



**IN THE SUPREME COURT OF THE STATE OF DELAWARE**

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

ON APPEAL FROM THE SUPERIOR COURT  
OF THE STATE OF DELAWARE

**STATE'S ANSWERING BRIEF**

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## NATURE AND STAGE OF THE PROCEEDINGS

In December 1993, Joseph Cornette was arrested in connection with a driving accident.<sup>1</sup> This event generated one complaint number, 3193009155, but two case numbers: 9312013018 and 9312013394. (A10). The former case number had one count of Vehicular Assault Second Degree and one count of Improper Lane Change; both resolved by *nolle prosequi* on January 26, 1994. (A10; Opening Br. at 5). The latter case was indicted on January 20, 1994, and had four charges: (i) Driving Under the Influence (“DUI”); (ii) Assault Second Degree; (iii) Vehicular Assault First Degree; and (iv) Improper Lane Change. (A1). On May 18, 1994, Cornette pled guilty to DUI (the “DUI Conviction”) and Assault Second Degree (the “Assault Conviction”). (A2-4; A10). The State entered a *nolle prosequi* on the Vehicular Assault First Degree and the Improper Lane Change. (A10; A16).

The Superior Court sentenced Cornette to an aggregate two years, six months incarceration suspended after serving six weekends at the Plummer Center for Level 2 probation. (A2-3). On September 23, 1996, the court discharged Cornette from probation. (A4). On October 8, 1996, Cornette satisfied all payment obligations,

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<sup>1</sup> Sources differ on the exact date of occurrence. Cornette identifies the date as December 27, 1993. *See, e.g.*, A12; A19. Cornette’s certified criminal history, however, identifies the arrest date as both December 24, 1993, and December 27, 1993. A10. That difference in date does not impact the substance of this appeal.

and the court closed the case. (A4). Since that time, Cornette has had no additional arrests, charges, or convictions. (A10).

On March 17, 2022, Cornette applied for a governor's pardon of his Assault Conviction. (A7-21). The State did not oppose Cornette's pardon request. (A23). On December 8, 2022, then-Governor Carney granted Cornette's pardon (the "Pardoned Conviction"). (A23-24).

On May 22, 2023, Cornette petitioned for expungement of his Pardoned Conviction and the Vehicular Assault First Degree and Vehicular Assault Second Degree.<sup>2</sup> (A25-32). He did not seek expungement of the DUI Conviction or the Improper Lane Change the State had *nolle prossed*. (A25).

On October 24, 2023, the State filed its response. (A36-39). It identified no good faith basis to oppose expungement of the Vehicular Assault Second Degree charge from case 9312013018 and identified it as eligible for mandatory expungement. (A36). As to case 9312013394, it noted the victim's opposition to expungement of the Pardoned Conviction but did not oppose expungement in light of the intervening 29 years in which Cornette did not have another arrest, charge, or conviction. (A36-37).

On October 27, 2023, a Superior Court commissioner denied the expungement request, reasoning that DUI-related charges are ineligible for

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<sup>2</sup> The State had entered a *nolle prosequi* on both Vehicular Assault charges.

expungement and identifying the Pardoned Conviction as DUI-related. (A40-41). Cornette appealed. (A42-96). Again, the State did not oppose. (A92-104).

On April 8, 2024, the Superior Court heard argument on Cornette’s petition. (A105-21). On June 11, 2024, the court denied the petition. (Opening Br. Ex. A). It reasoned the DUI Conviction and Pardoned Conviction were part of the same case, the DUI Conviction was ineligible for expungement as a Title 21 offense, and it “cannot split cases to expunge only a portion of Cornette’s case.” (Opening Br. Ex. A at 3-4).

On June 17, 2024, Cornette moved for reargument. (A122-28). On July 3, 2024, the State took the position that the Pardoned Conviction was eligible for expungement despite the DUI Conviction in the same case. (A129-30).

On July 15, 2024, the Superior Court heard Cornette’s motion to reargue. (A138-58). On November 15, 2024, the court denied Cornette’s expungement petition. (Opening Br. Ex. B). The court, again, reasoned that the Pardoned Conviction and DUI Conviction occurred in the same case, the Pardoned Conviction was eligible for expungement while the DUI Conviction was not, and that Cornette was not, consequently, eligible for his charges to “be expunged in a piecemeal fashion.” (Opening Br. Ex. B at 6).

Cornette filed a timely notice of appeal and an opening brief. This is the State’s answering brief.

## **SUMMARY OF THE ARGUMENT**

I. Appellant's argument is conceded. The only condition imposed on a petitioner seeking expungement of a pardoned conviction is that they have obtained a pardon. Cornette satisfied that condition, and the Superior Court erred by imposing the additional condition that all other offenses in the case be eligible for expungement. Title 21 offenses occurring in the same case do not bar expungement of other offenses that are otherwise eligible for expungement. The Superior Court erred in concluding Cornette's DUI Conviction operated as such a bar. The Superior Court erred when it determined it lacked the authority to grant expungements on a charge-by-charge basis.



## **STATEMENT OF FACTS**

In December of 1993, Cornette was drinking at a bar shortly after his 21<sup>st</sup> birthday. (A65). He decided to drive home. (A65). He fell asleep while driving, drifted into oncoming traffic, and “caused a head-on collision.” (A65). His injuries were minor; the other driver’s injuries were not. (A65). She suffered two broken legs, a broken arm, and a laceration above the eye. (A36). Despite over a week in the hospital at the time and the passage of 30 years, she still suffers nerve damage. (A36).

## **ARGUMENT**

### **I. THE SUPERIOR COURT INCORRECTLY CONCLUDED IT HAD NO AUTHORITY TO EXPUNGE CORNETTE’S PARDONED CONVICTION BECAUSE OF THE DUI CONVICTION IN THE SAME CASE.**

#### **Question Presented**

Whether the Superior Court properly determined it had no authority to expunge Cornette’s Pardoned Conviction because of Cornette’s DUI Conviction in the same case.<sup>3</sup>

#### **Standard and Scope of Review**

Whether the Superior Court properly interpreted the provisions of Title 11 Chapter 43 (the “Expungement Statute”) is a question of statutory interpretation, and this Court’s review is therefore *de novo*.<sup>4</sup>

#### **Merits of Argument**

The Superior Court explained the Expungement Statute permits expungement only where all offenses within a case are independently eligible for expungement.<sup>5</sup> On that basis, it concluded the Expungement Statute barred expungement of Cornette’s Pardoned Conviction, which was otherwise eligible for expungement, because it occurred in the same case as his DUI Conviction, which was ineligible for

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<sup>3</sup> Opening Br. Ex. B at 2.

<sup>4</sup> *Osgood v. State*, 310 A.3d 415, 418 (Del. 2023).

<sup>5</sup> Opening Br. Ex. B at 6.

expungement.<sup>6</sup> Cornette contends this was error because the Expungement Statute does not prohibit the expungement of an offense otherwise eligible for expungement merely because it is paired with another offense that is ineligible for expungement.<sup>7</sup>

The State agrees. As explained below, Cornette satisfied the conditions necessary to obtain expungement of his Pardoned Conviction, subject to the discretion of the court, and the Superior Court erred in imposing additional conditions on Cornette. The Superior Court also erred in concluding that a Title 21 offense occurring in the same case as an offense otherwise eligible for expungement operates as a bar to expungement. And the Superior Court erred in concluding it lacked authority under the Expungement Statute to grant expungements on a charge-by-charge basis.

The matter should be reversed and remanded.<sup>8</sup>

**A. Cornette's Pardoned Conviction Is Eligible for Expungement; His DUI Conviction Is Not.**

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A critical component to the question before this Court is the eligibility for expungement of Cornette's Pardoned conviction and the ineligibility for expungement of his DUI Conviction, a baseline to which the parties and Superior

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<sup>6</sup> *Id.*

<sup>7</sup> Opening Br. at 9.

<sup>8</sup> In researching this matter, the State became aware that the following legislation has been introduced: <https://legis.delaware.gov/BillDetail?LegislationId=142180>.

Court agree.<sup>9</sup> Cornette's Pardoned Conviction is a felony.<sup>10</sup> Felonies, with only a few exceptions, are ineligible for mandatory expungement pursuant to 11 *Del. C.* § 4373 ("Mandatory Expungement"); Assault Second Degree is not one of those exceptions.<sup>11</sup> Assault Second Degree is also ineligible for discretionary expungement pursuant to 11 *Del. C.* § 4374 ("Discretionary Expungement").<sup>12</sup> Section 4375,<sup>13</sup> however, changes that calculus.<sup>14</sup> It permits a petitioner to use the procedures of Discretionary Expungement if they obtain a pardon of their conviction.<sup>15</sup> Cornette's Pardoned Conviction, accordingly, became eligible for expungement, subject to the discretion of the court, once he obtained a pardon.

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<sup>9</sup> Opening Br. Ex. B at 6, 11.

<sup>10</sup> A23.

<sup>11</sup> See 11 *Del. C.* § 4373(a) (outlining eligibility requirements for Mandatory Expungement, which excludes most felonies, save for those listed in 11 *Del. C.* § 4373(a)(2)(b)-(c)).

<sup>12</sup> 11 *Del. C.* § 4374(b)(1) (excluding Violent Felonies listed in 11 *Del. C.* § 4201(c), which includes Assault Second Degree, from Discretionary Expungement).

<sup>13</sup> Unless otherwise noted, references to "Section \_\_\_\_" refer to sections within the Expungement Statute.

<sup>14</sup> 11 *Del. C.* § 4375(a) ("Notwithstanding 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.").

<sup>15</sup> *Id.* Only six crimes are ineligible for expungement even after a pardon. Assault Second Degree is not one of them. 11 *Del. C.* § 4375(b).

Title 21 offenses, by contrast, are precluded from expungement by Section 4372(f).<sup>16</sup> An exception to that general prohibition permits three identified Title 21 offenses to be expunged.<sup>17</sup> DUI offenses are not one of them.<sup>18</sup> Cornette's DUI Conviction, accordingly, is ineligible for expungement.

**B. The Superior Court's Conclusion that the Expungement Statute Empowers It to Grant Expungement Solely Where All Offenses Are Eligible for Expungement.**

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The Superior Court determined the Expungement Statute prohibited expungement of an otherwise expungable offense when it occurred in the same case as an offense ineligible for expungement.<sup>19</sup> At oral argument, the court explained its view:

I will tell you that I know when legislation has come up in the past, the Court has been clear that expungement relates to cases, not to individual charges... I know we've been talking about legislation, we have always said we can't do it by charge, it has to be by case.<sup>20</sup>

In its Order denying Cornette's Motion for Reargument, the Superior Court anchored this understanding in two provisions of the Expungement Statute:

Section 4372(b)(4) states 'a case is 'terminated in favor of the accused' only if ... all charges related to the case are

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<sup>16</sup> 11 *Del. C.* § 4372(f)(2) ("Except as otherwise provided under § 4374(i) of this title, offenses under Title 21, or their equivalent, are not eligible for expungement.").

<sup>17</sup> 11 *Del. C.* 4374(i)(2) (identifying three exceptions to the general prohibition against expunging Title 21 offenses).

<sup>18</sup> *Id.*

<sup>19</sup> Opening Br. Ex. A at 3; Opening Br. Ex. B at 6.

<sup>20</sup> A145.

otherwise dismissed.’ This is because ‘expungement’ means ‘all law-enforcement agency records and court records relating to a case in which expungement is granted, including any electronic records, are destroyed, segregated, or placed in the custody of the State Bureau of Identification . . . .’<sup>21</sup>

Section 4372(b)(4) is one of seven that define “terminated in favor of the accused.”<sup>22</sup> That term is irrelevant here; it applies to neither Discretionary Expungement nor expungement following a pardon.<sup>23</sup> In fact, the legislature used the term only once elsewhere in the Expungement Statute: Section 4373(a)(1).<sup>24</sup> That section governs Mandatory Expungement, which the State Bureau of Identification (“SBI”) oversees.<sup>25</sup> While Mandatory Expungement may require “all charges” in a case be eligible for expungement, it does not follow that Discretionary Expungement, which uses different terminology, requires the same, a distinction discussed below.<sup>26</sup>

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<sup>21</sup> Opening Br. Ex B (quoting 11 *Del. C.* § 4372(b)(4) and 11 *Del. C.* § 4372(c)(4), internal footnotes omitted, and ellipses in original).

<sup>22</sup> 11 *Del. C.* § 4372(b)(1)-(7).

<sup>23</sup> See 11 *Del. C.* § 4374 and 11 *Del. C.* § 4375.

<sup>24</sup> 11 *Del. C.* § 4373(a)(1)a (“The person was arrested or charged with the commission of 1 or more crimes and the case is terminated in favor of the accused.”).

<sup>25</sup> 11 *Del. C.* § 4373(a)(1) (“On an appropriate request to the State Bureau of Identification under this section, the Bureau shall . . .”); 11 *Del. C.* § 4373(a)(2) (“On an appropriate request to the State Bureau of Identification under this section, the Bureau shall . . .”).

<sup>26</sup> *Infra* I.D.2.

Section 4372(c)(4) defines expungement as the destruction of records related to “a case.”<sup>27</sup> The Superior Court’s appears to have reasoned that the choice to use the term “case” rather than “charge” was determinative. But this reasoning confuses a consequence with a requirement. Section 4372(c)(4) identifies what happens when SBI or a court grants expungement: destruction of records associated with the case in which expungement is granted.<sup>28</sup> Nowhere in its plain language does Section 4372(c)(4) require all charges in a case be eligible for expungement.<sup>29</sup> Nor is it unreasonable to conclude the legislature intended that the expungement of one charge but not all within a case would result in the destruction of all records related to that case. Identifying which records of a case belonged to any specific charge would likely be impossible.

**C. Cornette’s Arguments on Appeal.**

Cornette makes three arguments on appeal.<sup>30</sup> He argues the Superior Court failed to understand a pardoned conviction bypasses the eligibility provisions of Discretionary Expungement.<sup>31</sup> The State does not share the view that the Superior

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<sup>27</sup> 11 *Del. C.* § 4372(c)(4) (“‘Expungement’ means that all law-enforcement agency records and court records relating to a case in which an expungement is granted, including any electronic records, are destroyed, segregated, or placed in the custody of the State Bureau of Identification, and are not released in conjunction with any inquiry beyond those specifically authorized under this subchapter.”).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> Opening Br. at 11-24.

<sup>31</sup> Opening Br. at 12-15.

Court's ruling stemmed from a misapplication of the eligibility provisions of Discretionary Expungement. Instead, as explained above, the Superior Court based its decision on its understanding that expungement can only be granted on a case-by-case, rather than a charge-by-charge, basis.<sup>32</sup> Cornette concludes this argument by pointing to Section 4374(f), a procedure within Discretionary Expungement and applicable to expungement after a pardon and argues it illustrates the legislature's intent that expungement be done on a charge-by-charge basis.<sup>33</sup> The State agrees and discusses this provision further below.

Likewise, the State agrees with Cornette's second and third arguments; they also support those arguments the State makes below. Cornette's second argument is that this Court's precedent looks to the criminal history maintained by SBI to determine expungement eligibility, and Cornette's DUI Conviction would not be included in that history.<sup>34</sup> His DUI Conviction, therefore, cannot be used to determine his Pardoned Conviction's eligibility for expungement.<sup>35</sup> Cornette's third argument is that the Superior Court's ruling would lead to absurd results.<sup>36</sup> The State agrees with and expands on each argument below.

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<sup>32</sup> *Supra* I.B.

<sup>33</sup> Opening Br. at 16 (quoting 11 *Del. C.* § 4374(f)).

<sup>34</sup> Opening Br. at 17-20 (citing *Fuller v. State*, 104 A.3d 817 (Del. 2014) and *Osgood*, 310 A.3d 415).

<sup>35</sup> Opening Br. at 19-20.

<sup>36</sup> Opening Br. at 21-24.



**D. Cornette's Pardoned Conviction Is Eligible for Expungement Regardless of the DUI Conviction.**

Below, the State took the position that Cornette's Pardoned Conviction was eligible for expungement despite the existence of his DUI Conviction, a non-expungable Title 21 offense in the same case.<sup>37</sup> It maintains that position here. First, Cornette satisfied all conditions the Expungement Statute imposed on him to make his Pardoned Conviction eligible for expungement. Second, Title 21 offenses do not operate as a bar to offenses otherwise eligible for expungement occurring in the same case. Third, the Expungement Statute empowers courts to grant expungement where some but not all charges in a case are eligible for expungement. Accordingly, the matter should be reversed and remanded.

**1. Once a Conviction Is Pardoned the Expungement Statute Imposes No Additional Requirements for Expungement.**

Once Cornette obtained a pardon, his Pardoned Conviction became eligible for expungement subject to the discretion of the Superior Court. That is because the only condition Section 4375 imposes is that a petitioner obtains a pardon; Cornette did so.<sup>38</sup> Section 4375 provides, in relevant part, a person who is "unconditionally

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<sup>37</sup> A101.

<sup>38</sup> See, e.g., *Leatherbury v. Greenspun*, 939 A.2d 1284, 1288 (Del. 2007) ("It is well-settled that unambiguous statutes are not subject to judicial interpretation. If the statute as a whole is unambiguous and there is no reasonable doubt as to the meaning of the words used, the court's role is limited to the application of the literal meaning of those words.") (internal footnotes and quotations omitted).

pardoned by the Governor may request a discretionary expungement under the procedures under § 4374(c) through (h) and (j) of this title.”<sup>39</sup> Section 4374 does not condition the expungement eligibility it confers upon the eligibility of a petitioner's other resolved charges or convictions.<sup>40</sup> Rather, when a conviction has been unconditionally pardoned, that conviction becomes eligible for discretionary expungement notwithstanding other considerations so long as it is not one of the excluded convictions listed in Section 4375(b).<sup>41</sup> Because Cornette’s Pardoned Conviction was not one of the convictions excluded under Section 4375(b), it became eligible for expungement. Thus, the Superior Court erred when it imposed the additional condition on Cornette that the other charge in the case: his DUI Conviction, be eligible for expungement.

**2. Title 21 Offenses Do Not Bar Expungement of Other Charges In the Same Case.**

As discussed above, Cornette argues that the precedent of this Court dictates that expungement eligibility does not hinge on the existence of Title 21 offenses. SBI’s letter to Cornette in this case supports that argument.<sup>42</sup> In that letter, SBI advised Cornette that he was entitled to Mandatory Expungement of a portion of his

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<sup>39</sup> 11 *Del. C.* § 4375(a).

<sup>40</sup> *Id.*

<sup>41</sup> 11 *Del. C.* § 4375(b).

<sup>42</sup> A28.

record.<sup>43</sup> SBI's letter must refer to either case 9312013018 or 9312013394, Cornette's only two cases.<sup>44</sup> Both contain a non-expungable Title 21 offense. While true that one is a conviction (the DUI Conviction) and the other a *nolle pross*, that distinction makes no difference.<sup>45</sup> In whatever case SBI found Cornette eligible for Mandatory Expungement, that case contains a non-expungable Title 21 offense. Necessarily, SBI offered to grant Cornette (and presumably grants other petitioners) Mandatory Expungement in a case notwithstanding the existence of a Title 21 offense in that case.

SBI's treatment of Title 21 offenses is consistent with how the Expungement Statute treats Title 21 offenses in other circumstances. For example, pending Title 21 offenses do not bar a petitioner from obtaining expungement.<sup>46</sup> Nor do prior or subsequent Title 21 offenses bar a petitioner from obtaining expungement.<sup>47</sup> Thus,

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<sup>43</sup> A28. Cornette contends this relates to case 9312013018 in which there are two *nolle prossed* charges, a felony and a Title 21 offense. Opening Br. at 5 n.9. While the State finds no language supporting that position in SBI's letter, it is irrelevant to the present point because both cases contain Title 21 offenses.

<sup>44</sup> Opening Br. at 5.

<sup>45</sup> See 11 Del. C. § 4272(f) (identifying Title 21 "offenses" as ineligible for expungement).

<sup>46</sup> 11 Del. C. § 4273(f)(1)(c) ("[A] person is not eligible for an expungement while the person has pending criminal charges. For purposes of this paragraph (f)(1), 'pending criminal charges' does not include an alleged violation of any of the following . . . A Title 21 offense.").

<sup>47</sup> 11 Del. C. § 4273(h) ("A prior or subsequent conviction of a Title 21 offense does not operate as a bar to eligibility for discretionary or mandatory expungement under this subchapter.").

to accept the Superior Court’s ruling requires accepting that Title 21 offenses bar expungement only where they occur concurrently with charges otherwise eligible for Discretionary Expungement.<sup>48</sup>

This analysis highlights a particularly absurd result.<sup>49</sup> Cornette identifies as one absurd result the scenario in which expungement is barred “where Title 16 and Title 21 convictions are combined.”<sup>50</sup> But, as the above demonstrates, it need not even be a Title 21 *conviction* to operate as a bar. Title 21 offenses are non-expungable.<sup>51</sup> Thus, under the Superior Court’s reading, the existence of a mere Title 21 charge—regardless of its outcome—is alone sufficient to operate as a bar to expungement of an offense otherwise eligible for expungement.

The legislative synopsis of the Adult Expungement Reform Act speaks to this issue.<sup>52</sup> After observing that most Title 21 offenses are ineligible for expungement, it states, “traffic offenses (other than DUIs) will not operate as a bar to other offenses.”<sup>53</sup> Consistent with the above, this language indicates that the legislature

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<sup>48</sup> See, e.g., *Spielburg v. State*, 558 A.2d 291, 293 (Del. 1989) (“[T]he statute must be viewed as a whole, and literal or perceived interpretations which yield mischievous or absurd results are to be avoided.”).

<sup>49</sup> See, e.g., *Judicial Watch, Inc. v. University of Delaware*, 267 A.3d 996, 1006 (Del. 2021) (rejecting reading of a statute because, among other things, it would lead to an absurd result).

<sup>50</sup> Opening Br. at 22.

<sup>51</sup> 11 Del. C. § 4273(f)(2).

<sup>52</sup> See, e.g., *Salzberg v. Sciabacucchi*, 227 A.3d 102, 119-20 (Del. 2020) (looking to legislative synopsis to assist in statutory construction).

<sup>53</sup> <https://legis.delaware.gov/BillDetail/47355>.

intended concurrent Title 21 offenses would not operate as a bar to expungement of other offenses that occurred in the same case. While the parenthetical indicates a DUI would operate as such a bar, this idea does not appear to have been implemented into the Expungement Statute; the Expungement Statute does not refer to driving under the influence nor its statutory citation.

The above demonstrates the Superior Court's error. Title 21 offenses do not operate as a bar to the expungement of other offenses in the same case under Mandatory Expungement, subsequent and prior Title 21 offenses do not bar expungement of other offenses, nor do pending Title 21 offenses bar expungement of other offenses. The Superior Court's ruling would, if allowed to stand, result in concurrent Title 21 offenses operating as a bar in the singular instance of Discretionary Expungement. And it leads to absurd results and is inconsistent with the legislature's intent. Accordingly, the Superior Court erred when it concluded Cornette's DUI Conviction prohibited granting Discretionary Expungement of Cornette's Pardoned Conviction. This Court should reverse the Superior Court's decision and remand for further proceedings.

**3. The Superior Court Erred When It Concluded It Lacked the Authority Under the Expungement Statute to Grant Expungements on a Charge-by-Charge Basis.**

The Superior Court likewise erred when it concluded the Expungement Statute did not authorize it to grant expungement on a charge-by-charge basis. As

Cornette observes, Section 4374(f) provides that if a court determines “the arrest or conviction” meets the relevant standard the court must order “expungement of the law-enforcement and court records related to the charge or case.”<sup>54</sup> The Superior Court rejected this language as evidence of legislative intent that Discretionary Expungement may be done on a charge-by-charge basis.<sup>55</sup>

A comparison of this language to comparable language applicable to Mandatory Expungement, however, supports Cornette’s reading. The Mandatory Expungement statute requires SBI to “expunge all charges related to a case” if “all other charges in the case are eligible for expungement” and one of several conditions is met.<sup>56</sup> That difference is telling. Discretionary Expungement refers to “the arrest or [the] conviction” and “the charge or [the] case” while Mandatory Expungement refers to “all charges” and “all other charges.”<sup>57</sup> Canons of statutory interpretation require reading this difference as intentional and giving meaning to that intention.<sup>58</sup>

The procedures the legislature imposed on Mandatory Expungement and Discretionary Expungement support this reading. Mandatory Expungement is

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<sup>54</sup> Opening Br. at 16 (quoting 11 *Del. C.* § 4374(f)).

<sup>55</sup> Opening Br. Ex. B at 5.

<sup>56</sup> 11 *Del. C.* § 4373(a)(1)-(2).

<sup>57</sup> Compare 11 *Del. C.* § 4373(a)(1)-(2) with 11 *Del. C.* § 4374(f).

<sup>58</sup> See, e.g., *Zambrana v. State*, 118 A.3d 773, 778 n.32 (Del. 2015) (“The legislative body is presumed to have inserted every provision for some useful purpose and construction, and when different terms are used in various parts of a statute it is reasonable to assume that a distinction between the terms was intended.”) (quoting *Giuricich v. Emtrol Corp.*, 449 A.2d 232, 238 (Del. 1982)).

managed exclusively by SBI and involves neither the courts, the Attorney General, nor the victim.<sup>59</sup> Given the absence of checks and oversight, it is reasonable for Mandatory Expungement to require all offenses in a case to be eligible for expungement. Discretionary Expungement, by contrast, involves the courts, the Attorney General, and requires the latter obtain victim input.<sup>60</sup> Discretionary Expungement has robust procedural safeguards, which are absent from Mandatory Expungement. This supports the conclusion that the former may be done on a charge-by-charge basis.

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<sup>59</sup> See 11 *Del. C.* § 4373.

<sup>60</sup> 11 *Del. C.* § 4374(a) (“Upon petition to the appropriate court . . .”); 11 *Del. C.* § 4374(g) (“The State is made party defendant to the proceeding.”); 11 *Del. C.* § 4374(e) (“The Attorney General shall contact a victim of the crime at the victim’s last known address or telephone number to ascertain the victim’s position on the petition. The Attorney General shall provide the victim’s position, if known, in the Attorney General’s answer to the petition.”).

## CONCLUSION

For the foregoing reasons, the Court should reverse and remand.

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Dated: June 9, 2025



**IN THE SUPREME COURT OF THE STATE OF DELAWARE**

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

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STATE OF DELAWARE  
DEPARTMENT OF JUSTICE

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DATE: June 9, 2025