



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 AMENDED REPLY BRIEF

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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.

As an initial point, the Superior Court did not hold, as the Amicus Brief suggests, "that an expungement can only occur when all of the *convictions* in the same case are pardoned or otherwise eligible for expungement."¹ Rather, the Superior Court held "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 expunged."² This inclusion of "all charges," not "all convictions", literally means that any case involving a Title 21 offense, with very few exceptions, and regardless of whether the Title 21 offense resulted in a conviction or not, can never be expunged because Title 21 offenses (with few exceptions) cannot be expunged. This is an absurd result and plainly inconsistent with the plain language and intention of the legislature.

¹ Amicus Brief at p.1.

² Ex. A attached to Opening brief at p. 3 ¶ 4.

Early in its brief, Amicus announces that this is "a classic case of statutory construction,"³ requiring deference to the plain language of the expungement statutes. Cornette wholeheartedly agrees. Key among the words and phrases here are: "convicted of a crime" as used in §4375(a); and "the arrest or conviction" and "the charge or case" as used in §4374(f). While Cornette properly seeks to give these words and phrases their plain meaning, Amicus turns tail from its announcement and allows its argument to control their meaning.

To reach its faulty conclusion that Mr. Cornette's unconditionally pardoned crime cannot be expunged, Amicus does not begin with the logical starting point, the statute governing discretionary expungements for unconditionally pardoned crimes, §4375(a). Rather, it takes a circuitous route through the explanation of the mechanical process by which records are "expunged" after a court order is issued. As Amicus sees it, since expungement involves the destruction, segregation or "isolation" of records related to "a case,"⁴ then only "a case" can be expunged. So, working backwards, Amicus identifies the definition of a case as "a charge or set of charges related to a complaint or incident[.]"⁵ However, without explanation, throughout the rest of its brief, Amicus interprets "case" as meaning only all charges related to a single incident. Based solely on this rationale, and not on the governing

³ Amicus Brief at p.1.

⁴ 11 *Del.C.* §4372(c)(4).

⁵ 11 *Del.C.* §4372(c)(1).

discretionary expungement statute, Amicus declares Cornette ineligible for discretionary expungement because not “all charges” related to one incident are eligible for expungement.⁶

The actual starting point in determining whether Mr. Cornette’s unconditionally pardoned Assault Second conviction is eligible for a discretionary expungement is the statute governing discretionary expungement following a pardon, §4375 (a).⁷ That statute is directed at “a person who was convicted of *a crime* ... who is thereafter unconditionally pardoned by the Governor.” It allows that person to “request a discretionary expungement under the procedures under §4374(c) through (h) and (j)[.]” Given that 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), it is reasonable to conclude that, had the Legislature intended similar limitations on the “pardon” variety, it would have done so. Instead, § 4375 is careful to direct the Court beyond any limiting circumstances for a discretionary expungement of the “non-governor pardon” variety set out in §4374(a) and to the consideration provision in §4374(f).

⁶ Amicus Brief at pp. 6, 7.

⁷ Misunderstanding Cornette’s argument, Amicus seems to believe that he argues that “notwithstanding” as used in §4375 is designed to erase the definition of “expungement.” Not true; “notwithstanding” simply reveals that §4375, rather than §4374, controls when it comes to unconditional pardons. Thus, to the extent there is any doubt regarding piecemeal expungement under §4374, that would not apply in our case.

Section 4374(f) is the nucleus of discretionary expungements. It is where applications for eligible discretionary expungements go to be granted or denied by the Superior Court. This includes the application from Cornette, a “person who was convicted of *a crime* ... who is thereafter unconditionally pardoned by the Governor[.]” Nowhere in §4375 or in §4374(c) – (e) is that person required to have all charges in a case eligible for expungement in order to obtain expungement of the pardoned crime.

In §4374 (f), the court is directed to grant expungement as follows:

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*. ...⁸

This clear and unambiguous language reveals the error in Amicus’ and the lower court’s conclusions that the court “cannot split cases to expunge only a portion of Cornette’s case”⁹ or that a criminal arrest record “cannot be expunged in a piecemeal fashion[.]”¹⁰ The phrases “*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

⁸ 11 Del. C. § 4374(f) (emphasis added).

⁹ Ex. A attached to Opening Brief at pp. 3-4 ¶ 6

¹⁰ Ex. B attached to Opening Brief at 6 ¶ 13.

under consideration. And, certainly, the plain language supports the conclusion that the expungement of a pardoned crime, regardless of other charges accompanying that crime, was contemplated.

To combat what is clear on the face of the statute, Amicus makes an intriguing argument clothed as one rooted in the plain-language doctrine. Noting the difficulty with the additional word “charge” in the phrase “charge or case,” Amicus states,

When [4374(f)] speaks of a “charge or case,” the use of the term “charge” is referring to a “case” with only one charge. To hold otherwise would allow a pardon for only one felony to lead to an “expungement” of a case which involved multiple felonies and misdemeanors, a result which the General Assembly otherwise was very careful to avoid in crafting the language of the statute.¹¹

All parties agree, the term “case” includes “a charge or set of charges[.]”¹² Notwithstanding this clear language, Amicus relies on this same definition to explain away the term “charge” that is already built into the term “case.” This analysis reveals the flaw in Amicus’ reliance on the conclusion that “case” only means all charges in one case with multiple charges. It also reveals its failure to recognize what

¹¹ Amicus Brief at p. 16. Amicus foresees ‘absurd’ results if the statute is interpreted as forewarned by the State and Cornette. It is evident, however, that Amicus poses hypotheticals that would constitute, most undoubtedly, illogical and unimaginable court orders for expungement in discretionary cases, but the hypotheticals do not envision (or respond to) the scenarios presented in Cornette’s Opening Brief at pp. 21-24, or the State’s Answering Brief at pp. 16-17 which are direct, not discretionary, consequences of the lower court’s ruling.

¹² 11 Del.C. §4372(c)(1).

this Court recognizes, that the statute “defines ‘Case’ ... broadly.”¹³ Because Amicus provides no analysis that allows for a harmonious reading of the expungement statute, one can only conclude that its argument is built on a house of cards. Also worthy of note is the fact that the Legislature has used a phrase, rather than just the term “case”, when it sought to make it clear that it was addressing all charges in a case. For example, the phrase “all charges related to a case” as opposed to “case” is used in §4372(b), which proscribes criteria for mandatory expungement under §4373 by defining the phrase “terminated in favor of the accused.” In §4374(a)(4), the phrase “the entire case ... must be eligible for expungement” is used to proscribe an applicant with multiple misdemeanor convictions in multiple cases from discretionary expungement. And that specific reference is limited to “eligibility under this paragraph” - not “this subchapter”, not “this section” ... hence, not the entire expungement statute. Thus, contrary to Amicus’ claims, if the Legislature sought to have Cornette’s discretionary expungement contingent on the eligibility of all charges involved in one incident, it would have said so.

Amicus either fundamentally misunderstands or conveniently ignores the significance this Court has placed on the fact that the starting point for consideration of expungement is the certified copy of the petitioner’s SBI criminal history that

¹³ *Osgood v. State*, 310 A.3d 415, 421 n.43 (Del. 2023).

must be attached to a petition for expungement.¹⁴ It is the criminal history that the court reviews in making its initial eligibility decision¹⁵ and Title 21 violations are not listed in the criminal history. Significantly, motor vehicle convictions are maintained in the DMV records and are not expunged from that database.¹⁶ Accordingly, contrary to Amicus' contention, Cornette does not suggest that he is entitled to discretionary expungement consideration because of an SBI "cover letter" attached to his criminal history.¹⁷ Rather, he is eligible for discretionary expungement consideration because the expungement statute says he is, and because it is the criminal history, and not the motor vehicle record, that is reviewed for eligibility.

Amicus unfairly "[p]resum[es that] Cornette sought a pardon for the Assault Second Degree charge from the Governor with the hope that, if a pardon were granted, the Superior Court would grant expungement of that particular conviction under 11 Del.C. §4375 and that expungement would then cause the records relating

¹⁴ *Fuller v. State* 104 A.3d 817 (Del. 2014).

¹⁵ §4374 (f).

¹⁶ *Fuller*, 104 A.3d at 823–24 n.37 ("Title 21 violations are listed in a person's Delaware Criminal Justice Information System record, which is not mentioned in the expungement statute"). DMV is the primary custodian of driving records and its database interacts with DELJIS. According to its website, <https://deljis.delaware.gov/>, DELJIS is the state-level agency that manages and maintains the state's Criminal Justice Information System (CJIS). CJIS, in this context, refers to the computer hardware, software, and communication network used to collect, store, and share criminal justice information within Delaware, including DMV records.

¹⁷ Amicus Brief at p. 13.

to both charges to be removed from the criminal history.”¹⁸ Then, with no basis, Amicus speculates further that Cornette did not seek a pardon for both charges because “[p]erhaps he feared that the Governor would not pardon a drunk driving charge, despite the passage of time, given the seriousness of such driving.”¹⁹ This conjecture and imagination does nothing more than reveal Amicus’ fundamental misunderstanding of how criminal histories and motor vehicle records are separately maintained in Delaware generally and in Cornette’s case in particular.

It's quite simple, Mr. Cornette did not seek a pardon of his DUI conviction because, as the record reveals and his Opening Brief states, that conviction is not in his criminal history.²⁰ It is contained in his motor vehicle record, as are most Title 21 convictions.²¹ In fact, the DUI will forever remain on his DMV record, always accessible to the courts and to law enforcement, but not to the public.²²

¹⁸ Amicus Brief at p. 8.

¹⁹ Amicus Brief at p. 9.

²⁰ Opening Brief at pp. 8, 18; A29-30.

²¹ Mr. Cornette’s DUI conviction is classified, for sentencing purposes, as a misdemeanor, but is not on his SBI criminal history. If an individual is convicted of a felony DUI, however, it will end up on their criminal history. *See Fuller*, 104 A.2d 817, 829 n.21 (Valihura J., dissenting) (“Felony convictions under Title 21 are included in the certified criminal history.”). If that occurred, then, presumably, they could seek a pardon for that offense.

²² The release of personal information in DUI records is governed by 21 *Del. C.* § 305, titled “Privacy act governing the release of motor vehicle driving history and license records.” Unlike court records which are available to the public at open kiosks in the courthouse, § 305 lists specific permissible uses for disclosing personal information, such as for government agencies, motor vehicle safety, legitimate business purposes, and legal proceedings.

Delaware's expungement statute pertains only to publicly accessible, publicly searchable databases relating to an individual's criminal arrest history.²³ The statute never has, and never will, attempt to intrude on the DMV database and, therefore, all traffic convictions and any DUI resolutions will be documented in perpetuity. This is a vitally important understanding because the target of expungement is "a criminal history" maintained in the custody of SBI,²⁴ not a driving record maintained by the DMV.

Finally, Amicus' charming analogy to "The Adventure of the Silver Blaze" is a seemingly persuasive argument, and one that would appear to be insurmountable to defeat: how can one possibly prove that a specific type of expungement occurred when, by definition, the court records are destroyed, segregated, or isolated? But it is Elementary, my Dear Colleagues, that counsel should maintain digital records of their clients' files and court dispositions. Counsel has provided this Court with only a tiny sample of expungements (29) dating back to 2020, where the courts did exactly what the Superior Court said it cannot do in our case.²⁵

²³ "Expungement" includes records "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." §4372(c)(4).

²⁴ §§ 4371, 4372 (c)(4), 4374(e).

²⁵ Reply Brief, Exhibit A, filed under seal. The table of cases and the SBI notices of expungement/court orders of expungement are filed under seal because, pursuant to 11 Del.C. § 4376, public disclosure of expunged records is impermissible.

Counsel did make the point below that the court, in fact, has expunged criminal offenses from its database while civil and Title 21 offenses remain.²⁶ But, the lower court did not inquire further. On appeal, Amicus assumes there are no such cases. However, a limited review of Counsel’s files defeats that naked assumption. Accordingly, Counsel now asks this Court to take judicial notice of the court orders and notices contained in the attached sealed exhibit, even though they are no longer publicly accessible.

Therefore, quite contrary to the Superior Court’s conclusions that it “cannot split cases to expunge only a portion of Cornette’s case”²⁷ or that a criminal arrest record “cannot be expunged in a piecemeal fashion,”²⁸ 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*. ...²⁹

And, secondarily, the courts have applied this law repeatedly. The words “*arrest or conviction*” and “*charge or case*” underscore the Legislature's intent to

²⁶ A137 – 138.

²⁷ Ex. A attached to Opening Brief at pp. 3-4 ¶ 6.

²⁸ Ex. B attached to Opening Brief at p. 6 ¶ 13.

²⁹ 11 Del. C. § 4374(f) (emphasis added).

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.

CONCLUSION

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

Respectfully submitted,

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