



**STATE OF NEW JERSEY**

In the Matter of R.D., Sheriff's  
Officer (S9999U), Cumberland  
County and Police Officer (S9999U),  
Vineland

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

CSC Docket Nos. 2018-2855 and  
2018-3530

List Removal Appeal

**ISSUED: OCTOBER 5, 2018 (SLK)**

R.D. appeals his removal from the eligible lists for Sheriff's Officer (S9999U), Cumberland County and Police Officer (S9999U), Vineland on the basis that he possessed an unsatisfactory criminal background. These appeals have been consolidated due to common issues presented.

The appellant took the open competitive examination for Sheriff's Officer and Police Officer (S9999U), achieved a passing score, and was ranked on the subsequent eligible lists. In seeking his removal, the appointing authorities indicated that the appellant possessed an unsatisfactory criminal background.

On appeal, the appellant acknowledges that he does have a past criminal record; however, he submits an expungement order to show that many charges were downgraded or dismissed. Additionally, he asserts that he has demonstrated ample rehabilitation as he has been employed as a County Correction Officer for Cumberland County since June 2014, was recently named a Police Chaplain for the Cumberland County Jail to support the jail staff as well as inmates, received his Bachelor's degree, is a volunteer Fire Fighter, holds certifications related to public safety and mental and physical wellness and submits several letters of recommendation supporting his character.

In reply, Cumberland County submits its background report which indicates that the appellant was born in 1986 and has an extensive criminal history between

April 2003 and August 2005 as well as a resisting arrest charge in January 2011. The report states the appellant paid a fine for the offenses or the charges were dismissed and most of the convictions were expunged. Additionally, the report indicates that the investigator spoke with a Sergeant from the Bridgeton Police Department who stated that he was in an all-out brawl with the appellant after he was advised that he was under arrest. The investigator believed that the appellant's extensive criminal history showed a lack of respect for the law. Moreover, the investigation revealed that at the time of investigation, there was a civil action against the appellant where it was alleged that the appellant engaged in sexual misconduct with an inmate.

Vineland submits its background report which indicates that the appellant has an unsatisfactory criminal record, a history of domestic violence and theft and an overall pattern of disregard for the law. In addition to the criminal history as indicated by Cumberland County, Vineland indicates that in January 2015, a temporary restraining order (TRO) from a different victim was issued against the appellant and later dismissed. It asserts that the appellant's background precludes him from being hired under the Attorney General Guidelines and the Model Policy on Domestic Violence in Law Enforcement. Vineland believes that a prior Civil Service Commission (Commission) decision in 2014, which removed the appellant from a Correction Officer Recruit list, precludes his restoration in this matter. It submits other prior Commission decisions in support of its position.

In response to Cumberland County, the appellant asserts that the inmate's allegations against him were false and he submits documentation to show that on December 1, 2017, the court dismissed these charges. The appellant denies having an all-out brawl with a Sergeant from the Bridgeton Police and claims he does not even know who this Sergeant is and what incident this Sergeant is referencing. Therefore, he believes that the Sergeant's claim is a case of mistaken identity.

In further reply, Cumberland County emphasizes that the appellant admits in his appeal that he has an arrest record that is "adverse to work in law enforcement." It presents two cases, *In the Matter of R.D.* (CSC, decided October 22, 2014) and (CSC, decided March 9, 2017), where the appellant applied to be a Correction Officer Recruit and the Commission denied his appeals to be restored to the list. The appointing authority asserts that the facts remain relatively the same as compared to those cases and argues that if the appellant's criminal history adversely related to a position as a Correction Officer Recruit than it certainly would adversely relate to a position as a Sheriff's Officer. It attaches a State Police Investigation Report for a November 24, 2004 incident. The incident report indicates that there were seven assisting State Troopers and five Officers from the Bridgeton Police Department, including the Sergeant in question at the scene. The report describes a confrontation that the appellant had with a State Trooper as follows:

DSG Cunard attempted to arrest [R.D.], who was seated in the driver's seat, for tampering with the vehicle involved in the offense of eluding. [R.D.] attempted to prevent this arrest by pushing DSG Cunard and attempting to throw him to the ground. DSG Cunard was involved in this confrontation when [E.D.] exited the vehicle's passenger side front and began to push and pull DSG Cunard in an attempt to take him to the ground for the purpose of freeing his brother, [R.D.]. At this time, Bridgeton Police Officer Greir, arrived on location to assist and subjected [E.D.] to chemical force, specifically OC spray. Both [E.] and [R. D.] were arrested at this time.

Cumberland County emphasizes that the Sergeant gave a statement during the background investigation that the appellant was involved in an all-out brawl which the appellant denies. Therefore, it asserts that the appellant has not taken responsibility for his actions and downplays all of his arrests. Cumberland County reiterates that the appellant is claiming that the Sergeant must be mistaken, but it believes that this report shows otherwise.

In further response to Cumberland County, the appellant questions how it can contend that he was involved in an all-out brawl with police when there is no report that documents this alleged brawl.

In response to Vineland, the appellant emphasizes that he has changed his life as described above and the majority of these incidents took place before he was 20 years old. He states that he believes that the January 2011 incident was a case of racial profiling. The appellant claims that Vineland made a mistake and that the TRO issued against him was in January 2014 and not January 2015. He indicates that the TRO was dismissed because the complainant fabricated the situation in an attempt to stop him from enforcing his parental rights. The appellant argues that the Commission's prior decision in October 2014 that removed his name from a Correction Officer Recruit list should not remove him from the subject lists as he now has demonstrated ample rehabilitation since that decision including serving over four years as a Cumberland County Correction Officer.

Although given the opportunity, Vineland did not submit a further reply in this matter.

## 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 shall prohibit 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 Civil Service 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, 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*.

*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 the instant matter, a review of the record indicates that the appellant has an extensive criminal history between 2003 and 2011. The fact that most of his convictions were expunged does not mean that the appointing authorities cannot consider these offenses in determining whether or not to remove the appellant from the subject eligible lists. See *In the Matter of Felix Rivas Jr.* (CSC, decided June 7, 2017). Further, Vineland indicates that in January 2015, a temporary restraining order (TRO) from a different victim was issued against the appellant and later dismissed, which is another negative interaction with the law that took place less than two years prior to the August 2016 closing date. Moreover, Cumberland County's investigation revealed that at the time of its investigation, there was a civil action against the appellant where it was alleged that the appellant engaged in sexual misconduct with an inmate. In other words, while the Civil Service Commission can appreciate some of the steps that the appellant has taken to change his life, the appellant is unable to demonstrate sufficient rehabilitation from the serious offenses he committed earlier in his life as he has continued to have negative interactions with law enforcement and the judicial system. In this regard, it is

recognized that Sheriff's Officers and Police Officers are law enforcement employees who must help keep order and promote adherence to the law. These are highly visible and sensitive positions within the community and the standard for an applicant includes good character and an image of utmost confidence and trust. *See Moorestown v. Armstrong*, 89 N.J. Super. 560 (App. Div. 1965), *cert. denied*, 47 N.J. 80 (1966). *See also In re Phillips*, 117 N.J. 567 (1990). The public expects Sheriff's Officers and Police Officers to present a personal background that exhibits respect for the law and rules.

Additionally, even if the Commission was to accept the appellant's argument that he did not recently engage in any wrong doing and his recent negative interactions with the law were not his fault, the civil action against the appellant where it was alleged that he engaged in sexual misconduct with an inmate was still pending at the time Cumberland County prepared its background report and made its decision to remove his name from the list. In other words, the fact that this action was dismissed is of no consequence as Cumberland County had a valid reason to remove the appellant's name based on the information that was known to it at the time it made its decision. This is particularly so considering the appellant's prior criminal history. *See In the Matter of Paul Caldwell* (CSC, July 18, 2018).

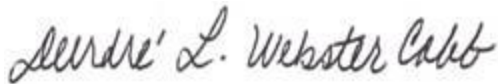
Accordingly, the appellant has not met his burden of proof in this matter and the appointing authorities have shown sufficient cause for removing his name from the Sheriff's Officer (S9999U), Cumberland County and Police Officer (S9999U), Vineland eligible lists.

### ORDER

Therefore, it is ordered that these appeals be denied.

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 3<sup>rd</sup> DAY OF OCTOBER, 2018



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