

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3472-14T4

IN THE MATTER OF
ANTHONY MURGOLO,
CORRECTION OFFICER
RECRUIT (S9988R),
DEPARTMENT OF CORRECTIONS

Argued October 26, 2016 – Decided March 2, 2017

Before Judges Alvarez and Accurso.¹

On appeal from the New Jersey Civil Service
Commission, Docket No. 2015-546.

David J. DeFillippo argued the cause for
appellant Anthony Murgolo (Detzky, Hunter &
DeFillippo, LLC, attorneys; Mr. DeFillippo, on
the brief).

Valentina M. DiPippo, Deputy Attorney General,
argued the cause for respondent Civil Service
Commission (Christopher S. Porrino, Attorney
General, attorney; Melissa H. Raksa, Assistant
Attorney General, of counsel; Todd A. Wigder,
Deputy Attorney General, on the brief).

¹ Hon. Carol E. Higbee participated in the panel before whom this case was argued. The opinion was not approved for filing prior to Judge Higbee's death on January 3, 2017. Pursuant to R. 2:13-2(b), "Appeals shall be decided by panels of 2 judges designated by the presiding judge of the part except when the presiding judge determines that an appeal should be determined by a panel of 3 judges." The presiding judge has determined that this appeal shall be decided by two judges.

PER CURIAM

Anthony Murgolo appeals from the February 9, 2015 final administrative decision of the Civil Service Commission (Commission) affirming the determination of the Division of Classification and Personnel Management removing his name from the eligible list of officer recruits for the Department of Corrections. We affirm.

In 2007, when Murgolo was sixteen years old, he was charged with an aggravated assault. The charge was eventually downgraded to a simple assault and was disposed by way of Juvenile Conference Committee diversion. Murgolo characterized the incident as a one-punch confrontation between teenagers. He claimed the victim only suffered a cut to his lip.

To the contrary, the investigating police officer's incident report regarding the assault indicated he was dispatched to a fight involving a number of juveniles at a park. Upon his arrival, most of the juveniles fled, including Murgolo. The victim, who was taken to a hospital emergency room for treatment, said he had been trying to talk to Murgolo when he threw a surprise punch at him. The victim fell to the ground and briefly lost consciousness. When he regained consciousness, Murgolo was on top of him, punching the back of his head. The victim also said that Murgolo was part

of a fight club that targeted students at random. He required stitches to close the cut to his lip.

The appointing agency asked Murgolo about his juvenile history, and in response Murgolo submitted a letter of support from the victim. That letter, purportedly signed by the victim, was actually signed by Murgolo. Because the victim was in Florida when the letter had to be submitted, Murgolo claimed he signed the victim's name purely as a matter of convenience with the victim's consent. When the victim was first contacted by the authority, however, he did not mention giving Murgolo permission to sign his name, nor did Murgolo mention it. The deception was not discovered until additional documents from the victim were submitted bearing signatures that clearly belonged to someone other than the person who signed the first. The victim's name was incorrectly spelled in the first letter. It was not until the deception was discovered that Murgolo acknowledged his conduct.

Despite initially claiming that he had no other arrests, Murgolo in 2010 was charged with the unlawful taking of \$5000 in aluminum roofing materials. That charge was eventually dismissed. In 2013, he was charged with a possession of alcohol offense, also dismissed.

The appointing authority's concern was the timeline of these incidents in relation to the application. Murgolo was certified eligible on May 23, 2013.

On appeal, Murgolo contends that the Commission's decision to remove his name from the list of eligible candidates was arbitrary, capricious, and unsupported by the substantial credible evidence in the record. He points to his several character references, attainment of an Associate's Degree, and lack of actual convictions as establishing his qualifications.

Civil Service appointments must be made "according to merit and fitness." N.J. Const. art. VII, § 1, ¶ 2. The Legislature has granted the Commission broad authority to adopt rules and regulations to implement this mandate. N.J.S.A. 11A:2-1, -6(d). To ensure that appointments are made on merit and fitness, the Commission has adopted regulations that permit the removal of a name from an eligible list when a candidate is not qualified for appointment. N.J.A.C. 4A:4-4.7(a), -6.1(a).

A candidate's name may be removed from the list for an arrest history. N.J.A.C. 4A:4-4.7(a)(4). An arrest history is of particular concern when the candidate is seeking a position in a sensitive area, such as law enforcement. Those candidates are held to a high standard requiring them to demonstrate the character necessary to maintain the public's trust and confidence. In re

Carter, 191 N.J. 474, 485-86 (2007). A police officer or corrections officer is a unique public employee who "must present an image of personal integrity and dependability in order to have the respect of the public." Id. at 486 (citing Twp. of Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966)).

Our role in reviewing the Commission's decision is limited. In re Stallworth, 208 N.J. 182, 194 (2011). "[A] strong presumption of reasonableness attaches to [an agency decision]." In re Carroll, 339 N.J. Super. 429, 437 (App. Div.) (internal citation and quotation marks omitted), certif. denied, 170 N.J. 85 (2001). "In order to reverse an agency's judgment, [we] must find the agency's decision to be 'arbitrary, capricious, or unreasonable, or [] not supported by substantial credible evidence in the record as a whole.'" Stallworth, supra, 208 N.J. at 194 (second alteration in original) (quoting Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980)).

To determine whether an agency action is arbitrary, capricious, or unreasonable, we must examine:

- (1) [W]hether the agency's action violates express[ed] or implied legislative policies, that is, did the agency follow the law;
- (2) [W]hether the record contains substantial evidence to support the

- findings on which the agency based its action; and
- (3) [W]hether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.

[Ibid. (quoting In re Carter, supra, 191 N.J. at 482-83)].

We "may not substitute [our] own judgment for the agency's, even though [we] might have reached a different result." Ibid. (quoting Carter, supra, 191 N.J. at 483). "This is particularly true when the issue under review is directed to the agency's special 'expertise and superior knowledge of a particular field.'" Id. at 195 (quoting In re Herrmann, 192 N.J. 19, 28 (2007)). Furthermore, "[i]t is settled that '[a]n administrative agency's interpretation of statutes and regulations within its implementing and enforcing responsibility is ordinarily entitled to our deference.'" E.S. v. Div. of Med. Assistance & Health Servs., 412 N.J. Super. 340, 355 (App. Div. 2010) (second alteration in original) (quoting Wnuck v. N.J. Div. of Motor Vehicles, 337 N.J. Super. 52, 56 (App. Div. 2001)).

Applying these standards to the record, we discern no reason to reverse the Commission's decision. The record amply supports the Commission's conclusion that Murgolo's background and complete history warranted removal from the list of eligible corrections

officers. Murgolo's initial diversion for assault was not the sole reason for removal; he was removed because of his three arrests close in time to his application. Additionally, in the process of addressing his juvenile diversion, Murgolo displayed poor judgment. In his haste to clear up any questions, he submitted another's signature without explaining that he had signed the document.

Murgolo's submission, and contacts with the system after the completion of his diversion, do not demonstrate to this date the judgment necessary for a law enforcement officer. The Commission's decision was not arbitrary, capricious, or unreasonable. It was supported by the substantial credible evidence, and is entitled to our deference.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION