



STATE OF NEW JERSEY

In the Matter of Melvin Rico,
Correctional Police Officer (S9988T),
Department of Corrections

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

CSC Docket No. 2018-3396

List Removal Appeal

ISSUED: AUGUST 17, 2018 (SLK)

Melvin Rico, represented by Marvin J. Hammerman, Esq., appeals his removal from the eligible list for Correctional Police Officer¹ (S9988T), Department of Corrections on the basis that he possessed an unsatisfactory criminal record.

The appellant took the open competitive examination for Correctional Police Officer (S9988T),² achieved a passing score, and was ranked on the subsequent eligible list. In seeking his removal, the appointing authority indicated that the appellant possessed an unsatisfactory criminal record. Specifically, the appellant was charged in 2007 with the following for possession of less than 50 grams of marijuana: third degree possession of a Controlled Dangerous Substance (CDS); fourth degree CDS – Manufacture/Distribute; third degree possession of CDS on school property; and second and third degree Possession/Distribution within 500 feet. The appellant entered a two-year diversion program and was assessed a \$2,175 fine.

On appeal, the appellant presents that the appointing authority’s decision to remove his name from the list is solely based on a single arrest in 2007. He acknowledges that he was arrested and charged with the aforementioned offenses. The appellant indicates that after successfully completing a Pre-Trial Intervention

¹ Pursuant to *N.J.S.A.* 11A:2-11.1, effective May 1, 2018, the title of Correction Officer Recruit has been retitled to Correctional Police Officer.

² The S9988T list expired on July 22, 2017.

(PTI) program that all the charges were dismissed. He emphasizes that the proceedings did not result in a plea or finding of guilt or any conviction of any charge. Additionally, the appellant states he is in the process of having his record expunged. He highlights that it has been more than 10 years since his arrest and he has not engaged in any criminal or other nefarious conduct since this incident. The appellant represents that he has subsequently passed several drug tests. The appellant argues that he has been rehabilitated as evidenced by his marriage in 2011 and having a son and his starting and continued operation of a successful automotive repair facility. He asserts that his background makes him an ideal candidate for a position in the subject title as he is a shining example of someone who faced criminal charges and never had a subsequent encounter with the criminal justice system.

In response, the appointing authority presents that the appellant in 2007 received multiple drug charges, some of which were of the fourth degree or higher. Thereafter, he entered a 24-month PTI program and was fined over \$2000. It highlights that these charges only occurred eight years prior to the January 2015 closing date. Additionally, the appointing authority indicates that the appellant admitted on his application that he had several other negative interactions with law enforcement including a 1993 graffiti charge, a 1999 fighting charge and a separate incident in 2007 for Drinking While Intoxicated (DWI). It emphasizes that the appellant was advised on the application that its criteria for removal included entering a PTI or similar diversion program.

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 (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).

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.

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 municipal police department, when requested for purposes of making a hiring decision. However, *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.

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.

Initially, it is noted that the Commission is not bound in any way by an appointing authority's internal standard in assessing the propriety of a candidate's removal from a list. See *In the Matter of Joseph Hutsebaut* (CSC, decided April 19, 2017). In the instant matter, a review of the record indicates that the appellant was charged with multiple drug related offenses in 2007 and the matters were dismissed after successfully completion of a PTI program. Additionally, the appellant was convicted in a separate incident in 2007 for DWI and had negative interactions with law enforcement and the judicial system for fighting, at age 15 in 1993, and regarding graffiti, at age 21 in 1999. While these incidents were not trivial matters, the nature of these offenses were not so serious as to automatically exclude the appellant from consideration as a Correctional Police Officer, especially given that the latest incident

was in 2007, approximately eight years prior to the January 8, 2015 closing date. Further, the appellant has shown evidence of rehabilitation by getting married and having a child and starting and operating his own business. Moreover, the 2007 charges were dismissed after successfully completing a PTI program.

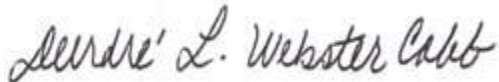
The Commission is mindful of the high standards that are placed upon law enforcement candidates and personnel. *See Moorestown v. Armstrong*, 89 N.J. Super. 560 (App. Div. 1965), *cert. denied*, 47 N.J. 80 (1966). *See also In re Phillips*, 117 N.J. 567 (1990). However, taking into consideration that the appellant's last incident was approximately eight years prior to the closing date, 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. *See In the Matter of Harold Cohrs* (MSB, decided May 5, 2004).

ORDER

Therefore, it is ordered that this appeal be granted and the list for Correctional Police Officer (S9988T), Department of Corrections be revived in order for the appellant to be considered for appointment at the time of the next certification 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 15th DAY OF AUGUST, 2018



Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
Director
Division of Appeals
& Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: Melvin Rico
Marvin J. Hammerman, Esq.
Veronica Tingle
Kelly Glenn