

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

One Ashburton Place – Room 503
Boston, MA 02108
617-979-1900

CHRISTOPHER RUIZ,

Appellant

G1-20-147

v.

DEPARTMENT OF CORRECTION,

Respondent

Appearance for Appellant:

Christopher Ruiz, *Pro Se*

Appearance for Respondent:

Joseph S. Santoro, Labor Relations Advisor
Department of Correction
50 Maple Street, 1st Floor
Milford, MA 01757

Commissioner:

Paul M. Stein

DECISION

The Appellant, Christopher Ruiz, acting pursuant to G.L. c. 31, § 2(b), appealed to the Civil Service Commission (Commission) from the decision of the Massachusetts Department of Correction (DOC), to bypass him for appointment to the position of a DOC Correction Officer I (CO I).¹ The Commission held a pre-hearing conference on December 8, 2020 via remote videoconference (Webex). A full hearing was held, also by remote videoconference (Webex), on February 5, 2021, which was digitally recorded.² Eighteen (18) exhibits (*Exhs.1 through 18*) were received in evidence. The DOC filed a Proposed Decision, but the Appellant did not. For reasons stated below, the Appellant’s appeal is denied.

¹ The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§1.00, *et seq.*, apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

² A link to the Webex audio/video recording of the full hearing was provided to the parties. If there is a judicial appeal of this decision, the plaintiff in the judicial appeal becomes obligated to use the recording to supply the court with the stenographic or other written transcript of the hearing to the extent that he/she wishes to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion.

FINDINGS OF FACT

Based on the Exhibits entered into evidence and the testimony of the following witnesses:

Called by the Appointing Authority:

- Eugene T. Jalette, DOC Supervising Identification Agent
- Jill Lococo, DOC Sergeant

Called by the Appellant:

- Christopher Ruiz, Appellant

and taking administrative notice of all matters filed in the case, pertinent law and reasonable inferences from the credible evidence, a preponderance of evidence establishes these facts:

1. The Appellant, Christopher Ruiz, is a Hispanic male in his late twenties who lives in Pawtucket, RI. He dropped out of high school to support his birth family's financial needs. In 2017, he earned a General Equivalency Diploma (GED). (*Exh.3; Testimony of Appellant*)

2. On October 20, 2018, Mr. Ruiz took and passed the Massachusetts Civil Service Examination for Correction Officer administered by the Massachusetts Human Resources Division (HRD). His name was placed on the Correction Officer Eligible List dated February 1, 2019. (*Exh.17*)

3. On January 13, 2020, HRD issued Certification No. 06870 to the DOC for appointment of new Correction Officers. Mr. Ruiz's name appeared in 67th place on the certification and he signed willing to accept and completed the required application packet. (*Exh.3; Testimony of Appellant*)

4. Pursuant to standard DOC policy, a background investigation is conducted on all applicants for the position of Correction Officer I under the supervision of Eugene Jalette, the DOC Supervising Identification Agent. The investigation includes: verification that all entrance requirements are met; inquiry of past employers and character references; and a thorough criminal records check of all Criminal Offender Records Information (CORI) through the Massachusetts Criminal Justice Information Services (CJIS), which encompasses data from the Massachusetts

Board of Probation (BOP) as well as other federal, state and local law enforcement, and the applicant's driver history. (*Testimony of Jalette*)

5. The CJIS check of Mr. Ruiz's CORI identified the following adult incidents:

- January 5, 2012 – Arrested by Pawtucket (RI) PD for Driving with a Suspended License – Pled Nolo Contendere, paid fine and court costs – Case Dismissed February 23, 2012 - Case Expunged by Court Order on March 12, 2020. (*Exh.5, 8,11, 13 & 16*)
- March 21, 2012 – Arrested by North Providence (RI) PD on Bench Warrant for Failure to Appear. (*Exhs.11 & 13*)³
- April 3, 2012 – Arraigned in Attleboro District Court for Compulsory Insurance Violation/ Concealing Number Plate – Dismissed December 17, 2014. (*Exhs.9 &10*)
- April 30, 2012 –Pawtucket PD found Mr. Ruiz parked at an elementary school and Summoned to Appear on Charge of Operating with Expired License. (*Exh.9*)⁴
- March 12, 2013 – Arrested by Cranston (RI) PD for Operating with Expired License; Summons issued for Court Appearance on May 1, 2013 – eventually Pled Nolo Contendere, paid fine and costs December 18, 2013. (*Exhs.7, 8 & 13*)⁵
- November 13, 2013 – Arrested by RI State Police (during traffic stop in which Mr. Ruiz was a passenger) on two Bench Warrants for Failure to Appear (i.e., the March 12, 2013 & April 30, 2012 offenses). (*Exhs.13 & 14*)
- January 23, 2014 – Due to appear for Arraignment on charges by East Providence (RI) PD for Driving with a Suspended License – eventually Pled Nolo Contendere on May 20, 2015 – Expunged by Court Order on March 12, 2020 (*Exh.16*)
- February 5, 2014 – Arrested by RI State Police (after traffic stop of vehicle in which Mr. Ruiz was a passenger) on Bench Warrant for Failure to Appear in Court (on January 23, 2014 arraignment) (*Exh.15*)

³ The record does not identify what proceeding Mr. Ruiz failed to appear for that prompted issuance of the Bench Warrant which resulted in his arrest. The only prior pending matter appears to be the charges associated with the January 5, 2012 offense which had been disposed of on February 23, 2012, a month prior to the arrest.

⁴ Police found marijuana and drug paraphernalia in the possession of others in the vehicle, but Mr. Ruiz was not charged with any drug-related offenses. (*Exh.9*)

⁵ Mr. Ruiz claims that the case involving the March 12, 2013 offense was one of the cases expunged by Court Order on March 12, 2020, but none of the four expungement orders he produced match up to that case. (I note that three of the four orders match up directly to three of the cases listed in this finding and one, an expungement of a Driving With Suspended License disposed of on December 3, 2012 does not match up with any of the cases in the record. (*Exhs. 5 through 16; Testimony of Appellant*))

- March 14, 2014 – Cited by Attleboro (MA) PD for Unlicensed Operation of Motor Vehicle – Bench Warrant issued after failure to appear – Dismissed December 17, 2014 (*Exhs.10 & 12*)
- December 16, 2014 – Arrested by Attleboro (MA) PD on Bench Warrant for failure to Appear (March 14, 2014 offense) – Dismissed with original offense on December 17, 2014. (*Exhs.10 & 12*)
- September 24, 2016 – Arrested by Pawtucket (RI) PD for Disorderly Conduct and Resisting Arrest – Disorderly Conduct charge dismissed November 30, 2016; Pled Nolo Contendere to Resisting Arrest and paid court costs - Case Expunged by Court Order on February 27, 2020. (*Exhs.11, 13 & 16*)
- May 5, 2017 – Referenced in an incident report by Pawtucket (RI) PD as a “participant” in a bar fight involving a friend of Mr. Ruiz. Friend arrested. No charges filed against Mr. Ruiz but all parties were given a no-trespass warning at request of bar owner. (*Exh.6*)
- October 20, 2017 – Cited by Cranston (RI) PD for Operating with Suspended License and Without Evidence of Insurance and Minor 1st Offense Possession of Marijuana (less than one ounce) – Guilty Findings entered on 10/27/2017 on Marijuana charge (in absentia) and Guilty Findings on MV violations on 01/08/2018. (*Exh.8*)

6. By letter dated January 27, 2020, Matthew Beaudet, DOC Deputy Director of Human Resources, informed Mr. Ruiz that, based on the information disclosed by the CJIS check of his CORI, copies of which were enclosed, “we may be inclined to make an adverse decision.” (*Exh.8; Testimony of Jalette*)

7. In or about March 2020, DOC Sergeant Jill Lococo was assigned to complete the pre-employment background investigation of Mr. Ruiz. She proceeded to follow-up with law enforcement agencies concerning the negative incidents on Mr. Ruiz’s criminal record. She also checked Mr. Ruiz’s education, employment history and professional references, as well as personal and neighborhood references, and conducted a home visit (on March 11, 2012) with Mr. Ruiz and his girlfriend, all of which were positive. (*Exh.5: Testimony of Jalette & Lococo*)

8. At the home visit, Mr. Ruiz told Sgt. Lococo that he had made an appointment to see a judge the next day and “everything” on his criminal record would be expunged. Mr. Ruiz

subsequently provided the DOC with copies of four Expungement Orders, as described in Finding No. 5 above. (*Exhs.5 & 16; Testimony of Appellant & Lococo*)

9. Sgt. Lococo prepared a background investigation report dated March 16, 2020, summarizing the results of her investigation of Mr. Ruiz. The background investigation report, together with all accompanying documentation, including Mr. Ruiz’s application, criminal history, references and the Expungement Orders provided by Mr. Ruiz, were submitted for review and consideration by the Appointing Authority, DOC Commissioner Carol A. Mici, who decided that Mr. Ruiz should be bypassed for appointment based on his criminal history. (*Exh.2; Testimony of Jalette*)

10. Ultimately, DOC appointed 29 candidates as Correction Officers from Certification #06870, of which fifteen (15) candidates were ranked below Mr. Ruiz. (*Stipulated Facts*)

11. By letter dated August 17, 2020, DOC Deputy Commissioner Thomas J. Preston informed Mr. Ruiz that he had been bypassed for appointment for the following reason:

“Background investigation: Failed background due to a criminal history and negative police contacts to include driver history; Specifically, in 2016 you were arrested for disorderly conduct and related arrest (later expunged on 2/27/2020); Additionally, in 2014 and 2013 you were arrested by RISP for a warrant. In 2013 you were charged with driving with a suspended license (DSL). In 2012 you were charged with DSL; your BOP had two charges related to motor vehicle violations and numerous negative adult contacts with the Pawtucket Police Department.”

(*Exh.2*)

12. This timely appeal to the Commission duly ensued. (*Exh.1; Stipulated Facts*)

APPLICABLE CIVIL SERVICE LAW

The core mission of Massachusetts civil service law is to enforce “basic merit principles” for “recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills” and “assuring that all employees are protected against coercion for political purposes, and are protected from arbitrary and capricious actions.” G.L. c. 31, § 1. See, e.g., Massachusetts

Ass'n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 259 (2001); MacHenry v. Civil Serv. Comm'n, 40 Mass. App. Ct. 632, 635 (1995), rev. den., 423 Mass. 1106 (1996).

Original and promotional appointments of civil service employees are made from a list of candidates, called a “certification”, whose names are drawn in the order in which they appear on the applicable civil service “eligible list”, using what is called the 2n+1 formula. G.L. c. 31, §§ 6 through 11, 16 through 27; Personnel Administration Rules, PAR.09. An appointing authority must provide specific, written reasons – positive or negative, or both -- consistent with basic merit principles – for bypassing a higher ranked candidate in favor of a lower ranked one. G.L. c. 31, § 27; PAR.08(4).

A person may appeal a bypass decision under G.L. c. 31, § 2(b) for de novo review by the Commission. The Commission’s role is to determine whether the appointing authority has shown, by a preponderance of the evidence, that it has “reasonable justification” for the bypass after an “impartial and reasonably thorough review” of the relevant background and qualifications bearing on the candidate’s present fitness to perform the duties of the position. Boston Police Dep’t v. Civil Service Comm’n, 483 Mass. 461, 474-78 (2019); Police Dep’t of Boston v. Kavaleski, 463 Mass. 680, 688-89 (2012); Beverly v. Civil Service Comm’n, 78 Mass. App. Ct. 182, 187 (2010); Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-28 (2003).

“Reasonable justification . . . means ‘done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law’”. Brackett v. Civil Service Comm’n, 447 Mass. 233, 243 (2006); Commissioners of Civil Service v. Municipal Ct., 359 Mass. 211, 214 (1971) and cases cited. See also Mayor of Revere v. Civil Service Comm’n, 31 Mass. App. Ct. 315, 321 (1991) (bypass reasons “more probably than not sound and sufficient”).

The governing statute, G.L. c. 31, gives the Commission’s de novo review “broad scope to evaluate the legal basis of the appointing authority's action” and it is not necessary that the Commission find that the appointing authority acted “arbitrarily and capriciously.” City of Cambridge v. Civil Service Comm’n, 43 Mass. App. Ct. 300, 303-305, rev. den., 428 Mass. 1102 (1997) The commission “. . . cannot substitute its judgment about a *valid* exercise of *discretion based on merit or policy considerations* by an appointing authority” but, when there are “overtones of political control or objectives unrelated to merit standards or neutrally applied public policy, then the occasion is appropriate for intervention by the commission.” Id. (*emphasis added*). See also Town of Brookline v. Alston, 487 Mass. 278 (2021) (analyzing broad scope of the Commission’s jurisdiction to enforce basic merit principles under civil service law).

Law enforcement officers are vested with considerable power and discretion and must be held to a high standard of conduct:

[They] are not drafted into public service; rather they compete for their positions. In accepting employment by the public, they implicitly agree that they will not engage in conduct which calls into question their ability and fitness to perform their official responsibilities.

Police Comm’r v. Civil Service Comm’n, 22 Mass. App. Ct. 364, 371 rev. den. 398 Mass. 1103 (1986).

ANALYSIS

The DOC proved by a preponderance of the evidence that it had reasonable justification to bypass Mr. Ruiz for appointment to a position of DOC Correction Officer. The pattern of his infractions, most troubling of which include multiple failures to appear in court on numerous occasions, which led to his arrest on multiple bench warrants, combined with at least one recent incident (2016) in which he pled nolle contendere to resisting arrest, provides a sufficient basis to doubt that Mr. Ruiz is currently suitable to assume the duties of a Correction Officer at this time.

I have taken account of the fact that Mr. Ruiz's criminal offenses appear related to socioeconomic factors such as expired registrations or simply "being in the wrong place at the wrong time", which the Commission has strongly emphasized may have no bearing on whether a candidate can serve as a public safety officer. These factors deserve less weight and must not be used to exclude candidates, especially minority candidates. See Rodriguez v. Massachusetts Parole Bd., 32 MCSR 311 (2019); Dorn v. Boston Police Dep't, 31 MCSR 375 (2018). Had these infractions not been accompanied by a repeated failure to attend to the responsibility to appear in court to address the offenses, the Commission might have been inclined to treat the matter differently. The DOC must pay attention to this issue in any future consideration of Mr. Ruiz and may not penalize him in the future for these prior socioeconomic circumstances.

I also note that Mr. Ruiz claims that he has taken steps to clear most of his criminal record through expungement orders. Expungement of a criminal record is a factor that DOC should consider, and which it did consider here, but that fact, alone, does not preclude DOC from relying on the underlying circumstances of the offense as part of the totality of an applicant's adult criminal history. See Kodhimaj v. Department of Correction, 32 MCSR 377 (2019). At the time of his bypass, Mr. Ruiz had maintained a clean driving and criminal record for approximately two years and his employment and personal references provided strong support for his candidacy. Based on the facts presented here, it was reasonable for DOC Commissioner Mici, after a thorough review of Mr. Ruiz's complete application packet, to conclude that, at the time of his bypass in March 2020, more time without future infractions was required to satisfy DOC that it should take the risk of appointing him to a position of Correction Officer. Should Mr. Ruiz continue to maintain his clean record, at some point in the future, Mr. Ruiz should be given a fresh look.

CONCLUSION

For all of the above stated reasons, the bypass appeal of Christopher Ruiz, under Docket No. G1-20-147, is **denied**.

Civil Service Commission

/s/ Paul M. Stein

Paul M. Stein, Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Ittleman, Camuso, Stein & Tivnan, Commissioners) on September 23, 2021.

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration **does not** toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice to:

Christopher Ruiz (Appellant)

Joseph Santoro. (for Respondent)