

Circuit Court for Baltimore County
Case No. 03-K-12-001514

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1397

September Term, 2021

IN RE EXPUNGEMENT PETITION OF
MEAGAN H.

Berger,
Beachley,
Shaw,

JJ.

Opinion by Beachley, J.

Filed: August 8, 2022

*This is an unreported opinion, and it may not be cited in any paper, brief, motion or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

The State appeals from an order entered by the Circuit Court for Baltimore County granting an expungement petition filed by the appellee, Meagan H. It presents a single question for our review:

Did the court err in granting [Ms.] H.’s petition for expungement of records for her conviction for identity fraud, which is not a conviction enumerated in the statute as eligible for expungement?

We answer this question in the affirmative and will therefore reverse the judgment of the circuit court.

BACKGROUND

On April 4, 2012, Ms. H. pleaded guilty to one count of identity fraud by obtaining personal identifying information without consent in violation of Md. Code (2002, 2012 Repl. Vol.), § 8-301(b) of the Criminal Law Article (“CR”).¹ The court imposed a one-year suspended sentence with three years’ supervised probation and 40 hours of community service. Ms. H. subsequently admitted to having violated the terms of her probation. Despite that violation, on August 12, 2015, the court found that she had satisfactorily completed probation.

¹ At the time of her 2012 conviction, CR § 8-301(b) provided:

- (b) A person may not knowingly, willfully, and with fraudulent intent possess, obtain, or help another to possess or obtain any personal identifying information of an individual, without the consent of the individual, in order to use, sell, or transfer the information to get a benefit, credit, good, service, or other thing of value in the name of the individual.

On July 22, 2021, Ms. H. filed a *pro se* expungement petition pursuant to Md. Code (2001, 2018 Repl. Vol.), § 10-105 of the Criminal Procedure Article (“CP”), wherein she averred:

On or about 4 APR 2012, I was convicted . . . of . . . a crime specified in Criminal Procedure Article §10-105(a)(9). Three (3) years have passed since the later of the conviction or satisfactory completion of the sentence, including probation. I am not now a defendant in any pending criminal action.

The State responded with an answer opposing her expungement petition. In that answer, it argued that Ms. H.’s conviction was ineligible for expungement because identity fraud is not among the expungeable criminal convictions enumerated in either CP § 10-105(a) or CP § 10-110(a).

On October 27, 2021, the circuit court held an expungement hearing, at which Ms. H. offered the following in support of her petition:

[W]hen I committed the offense, I was a teenager at the time, although that is no excuse. I did complete the probation for a time of 3 to 5 years. I completed all of my community service hours and then I even began working at the location where I was able to complete my community service. I enrolled in college to finish out my college career and I have been a public servant for the entire time since that incident happened. I have completely done everything . . . to change what I did.

Um, I have . . . obtained my Bachelors degree in social work and then I got a Master’s degree in social work. I tried to help children like myself for years now working at numerous agencies, AmeriCorps, the Peace Corps, and then I attempted to get lots of social work jobs to help other children not make the same mistakes that I did coming out of foster care with no guidance or parental help when I made those poor decisions. I have been unable to get many positions in my field with my educational background even though I have a Bachelors and Masters degree in social work because of this being on my record.

Um, I have waited a period of 10 years. I was told that some people, um, after a period of 10 years that they are able to try to get it expunged off their record. So I'm trying to do that today. I am a First Lieutenant and in two months I'll be promotable and I'll be able to attain Captain. As a Captain in the United States Army, I will be significantly more -- even as a Lieutenant, significantly more than I would as a social worker, but it has always been my dream and my goal to be a social worker.

Because I was in foster care, I just think that I bring an excellent background and experiences and that I can impact the world and other children's lives in other ways. I just really want to do that. I've always wanted to do that. I had an opportunity to do it in the military and also in the civilian sector and I just want to be granted an opportunity to try, Your Honor.

Ruling from the bench, the court stated:

I'm going to grant her request *based on good cause*. I was impressed by her military record and her life. I'm not 100 percent sure I'm right on that, but I believe it's appropriate and I'm going to go ahead and grant it for those purposes.

(Emphasis added). The court memorialized that ruling in an order entered on November 3, 2021. The State timely appealed from that order, as authorized by CP § 10-105(g).²

DISCUSSION

The State contends that the circuit court erroneously construed the “good cause” provision currently codified as CP § 10-105(c)(9), which provides: “A court may grant a petition for expungement at any time on a showing of good cause.” It argues that CP

² CP §10-105(g) provides:

- (g)(1) The State's Attorney is a party to the [expungement] proceeding.
- (2) A party aggrieved by the decision of the court is entitled to appellate review as provided in the Courts Article.

§ 10-105(c)(9) does not grant courts “roving authorization to grant expungement petitions on substantive grounds deemed ‘good cause’ by the court outside the statutory prerequisites for relief.” Rather, the State asserts, CP § 10-105(c)(9) merely vests courts with the discretion “to deviate . . . from the petition timing requirements that are the subject of subsections (c)(1) through (c)(8).”³

Standard of Review

A petitioner’s eligibility for expungement is a question of law, which we review *de novo*. See *In re Expungement Petition of Dione W.*, 243 Md. App. 1, 3 (2019) (“[O]n appeal, a person’s eligibility for expungement is a question of law that is subject to de novo review.”). The expungement statute “seems to lodge no discretion in the court, but to mandate either granting or denying the relief, based upon statutorily defined entitlement, or the lack of it.” *State v. Nelson*, 156 Md. App. 558, 568 (2004) (quoting *Ward v. State*, 37 Md. App. 34, 36 (1977)); see also *Dione W.*, 243 Md. App. at 3 (“[A] court has no discretion to deny the remedy of expungement if a person has demonstrated his or her statutory entitlement to it.”).

CP § 10-105(a)(9)

We will first address Ms. H.’s initial claim that her identity fraud conviction was expungeable pursuant to CP § 10-105(a)(9). CP § 10-105(a) permits the expungement of convictions or findings of not criminally responsible under State or local laws prohibiting the following public nuisance crimes:

³ Ms. H. did not file an appellate brief.

- (i) urination or defecation in a public place;
- (ii) panhandling or soliciting money;
- (iii) drinking an alcoholic beverage in a public place;
- (iv) obstructing the free passage of another in a public place or a public conveyance;
- (v) sleeping on or in park structures, such as benches or doorways;
- (vi) loitering;
- (vii) vagrancy;
- (viii) riding a transit vehicle without paying the applicable fare or exhibiting proof of payment; or
- (ix) except for carrying or possessing an explosive, acid, concealed weapon, or other dangerous article as provided in § 7-705(b)(6) of the Transportation Article, any of the acts specified in § 7-705 of the Transportation Article[.]

Identity fraud clearly is not among the convictions enumerated in CP § 10-105(a)(9). Nor is it otherwise identified as an expungeable offense in either CP § 10-105 or CP § 10-110. This does not, however, end our inquiry. We must now turn to the issue of whether CP § 10-105(c)(9) vests the circuit court with discretion to grant the expungement of an unenumerated criminal conviction for good cause shown.

In re Expungement Petition of Vincent S.

As the State correctly notes, in granting Ms. H.'s petition, the circuit court appears to have relied upon an overly broad interpretation of CP § 10-105(c)(9). We set forth that provision in context:

- (c)(1) Except as provided in paragraph (2) of this subsection, a petition for expungement based on an acquittal, a nolle prosequi, or a dismissal may not be filed within 3 years after the disposition, unless the petitioner files with the petition a written general waiver and release of all the petitioner's tort claims arising from the charge.
- (2) A petition for expungement based on a probation before judgment or a stet with the requirement of drug or alcohol abuse treatment may not be filed earlier than the later of:
 - (i) the date the petitioner was discharged from probation or the requirements of obtaining drug or alcohol abuse treatment were completed; or
 - (ii) 3 years after the probation was granted or stet with the requirement of drug or alcohol abuse treatment was entered on the docket.
- (3) A petition for expungement based on a nolle prosequi with the requirement of drug or alcohol treatment may not be filed until the completion of the required treatment.
- (4) A petition for expungement based on a full and unconditional pardon by the Governor may not be filed later than 10 years after the pardon was signed by the Governor.
- (5) Except as provided in paragraph (2) of this subsection, a petition for expungement based on a stet or a compromise under § 3-207 of the Criminal Law Article may not be filed within 3 years after the stet or compromise.
- (6) A petition for expungement based on the conviction of a crime under subsection (a)(9) of this section may not be filed within 3 years after the conviction or satisfactory completion of the sentence, including probation, that was imposed for the conviction, whichever is later.
- (7) A petition for expungement based on a finding of not criminally responsible under subsection (a)(9) or (10) of this section may not be filed within 3 years after the finding of not criminally responsible was made by the court.

- (8) A petition for expungement based on the conviction of a crime under subsection (a)(12) of this section may not be filed within 4 years after the conviction or satisfactory completion of the sentence, including probation, that was imposed for the conviction, whichever is later.
- (9) *A court may grant a petition for expungement at any time on a showing of good cause.*

(Emphasis added).

Our recent opinion in *In re Expungement Petition of Vincent S.*, ___ Md. App. ___, Nos. 607 & 608, Sept. Term, 2021 (Ct. of Spec. App. July 5, 2022), is dispositive of whether the court exceeded its statutory authority in this case. Vincent S. petitioned for the expungement of his burglary and felony theft convictions. *Vincent S.*, slip op. at 4. The State opposed those petitions, arguing, in pertinent part, that Mr. S.’s subsequent conviction for acting as a contractor without license—a crime enumerated in neither CP § 10-105 nor § 10-110—precluded expungement of the prior convictions. *Id.*; see CP § 10-110(d)(1) (“If the person is convicted of a new crime during the applicable time period set forth in subsection (c) of this section, the original conviction or convictions are not eligible for expungement unless the new conviction becomes eligible for expungement.”). Following a contested hearing, the court denied Vincent S.’s petition. *Vincent S.*, slip op. at 5.

On appeal, Vincent S. asserted that the circuit court failed to recognize its discretionary authority to grant the expungement for good cause shown pursuant to CP § 10-105(c)(9), which he construed as affording “courts plenary authority to grant petitions for expungement even if the petitioner is unable to satisfy the relevant statutory criteria.”

Id., slip op. at 8. Accordingly, he asked that we “vacate the circuit court’s order and . . . ‘remand with instructions to conduct a hearing concerning the issue of good cause.’” *Id.*

This Court rejected Mr. S.’s broad reading of CP § 10-105(c)(9), holding: “When it is read in context, § 10-105(c)(9) grants courts discretionary authority to relieve a petitioner of the time requirements for filing an expungement petition only as to those circumstances described in the preceding subsections of [CP] § 10-105(c).” *Id.*, slip op. at 10. We found support for that plain language interpretation in the expungement statute’s legislative history and statutory purpose, as well as prior case law.

When the General Assembly initially saw fit to enact a statutory scheme for expungement, we explained, it “limited the availability of expungements to persons who were never convicted of the crime with which they were charged—and generally only after the expiration of a three-year waiting period.” *Id.*, slip op. at 14. That limitation was consistent with the statute’s purpose of “protect[ing] individuals seeking employment or admission to an educational institution, by entitling them to expungement of *unproven charges*, so that those individuals could avoid being unfairly judged during their application processes.” *Id.*, slip op. at 13 (emphasis added) (quoting *Stoddard v. State*, 395 Md. 653, 664 (2006)).

In 1988, the General Assembly amended then Article 27, § 737 through Chapter 592 of the Acts of 1988, which added the “good cause” provision at issue. When the Legislature adopted that amendment, “§ 737 did not permit expungement of any convictions, other than those involving nonviolent offenses for which the petitioner had

been granted a ‘full and unconditional pardon by the Governor.’” *Id.*, slip op. at 14 (quoting Md. Code Art. 27, § 737(a)(7) (1957, 1988 Supp.)). According to the 1988 Senate Judicial Proceedings Committee Floor Report, the General Assembly intended that amendment “to provide the court with some discretion to grant an earlier expungement in appropriate cases,” and *not* “to make it easier for a criminal to expunge the criminal’s record[.]” *Id.*, slip op. at 15 (emphasis removed) (quoting Legislative Bill File, S.B. 429 at 6). In other words, the Legislature “intended the 1988 amendment to what is now [CP] § 10-105(c)(9) to authorize courts to waive the time requirements set forth in [CP] § 10-105(c)(1) through (c)(8) for good cause shown,” rather than to vest courts with “blanket” discretion to expunge any criminal conviction for good cause shown. *Id.*

Our interpretation of CP § 10-105(c)(9) also accords with our holding in *Nelson*, *supra*. In that case, we held that the “good cause” provision currently codified as CP § 10-105(c)(9) does not grant courts discretion to circumvent CP § 10-105(d) and (e), which “unambiguously mandate the opportunity for the State’s Attorney to file an objection within thirty days of service and that the court must conduct a hearing on the petition after any objection is noted.” *Nelson*, 156 Md. App. at 565. We reasoned:

Applying the recognized test of statutory construction to the language here under consideration, we cannot agree that the ability of the court to grant expungement “at any time for good cause” is to be read in the abstract. To do so renders the carefully crafted notice and time provisions meaningless. . . . [A] statutory scheme which pr[e]scribes, in considerable

detail, the rights and obligations of the State, cannot be held to be rendered meaningless by some action of the court that would circumvent that scheme.

* * *

In conclusion, we find that to provide the State with the opportunity to object and to be heard, but at the same time eliminate that opportunity by judicial fiat, does not serve the legislative purpose of the statute. To agree with appellee’s position would effectively deprive the public, through its representative, the State’s Attorney, the opportunity to oppose petitions for expungement where, as here, statutory criteria for expungement are lacking.

Id. at 566–67.

Relying in part on our reasoning in *Nelson*, we concluded in *In re Expungement Petition of Vincent S.* that CP § 10-105(c)(9) “does not grant a court a *carte blanche* to disregard the statutory prerequisites for expungement. Rather, subsection (c)(9) is properly construed as granting courts the discretion to relieve a petitioner of the time requirements set forth in the immediately preceding eight subsections of § 10-105.” *Vincent S.*, slip op. at 12.

Consistent with our opinion in *In re Expungement Petition of Vincent S.*, we hold that the court erred as a matter of law by granting Ms. H.’s petition for expungement of an unenumerated criminal conviction pursuant to CP § 10-105(c)(9). We therefore reverse and remand this case to the circuit court with instructions to vacate its expungement order.

**JUDGMENT OF THE CIRCUIT COURT FOR
BALTIMORE COUNTY REVERSED. CASE
REMANDED WITH INSTRUCTIONS TO
VACATE THE EXPUNGEMENT ORDER.
COSTS TO BE PAID BY APPELLEE.**