



IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOSEPH H. CORNETTE,)	
)	
Defendant Below,)	
Appellant,)	
)	
v.)	No. 505, 2024
)	
STATE OF DELAWARE,)	
)	
Plaintiff Below,)	
Appellee.)	

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

APPELLANT'S OPENING BRIEF

/s/Nicole M. Walker

Nicole Walker, Esq., DE #4012
Office of Defense Services
Office of the Public Defender
Carvel State Office Building
820 North French Street
Wilmington, DE 19801

/s/John Deckers

John P. Deckers, Esq., DE#3085
Office of Defense Services
Office of Conflict Counsel
John P Deckers, P.A.
800 N. King St., Ste. 303
Wilmington, DE 19801

/s/Alanna R Farber

Alanna R. Farber, Esq., DE #6277
Office of Defense Services
Office of the Public Defender
Carvel State Office Building
820 North French Street
Wilmington, DE 19801

Attorneys for Appellant

DATED: May 5, 2025

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CITATIONS	ii
NATURE AND STAGE OF THE PROCEEDINGS	1
SUMMARY OF THE ARGUMENT	3
STATEMENT OF FACTS	4
ARGUMENT	
I. DUE TO A MISUNDERSTANDING OF THE ADULT EXPUNGEMENT SCHEME, THE SUPERIOR COURT ERRONEOUSLY PRECLUDED CONSIDERATION OF A DISCRETIONARY EXPUNGEMENT OF CORNETTE’S FULLY PARDONED CRIME BY FAILING TO APPLY THE PLAIN LANGUAGE OF 11 DEL. C. §4375(a) AND, IN DOING SO, IT CREATED A DECISION THAT WOULD PRECLUDE FROM ELIGIBILITY, EXPONENTIALLY, THE NUMBER OF INDIVIDUALS WHOM THE LEGISLATURE INTENDED TO BENEFIT FROM DISCRETIONARY EXPUNGEMENT.	9
CONCLUSION	25
June 11, 2024 Order Affirming Denial of Expungement	Exhibit A
November 15, 2024 Order Denying Motion for Reargument	Exhibit B

TABLE OF AUTHORITIES

Cases:

<i>Coastal Barge Corp. v. Coastal Zone Indus. Control Bd.</i> , 492 A.2d 1242 (Del. 1985)	9
<i>Fuller v. State</i> , 104 A.3d 817 (Del. 2014)	17-19, 21
<i>Osgood v. State</i> , 310 A.3d 415 (Del. 2023)	14, 19-21, 23
<i>State v. Cooper</i> , 575 A.2d 1074 (Del.1990)	21
<i>Wiggins v. State</i> , 227 A.3d 1062 (Del. 2020)	9

Statutes:

11 Del. C. § 4371	24
11 Del.C. § 4372	2, 11-14
11 Del.C. § 4372(b).....	12, 13, 18, 20
11 Del.C. § 4372(b)(4).....	12
11 Del.C. § 4372(f)(1)(c)	23
11 Del.C. § 4372(f)(2).....	13
11 Del.C. § 4372(h).....	23
11 Del. C. § 4373	15
11 Del. C. § 4373(a)(1)a.	13
11 Del. C. § 4373(a)(1)-(3).....	15
11 Del. C. § 4373(a)(2)	19
11 Del.C. § 4374	11

11 Del.C. § 4374(a).....	10, 12, 14, 15, 18-20
11 Del.C. § 4374(a)(4)	15
11 Del.C. § 4374(b).....	10, 12
11 Del.C. § 4374(c) through (h) and (j)	10, 12, 14, 17, 18
11 Del.C. § 4374(f)	12, 16
11 Del.C. § 4374(i)(2).....	23
11 Del.C. § 4375	1, 9-12, 14, 15, 20
11 Del.C. § 4375(a).....	3, 9-12, 14, 15, 20
11 Del.C. § 4375(b).....	10, 11, 15

NATURE AND STAGE OF THE PROCEEDINGS

Joseph Cornette entered a guilty plea on May 18, 1994, to Assault Second Degree and DUI, following an arrest for driving while impaired and for causing serious injury to another motorist. (Appendix, pp. 1, 2, 10)(“A-#”) Twenty-eight years later, having had no prior or subsequent arrests, Cornette applied for a Governor’s Pardon of his felony assault conviction. (A 7-21) Without objection from the State, the Governor issued an unconditional Pardon on December 8, 2022. (A 22-24)

On May 22, 2023, per 11 *Del. C.* §4375 (“Discretionary Expungement following a Pardon”), Cornette applied for an expungement of his criminal arrest record (A 25-35) which consisted of the pardoned felony offense and two charges that were resolved by *nolle prosequi* (A-29); he did not seek the expungement of his DUI conviction, a Title 21 offense that did not appear on his certified Delaware criminal history issued by the Delaware State Bureau of Identification (“SBI”) (A-29), but which appeared on the Superior Court docket. (A-1) The State did not oppose the expungement application. (A 36-39) A Superior Court Commissioner denied the Petition on November 27, 2023, stating that Cornette was "convicted of two DUI-related charges (DUI and Assault Second Degree)" and, as a consequence, was ineligible to have his record expunged. (A 40-41)

Cornette appealed the Commissioner’s Order (A 42-96) and the State filed a

response in which it, again, did not oppose his requested relief. (A 98-104) An oral argument was held on April 8, 2024, wherein Counsel for the State and Petitioner agreed that Cornette was statutorily eligible to apply for a discretionary expungement following his Governor's Pardon. (A 110-111) The Court also heard from Cornette. (A 118-119)

The Court affirmed the Commissioner's Order on June 11, 2024, holding that Cornette's arrest record was statutorily ineligible for expungement pursuant to 11 *Del. C.* §4372 because of a non-expungeable DUI was joined with the underlying criminal case.¹

Cornette filed a Motion for Reargument on June 17, 2024. (A 122-128) The State filed a Response on July 3, 2024, indicating a disagreement with the Court's holding that it lacked authority to consider the application, but nevertheless asserting that the Court could deny the expungement application as a matter of discretion. (A 129-133) The Court again held oral argument. (A-134-158) The Court denied Cornette's Motion for Reargument on November 15, 2024 again holding that it could not consider his record because of the Title 21 offense.²

Cornette filed a timely notice of appeal. This is his Opening Brief in support of that appeal.

¹ June 11, 2024 Order Affirming Denial of Expungement, Ex. A.

² November 15, 2024 Order Denying Cornette's Motion for Reargument, Ex. B

SUMMARY OF THE ARGUMENT

After receiving an unconditional Governor's Pardon, Cornette sought an expungement. He received his Criminal History from the SBI along with a letter informing him that he was eligible for a mandatory expungement of a portion of his criminal record and directing him to apply to the Superior Court for a discretionary expungement of the remaining charge. The State has always maintained that Cornette's pardoned criminal conviction is eligible for expungement.

The Commissioner initially erred in denying Cornette's expungement by concluding that "a person is still generally not eligible for expungement of DUI-related charges". The Superior Court further erred in denying Cornette's appeal from the Commissioner's Order, holding - in an even broader scope than the Commissioner's - that, for the Court to grant *any* expungement, *all* charges within one case must be expungable. The Court failed to apply 11 Del.C. §4375(a), the governing expungement provision, and instead conflated two inapplicable subsections of the expungement statute to reach an errant conclusion. The foundational principle upon which the Court's Order stands is unsupported by the subsections governing discretionary expungements following a pardon. Moreover, the Court's ruling has sweepingly altered the current calculus of relevant factors for expungement consideration, resulting in unintended and arbitrary results for otherwise qualified and deserving applicants.

STATEMENT OF FACTS

Just one month after turning 21, Joseph Cornette made the most regrettable decision of his life: he got behind the wheel of his car and drove after having consumed too much alcohol.³ Prior to that day, Cornette had no police contact; subsequent to that day, he's incurred no arrests and not even so much as a speeding ticket.⁴ In fact, it was Cornette's impeccable record over the past thirty years that prompted the State to not oppose his expungement application.⁵

Cornette was with friends drinking at bars in Newark on December 27, 1993. He was not experienced enough to comprehend the impact that alcohol was having on his decision-making, and he failed to comprehend the risks and consequences of his decision to drink and drive. While driving home alone on Paper Mill Road, he fell asleep, veered into the opposite lane, and caused a head-on collision.⁶

Cornette experienced minor facial injuries, but the other driver was seriously injured. She spent a week in the hospital with two broken legs, a broken arm, and a laceration above the eye; she required physical therapy after the accident. To this day, she experiences residual nerve pain because of the accident.⁷ Cornette immediately made up his mind to accept full responsibility for his actions. He felt

³ Appendix, p.12 ("A-#")

⁴ A 116-117

⁵ Id.

⁶ A-12

⁷ A-36

horrible about his decision to drink and drive and, most significantly, he felt extreme guilt and remorse for having injured an innocent person. When he saw the victim in court, he asked his lawyer for permission to apologize directly to her. Cornette still thinks about her all the time.⁸

Cornette was originally charged by Newark Police, under complaint #3193009155, with Vehicular Assault Second Degree, DUI and Improper Passing on the Left (all set forth in the court Case ID# 9312013018. The State sought an Indictment for this same arrest on January 20, 1994 (documented in a different Case ID# 9312013394) and, thereafter on January 26, 1994, entered a *nolle prosequi* on all charges in original Case ID# 9312013018.⁹ The newly indicted case included the same Title 21 charges, but upgraded the Vehicular Assault charge to ‘First’ Degree and added one count of Assault Second Degree. On May 8, 1994, Cornette entered a guilty plea in Case ID# 9312013394 to the charges of Assault Second Degree and DUI. The State entered a *nolle prosequi* on the Vehicular Assault First and improper lane travel charges.¹⁰

⁸ A-12

⁹ SBI viewed Case ID# 9312013018 as terminated in Petitioner’s favor and thus offered him the opportunity to receive a mandatory expungement of two charges. (A-28: letter from SBI offering “a mandatory expungement for a portion of [Cornette’s] certified criminal history”).

¹⁰ A-1

Cornette was sentenced to serve six weekends at the Plummer Center; he completed all other terms and conditions of his probation, including 70 hours of community service and a DUI course.¹¹ He asserts that he has never, subsequently, operated a motor vehicle after consuming alcohol.¹²

Nearly 25 years ago, Cornette was hired by Longwood Gardens as a full-time carpenter.¹³ He feels fortunate and privileged to be able to work there: as a job, it allows him to support his wife and children, but it also provides personal fulfillment and a greater purpose. Longwood Gardens attracts well over a million visitors every year, and he is proud to be a part of such a worthy institution.¹⁴ In recent years, management at Longwood started conducting background checks for all new employees, whether full-time, seasonal, or even as an internship. If Cornette applied for his job today, he believes he would be rejected. While Cornette has not been asked to submit to a background check, he is constantly aware that it may, at some point, become a requirement. He fears that his employer will discover his criminal history. He is well regarded in his own department, and Longwood always has opportunities for advancement, but he never applies for promotions or lateral moves because of the fear of the background check.¹⁵ These daily reminders of

¹¹ A 2-4

¹² A-12

¹³ A 118-119

¹⁴ A 32-33

¹⁵ A 32-33, 118-119

impediments in Cornette’s life lead him to think not woefully about himself but, rather, they bring him to think about the woman he injured.¹⁶

The continued existence of Cornette’s felony arrest has also taken an emotional/psychological toll on him. While he has the love and respect of his family who admire him for who he is, he still disparagingly views himself as a pardoned felon. He is active in the lives of his children, but he has never applied to be involved in school or sports-related activities because he knows that a background check would not only preclude him from participation but would, also, publicly reveal embarrassing details of his younger self.¹⁷ He hopes to one day be able to support his grandchildren in those areas.¹⁸

Approximately five months after receiving a Governor’s Pardon, Cornette went to SBI and applied for a criminal history to start the expungement process. As anticipated, on May 10, 2023, he received a standardized letter from the SBI¹⁹ and a “certified copy of [his] Delaware criminal history.”²⁰ The criminal history included three charges: Vehicular Assault Second Degree and Vehicular Assault First Degree (both of which were disposed by *nolle prosequi*) and Assault Second Degree (with a disposition of: “Full Pardon By Governor ... 12/8/2022”). The DUI

¹⁶ A 118-119

¹⁷ A 32-33

¹⁸ A 118-119

¹⁹ A-28

²⁰ A-29

and lane violation charges are not contained within the certified criminal history and no one – not SBI nor the State in any litigation below – provided the Court with a DMV driving record reflecting the DUI conviction; it is, however, set forth in the criminal docket. SBI’s letter explained that Cornette was eligible “for a mandatory expungement for a portion of [his] certified criminal history” (i.e., the two charges in Case ID# 9312013018 that were *nolle prosequi*) and that he “may be eligible for a ... discretionary adult expungement ...” of the remaining, pardoned charge. He was directed to resources for the expungement application.²¹

²¹ A-28

I. DUE TO A MISUNDERSTANDING OF THE ADULT EXPUNGEMENT SCHEME, THE SUPERIOR COURT ERRONEOUSLY PRECLUDED CONSIDERATION OF A DISCRETIONARY EXPUNGEMENT OF CORNETTE’S FULLY PARDONED CRIME BY FAILING TO APPLY THE PLAIN LANGUAGE OF 11 DEL. C. §4375(a) AND, IN DOING SO, IT CREATED A DECISION THAT WOULD PRECLUDE FROM ELIGIBILITY, EXPONENTIALLY, THE NUMBER OF INDIVIDUALS WHOM THE LEGISLATURE INTENDED TO BENEFIT FROM DISCRETIONARY EXPUNGEMENT.

Question Presented

Whether the joinder in one case of a Title 21 offense with a Title 11 crime precludes consideration of a discretionary expungement of the fully pardoned crime under 11 Del.C. §4375 when the plain language of the statute empowers the Court to expunge any fully pardoned eligible charge if it finds that the continued existence and possible dissemination of information relating to the arrest or conviction of the petitioner causes, or may cause, circumstances which constitute a manifest injustice to him.

Standard and Scope of Review

Questions of statutory interpretation are questions of law, reviewed *de novo* by this Court.²²

²² See *Wiggins v. State*, 227 A.3d 1062, 1078 (Del. 2020); *Coastal Barge Corp. v. Coastal Zone Indus. Control Bd.*, 492 A.2d 1242, 1246 (Del. 1985).

Argument

The Superior Court's erroneous decision is based on its failure to recognize that, within the *discretionary* expungement scheme, there are two types: 'regular' discretionary expungement under 11 *Del. C.* §§ 4374(a) and (b) and discretionary expungement following a pardon under 11 *Del. C.* §§ 4375(a) and (b). Because of its oversight, the Court also failed to understand that the process for obtaining a discretionary expungement depends on the type sought. As a result of the Court's misunderstanding, when Cornette sought a *discretionary expungement of a fully pardoned* Assault Second Degree charge, per §4375(a), the Court improperly ignored the plain language of that statute which provides,

[n]otwithstanding any provision of this subchapter or any other law to the contrary, a person who was convicted of a crime, other than those specifically excluded under subsection (b) of this section, who is thereafter unconditionally pardoned by the Governor may request a discretionary expungement under the procedures under § 4374(c) through (h) and (j) of this title. (emphasis added).

Instead, after identifying §4375(a) as the controlling statute, the Court incorrectly concluded that discretionary expungement was not available to Cornette because his pardoned crime did not fit into any of the categories of availability of "regular" discretionary expungement (§ 4374(a) and (b)) which the plain language of § 4375 specifically directs the Court not to consider. Thus, the Superior Court's decision must be reversed.

The Superior Court Did Not Follow The Clear And Unambiguous Language of §4375(a), The Applicable Expungement Statute

Significantly, throughout all of the proceedings below, the State agreed with Cornette that “[t]he Delaware Code does not preclude expungement of offenses that are otherwise eligible for expungement under 11 Del. C. § 4734-4375 solely because the charges stem from a DUI arrest, and Delaware case law does not set such a precedent.”²³ As the State informed the Court, “[p]ursuant to 11 Del. C. § [4372]-4375 ... [Cornette] is ineligible for expungement of the DUI conviction which will remain on his record ... but ... he is eligible for discretionary expungement of the Assault Second Conviction under 11 Del. C. § [4375].”²⁴

Particularly, in response to Cornette’s motion for reargument, the State again embraced Cornette’s legal analysis:

... an unconditional pardon of a conviction not listed in §4375(b) or that is not explicitly precluded from expungement in the subchapter, becomes eligible for discretionary expungement ... §4375 does not state that eligibility of a pardoned conviction is contingent upon eligibility of a petitioner’s other resolved charges or convictions ...²⁵

Applying Cornette’s shared interpretation of the statute, the State concluded that the Governor’s unconditional pardon rendered the abrogated conviction eligible for expungement, even though he had an expungement-ineligible DUI conviction

²³ A-100

²⁴ A-101

²⁵ A-130

joined in the criminal case. The State advised the Court, however, that it could deny the Petition as a matter of discretion.²⁶

In the Superior Court’s decision upholding the Commissioner’s order and in its denial of the motion for reargument, the Court’s analysis seemed to be in sync with the parties when it found, in part, that Cornette’s expungement analysis was governed by §4375.²⁷ But, despite the parties’ joint request to do so, the Court never followed the mandate of § 4375(a) to bypass the inapplicable provisions of § 4374 (a) and (b) and to, instead, follow § 4374(c) through (h) and (j) to render a discretionary call, as required by §4374(f), on whether “the continued existence and possible dissemination of information relating to the arrest or conviction of the petitioner causes, or may cause, circumstances which constitute a manifest injustice to the petitioner.”

Rather, the Court veered off course with a core misapplication of §4372. Specifically, it mistakenly focused its attention on §4372(b)(4) – the definition of a case “terminated in favor of the accused” - to persist in the conclusion that “... if there are multiple charges in a case, each charge must be expungeable for the case as a whole to be dismissed.”²⁸ Section 4372(b) is a “mandatory expungement”

²⁶ A-130

²⁷ Ex. B at p. 3 ¶ 6

²⁸ Ex. B at p. 5 ¶ 9

definitional phrase inapplicable to discretionary expungement following a pardon.²⁹ This focus led to the errant conclusion that “in order for the Court to grant expungement the entire case must be eligible for expungement. This means that *all* charges within one case must be expungeable.”³⁰ Applying that misconceived conclusion to the fact that “Title 21 driving convictions including DUIs are ineligible for expungement”,³¹ the Court reasoned that it had no authority to expunge Cornette’s pardoned offense because it was joined in the same case as a non-expungeable Title 21 offense: “the Court cannot split cases to expunge only a portion of Cornette’s case.”³²

Section 4372(b) does not illuminate, or limit, considerations for ‘discretionary expungements’ and, certainly, not discretionary expungements

²⁹ Delaware’s expungement statute authorizes the SBI, via §4373(a)(1)a, to expunge certain arrest records when the case was terminated in favor of the accused (“mandatory expungement”). Section 4372 is entitled “Applicability; definitions; effect of expungement.” §4372(b) starts off with: “For the purposes of this subchapter, a case is “terminated in favor of the accused” only if 1 or more of the following occurs ...” and then lists seven possible case disposition scenarios. But §4372(b) is expressly limited to defining the phrase “terminated in favor of the accused”, and that phrase is only found in one other subsection of the overall expungement statute: §4373(a)(1)a., defining eligibility for a “mandatory expungement”. Thus, §4372(b) only informs the analysis of §4373(a)(1)a.

³⁰ Ex. A at p. 3 ¶ 4

³¹ Ex. A at p. 3 ¶ 5, citing 11 *Del. C.* §4372(f)(2)

³² Ex. A at pp. 3-4 ¶ 6

following a pardon which are expressly governed by the provisions of § 4374(c) through (h) and (j).

The Court travelled into the land of § 4372 by failing to follow the plain path of § 4375(a). Section 4375(a), the discretionary expungement of a fully pardoned crime focuses specifically on a “crime,” not a case. On the other hand, as the Superior Court’s erroneous decision reveals, a discretionary expungement of the “non-governor pardon” variety is only available in its own limited sets of circumstances as set forth in §4374 (a), each of which involve the interpretation of the term “case.” Significantly, § 4375, the controlling statute in our case, specifically directs the Court to bypass any consideration of the circumstances of availability of a discretionary expungement of the “non-governor pardon” variety set out in §4374(a). As the Superior Court’s citation³³ to *Osgood v. State* reveals, its analysis of §4372 was prompted by its erroneous attempt to determine eligibility under §4374(a) and not §4375(a) as required. Accordingly, the Superior Court erred to the extent that it relied on *Osgood* for this purpose.

Assuming, *arguendo*, an analysis of whether Cornette’s eligibility to apply for an expungement is to be conducted under § 4374(a), the Court’s decision reflects a failure to apply the plain language of that provision, as well. The Legislature expressly stated, in only one of four “non-governor’s pardon” discretionary

³³ Ex. A at pp. 2-3 ¶ 3, fn. 12

expungement subsections, that eligibility for expungement is contingent upon the eligibility of the entirety of the case in which a conviction appears.³⁴ However, the Legislature excluded such a limiting provision in the immediately preceding §§ 4373 (a)(1)-(3) and in § 4375, the applicable law affecting Cornette’s expungement application: an expungement following a pardon. This intentional use of limiting language in one category of discretionary expungement, but not in the others, means, contrary to the Superior Court’s decision, that, ordinarily, the entire case is not required to be eligible for expungement to expunge one or more charges within a case. The governor’s pardon variety of discretionary expungements is a whole different category, and that is why § 4375(a) directs the Court to bypass §4374(a) and has its own set of exclusions in subsection § 4375 (b).

Quite contrary to the Court’s conclusions that it “cannot split cases to expunge only a portion of Cornette’s case”³⁵ or that a criminal arrest record “cannot

³⁴ 11 Del.C. § 4374 (a)(4):

Was convicted of 1 or more violations or misdemeanors other than those listed in § 4373(b) of this title in more than 1 case and at least 5 years have passed since the date of the most recent conviction or the date of release from incarceration, whichever is later, and the person has no other prior or subsequent convictions that would not be eligible for a mandatory expungement under § 4373 of this title standing alone. *For eligibility under this paragraph, the entire case in which each conviction appears must be eligible for expungement.*

³⁵ Ex. A at pp. 3-4 ¶ 6

be expunged in a piecemeal fashion”³⁶, the guiding statute directs the Court, in clear and unambiguous language, to do just that:

If the Court finds that the continued existence and possible dissemination of information relating to the *arrest or conviction* of the petitioner causes, or may cause, circumstances which constitute a manifest injustice to the petitioner, it shall enter an order requiring the expungement of the law-enforcement and court records relating to the *charge or case*. ...

11 Del. C. § 4374(f) (emphasis added). The words “*arrest or conviction*” and “*charge or case*” underscore the Legislature's intent to authorize a Court to order an expungement of an entire case or of a charge within a case depending on the type of discretionary expungement under consideration.

³⁶ Ex. B at 6 ¶ 13

***Cornette’s Reading Of The Discretionary Expungement Eligibility
Criteria Is Consistent With This Court’s Interpretation Of Other
Expungement Eligibility Questions***

In *Fuller v. State*,³⁷ this Court addressed a jurisdictional issue with respect to the discretionary juvenile expungement statute. There, the Court sought to determine whether Title 21 offenses were “subsequent adult convictions” disqualifying a petitioner from expungement. The Court focused on (i) the text of the juvenile expungement statute itself, which, like here, did not expressly state that Title 21 violations were to be considered for purposes of eligibility and which, like here, used an application process requiring an SBI criminal history that omitted Title 21 offenses, (ii) considered the context in which the expungement disqualifying language was used, and (iii) adhered to the statute's own stated purpose.³⁸

Here, Cornette sought to have the Court properly consider his application under the procedures listed within §§ 4374(c) through (h) and (j) and specifically asked the Court to make a ruling on whether “the continued existence and possible dissemination of information relating to [his pardoned offense] causes, or may cause, circumstances which constitute a manifest injustice” to him. Instead, the Court abdicated its review based upon inapplicable criteria. The proper text to be

³⁷ 104 A.3d 817 (Del. 2014).

³⁸ *Id.* at 825.

used by the Superior Court was that found in §§ 4374(c) through (h) and (j), not the qualifying language for a “regular” discretionary expungement in § 4374(a) or the mandatory expungement disqualifying language found in § 4372(b).

The *Fuller* Court also relied on the fact that the petitioner was required to attach a copy of his criminal history as maintained by SBI to her petition for expungement. The Court found that this fact reflected that only the offenses contained therein constitute the baseline eligibility criteria for the reviewing judge. Cornette’s conviction for DUI is not contained in his SBI criminal history. Similarly, in our case, nowhere in the discretionary expungement statute does it state that a petitioner must provide a Division of Motor Vehicle driving record, which would reflect any driving offenses, or that a driving offense will automatically exclude an individual from petitioning for a discretionary expungement following a pardon. This is not to say that a Title 21 offense is wholly irrelevant, however. At the *Fuller* Court stated:

... we are not suggesting that Title 21 violations are irrelevant to the expungement process. As with other legitimate factors bearing on the decision to expunge, the Family Court may consider Title 21 traffic violations as evidence that the continued existence of the juvenile arrest record does not constitute a manifest injustice.³⁹

Thus, the Superior Court retains the discretion to decide whether a violation of Title 21 is sufficiently serious to deny this discretionary expungement application, but

³⁹ *Fuller*, 104 A.3d at 818–19

the existence of a Title 21 motor vehicle violation does not act as a total bar to consideration in the first place.

In *Osgood v. State*,⁴⁰ this Court addressed a jurisdictional issue with respect to the adult expungement statute following Delaware General Assembly enactments of the Adult Expungement Reform Act in 2019 and the Clean Slate Act in 2021. The Court was asked to determine whether out-of-state convictions constituted a bar to either mandatory or discretionary expungements. The relevant statutes, §§ 4373(a)(2) and 4374(a), each contain a provision limiting applicants to those who have no “prior or subsequent convictions.”

As in *Fuller*, the Court reiterated that the expungement process begins with an applicant obtaining a copy of their criminal arrest record from the SBI and noticed that the criminal history did not contain a statement of their out-of-state record.⁴¹ By analogy, Cornette’s criminal history did not contain the Title 21 charges. The Court ascribed meaning to the words “prior or subsequent convictions” by reviewing those words within the context of the overall statute itself and by noting the Legislature’s silence on a more expansive interpretation.⁴² The Court ascribed meaning to the words based upon their plain language but, also, upon

⁴⁰ 310 A.3d 415 (Del. 2023)

⁴¹ *Id.*

⁴² *Id.* at 421

reference to other words in the statute.⁴³ Next, the Court endeavored to define the words in a manner that would not lead to inconsistencies, absurdities, unintended and unjust consequences,⁴⁴ or arbitrary outcomes for similarly situated applicants.⁴⁵ Finally, the Court recognized that an out-of-state record criminal record does not exclude an applicant from consideration but, nevertheless, remains “fair game” for the merits of a discretionary review, wherein the petitioner must demonstrate a manifest injustice by a preponderance of the evidence.⁴⁶

Likewise, Cornette asks this Court to reject the Superior Court’s conflation of the words in §§ 4375 and 4372(b) and, instead, to ascribe meaning and purpose to the words in §4372(b), §4374(a), and §4375(a) as each provision refers to a separate and distinct part of the expungement scheme. The Superior Court combined §4372(b) and §4375 in a manner that erroneously implicated §4374(a) and, in so doing, unreasonably expanded the number of applicants who would become ineligible for expungement – directly in contrast the Legislature’s intentions of expanding the pool of individuals eligible for expungement via the Adult Expungement Reform Act and the Clean Slate Act.

⁴³ Id. at 422

⁴⁴ Id. at 422-423

⁴⁵ Id. at 424

⁴⁶ Id. at 425

***The Superior Court's Erroneous Decision Leads To
An Avalanche Of Arbitrary Outcomes For Future Applicants***

In *Fuller* and *Osgood*, this Court took pains to respect the General Assembly's intentions by interpreting its legislation "in a reasonable manner that best advances its evident purposes."⁴⁷ "Courts have long sought to avoid interpretations that produce inequitable results when there is another reasonable reading of the statute."⁴⁸ "Literal or perceived interpretations, which yield illogical or absurd results, should be avoided in favor of interpretations consistent with the intent of the Legislature."⁴⁹

If the Superior Court's decision stands, a multitude of individuals will never have their eligible offenses expunged simply because they are attached to a non-eligible offense, such as Title 21 offense. Of course, the most inequitable result is where a person whom the Governor has seen fit to receive an unconditional pardon is prevented from ever receiving an expungement due solely to an accompanying Title 21 offense. Yet, the list of illogical results left in the wake of the Court's decision is numerous:

- College kids charged with a fake ID (Title 21) and underage possession or consumption of alcohol (Title 4) could never get their arrest record expunged.

⁴⁷ *Fuller*, 104 A.3d at 825, see fn. 45; *Osgood*, 310 A.3d. at 421, fn. 44 and 310 A.3d. at 424, fn. 55.

⁴⁸ *Fuller*, 104 A.3d at 825, see fn. 46.

⁴⁹ *State v. Cooper*, 575 A.2d 1074, 1076 (Del.1990)

- Drug arrests are frequently initiated by a traffic stop; none of those cases, where Title 16 and Title 21 convictions are combined, would ever be eligible for an expungement.

- In same scenario, even where all Title 21 charges associated with the arrest are terminated in favor of the accused, most of those cases could never be expunged because, with only three exceptions, Title 21 offenses are not eligible.

- Even worse, in the same scenario, where all Title 16 charges associated with the case are terminated in favor of the accused but a traffic ticket remains, that application will likewise be denied before the applicant steps into the batter's box.

- The Court's decision leads to disparate results for the same criminal conduct depending on whether the crime was committed at the same time as a traffic offense or whether the conduct occurred outside of a vehicle: if someone possesses drugs in a backpack while walking down the street, the arrest might be able to be expunged but, if the backpack was in a car and the driver ran a red light, then that arrest could not be expunged.

- In a slightly different scenario, that same driver of a vehicle who is criminally in possession of controlled substances may or may not have the arrest eventually expunged based upon an arbitrary decision of the police officer to charge, or not charge, a Title 21 offense. Law enforcement personnel who are

generally not supportive of expungement may be incentivized to charge Title 21 offenses.

- An expungement applicant may have Title 21 convictions both before and after a criminal arrest and still be eligible for expungement⁵⁰; however, if an applicant has any but three Title 21 offenses as part of the same arrest, then they are ineligible.

- An expungement applicant may have an unresolved Title 21 case pending in a court and remain eligible to apply for an expungement of a separate offense⁵¹; however, if an applicant has a resolved Title 21 offense as part of the same arrest for which they are seeking an expungement, then they are ineligible.

- Despite the general rule that Title 21 offenses are ineligible for expungement, § 4734(i)(2) has carveouts for three Title 21 offenses that are eligible; a person who commits a criminal offense while running a red light would never be eligible for an expungement and, yet, a person committing the same criminal act while engaged in reckless driving, certainly a far worse Title 21 offense, could possibly be eligible.

- The same administrative scenario that the Superior Court confronted in *Osgood*, where the SBI made jurisdictional expungement decisions without an

⁵⁰ 11 *Del. C.* § 4372(h)

⁵¹ 11 *Del. C.* § 4372 (f) (1) (c).

applicant knowing why his application was rejected, will occur once again if the Court's decision stands. If the presence of a Title 21 offense in a criminal case does, in fact, exclude an applicant from discretionary expungement consideration in that case, then SBI will, as an administrative agency outside of the court process, summarily advise applicants that they are not eligible for expungement.

These are not hypothetical scenarios in a vacuum. This is the state of Delaware's Adult Expungement law following the Superior Court's decision, and the disparities and unintended consequences cannot be more at odds with the stated intent of the Legislature:

The General Assembly finds that a criminal history is a hindrance to a person's present and future ability to obtain employment, housing, education, or credit. This subchapter is intended to protect persons from unwarranted damage which may occur *when the existence of a criminal history continues indefinitely*.

11 *Del.C.* § 4371 (emphasis added). Delaware's Legislature has determined, as a matter of public policy, that the prolonged existence of a person's Delaware record can be personally and socially counterproductive and, therefore, requiring its citizens to persistently drag the 'ball and chain' of their criminal record is an outdated and undesirable mode of thinking. The Legislature could not have intended or imagined that its grand Expungement Reform Act and Clean Slate policy was contingent on someone not having a speeding ticket.

CONCLUSION

Wherefore, for the reasons and upon the authorities cited herein, the Superior Court's decision must be reversed.

Respectfully submitted,

/s/Nicole M. Walker

Nicole Walker, Esq., DE #4012
Office of Defense Services
Office of the Public Defender
Carvel State Office Building
820 North French Street
Wilmington, DE 19801

/s/John Deckers

John P. Deckers, Esq., DE#3085
Office of Defense Services
Office of Conflict Counsel
John P Deckers, P.A.
800 N. King St., Ste. 303
Wilmington, DE 19801

/s/Alanna R Farber

Alanna R. Farber, Esq., DE #6277
Office of Defense Services
Office of the Public Defender
Carvel State Office Building
820 North French Street
Wilmington, DE 19801

Attorneys for Appellant

DATED: May 5, 2025