that this automatically disqualifies him from consideration because he had "been convicted of a disorderly persons or petty disorderly person offense within the last 10 years," which is one of the criteria for removal as explained on the employment application. It highlights that the charge resulted in the issuance of a temporary restraining order and claims that the appellant is not being honest in his description of the incident and resolution process. It provides that the matter was not disposed by diversion until December 19, 2007, over two years after the incident. The appointing authority emphasizes that the disposition date was only six years prior to the submission of his application for employment and five years prior to the closing date of the examination. Finally, although the appointing authority recognizes that participation in a diversion program is not a sign of guilt nor innocence, the charge for which the appellant stipulated and agreed to the terms for successful diversion are grounds for removal in accordance with its criteria for list removal.

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 juvenile diversion program which is similar to 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).

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 or her name from an eligible list was in error.

In this matter, a thorough review of the record indicates that the appellant's removal from the (S9988R) eligible list for Correction Officer Recruit is not warranted. With respect to the appellant's criminal history, in 2005, when he was 13 years old, the appellant was charged with simple assault. The case was referred to a non-adjudicatory diversion program and the matter was ultimately dismissed. Even if the appellant was directly involved in the altercation, the incident was a minor offense when he was a 13 year old juvenile and the incident occurred 8 years prior to the closing date for the subject examination. Further, this was an isolated event as the appellant has not been convicted for any criminal activity since the occurrence. Also, in reviewing his employment application, he has demonstrated rehabilitation as evidenced by his graduation from high school and his continued gainful employment. 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). Taking into consideration that the charge against the appellant was minor and the incident took

place in 2005, when he was 13 years old, the totality the record does not provide a sufficient basis to remove the appellant's name from the subject eligible list based on his criminal record.

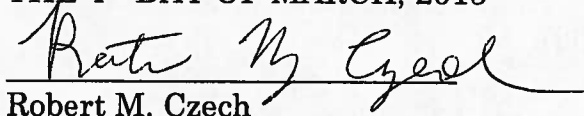
Accordingly, the appellant has met his burden of proof in this matter and the appointing authority has not shown sufficient justification for removing his name from the eligible list for Correction Officer Recruit (S9987M), Department of Corrections.

ORDER

Therefore, it is ordered that this appeal be granted, and the appellant's name restored to the list for Correction Officer Recruit (S9987M), Department of Corrections, 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 4th DAY OF MARCH, 2015



Robert M. Czech
Chairperson
Civil Service Commission

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

Attachments

c: Rene Marte
James Mulholland
Jennifer Rodriguez
Kenneth Connolly



STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION

DIVISION OF CLASSIFICATION & PERSONNEL MANAGEMENT
P. O. Box 313
Trenton, New Jersey 08625-0313

Robert M. Czech
Chair/Chief Executive Officer

Chris Christie
Governor
Kim Guadagno
Lt. Governor

October 8, 2014

Rene Marte III

Title: Correction Officer Recruit
Symbol: S9988R
Jurisdiction: Department of Corrections
Certification Number: JU13D01
Certification Date: 05/23/13

Initial Determination: Removal – Unsatisfactory Criminal Record

This is in response to your correspondence contesting the removal of your name from the above-referenced eligible list.

The Appointing Authority requested removal of your name in accordance with *N.J.A.C. 4A:4-4.7(4)*, which permits the removal of an eligible candidate's name from the eligible list if the eligible has a criminal record which adversely relates to the employment sought.

After a thorough review of our records and all the relevant material submitted, we find that there is not a sufficient basis to restore your name to the eligible list. Therefore, the Appointing Authority's request to remove your name has been sustained and your appeal is denied.

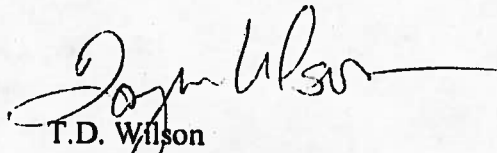
Please be advised that in accordance with Civil Service Rules, you may appeal this decision to the Division of Appeals & Regulatory Affairs (DARA) within 20 days of the receipt of this letter. You must submit all proofs, arguments and issues which you plan to use to substantiate the issues raised in your appeal. Please submit a copy of this determination with your appeal to DARA. You must put all parties of interest on notice of your appeal and provide them with copies of all documents submitted for consideration.

Please be advised that pursuant to P.L. 2010, c.26, effective July 1, 2010, there shall be a \$20 fee for appeals. Please include the required \$20 fee with your appeal. Payment must be made by check or money order only, payable to the NJ CSC. Persons receiving public assistance pursuant to P.L. 1947, c. 156 (C.44:8-107 et seq.), P.L. 1973, c.256 (C.44:7-85 et seq.), or P.L. 1997, c.38 (C.44:10-55 et seq.) and individuals with established veterans preference as defined by N.J.S.A. 11A:5-1 et seq. are exempt from these fees.

Address all appeals to:

Henry Maurer, Director
Appeals & Regulatory Affairs
Written Record Appeals Unit
PO Box 312
Trenton, NJ 08625-0312

Sincerely,



T.D. Wilson
Human Resource Consultant
State Certification Unit

For Joe M. Hill Jr. Assistant Director
Division of Classification & Personnel Management

C James J. Mulholland, Director
File

908-917-2761



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

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

GARY M. LANIGAN
Commissioner

June 11, 2014

RENE MARTE
632 ENGLISH COURT
SOUTH PLAIN NJ 070808

RE: NOTIFICATION OF REMOVAL
Symbol: S9988R; Rank: 1786

Dear Candidate:

This is to inform you that your name has been 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 2C:12-1A-Simple Assault. The charge was conditionally disposed through a successful diversion program on 7/28/05 to include Intake Services Conference and was later dismissed on 12/19/07 after the conditions were met.

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. You must send a copy of your appeal to the undersigned.

Your appeal must be filed with:

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

YOU MUST INCLUDE A COPY OF THIS NOTICE WITH YOUR APPEAL and forward a copy of your appeal documents to the Department of Corrections for our records.

Sincerely,

Custody Recruitment Unit
New Jersey Department of Corrections

SMB
C:file

