**[J-74A-H-2013] [MO: Stevens, J.]**
**IN THE SUPREME COURT OF PENNSYLVANIA**
**EASTERN DISTRICT**

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| COMMONWEALTH OF PENNSYLVANIA, | : No. 9 EAP 2013 |
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| Appellant | : Appeal from the Order of the Superior |
| | : Court entered May 25, 2012 at No. 1631 |
| | : EDA 2010, vacating the Order entered on |
| v. | : May 20, 2010 in the Court of Common |
| | : Pleas, Philadelphia County, Criminal |
| | : Division, at No. MC-51-CR-0127801-1992 |
| MARK WALLACE, | : |
| | : |
| Appellee | : SUBMITTED: September 9, 2013 |

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| COMMONWEALTH OF PENNSYLVANIA, | : No. 10 EAP 2013 |
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| Appellant | : Appeal from the Order of the Superior |
| | : Court entered on May 25, 2012 at No. 1894 |
| | : EDA 2010, vacating the Order entered on |
| v. | : June 28, 2010 in the Court of Common |
| | : Pleas, Philadelphia County, Criminal |
| | : Division, at No. MC-51-CR-1059771-1998 |
| MARK GREEN, | : |
| | : |
| Appellee | : SUBMITTED: September 9, 2013 |

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| COMMONWEALTH OF PENNSYLVANIA, | : No. 11 EAP 2013 |
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| Appellant | : Appeal from the Order of the Superior |
| | : Court entered on May 25, 2012 at No. 1895 |
| | : EDA 2010, vacating the Order entered on |
| v. | : June 28, 2010 in the Court of Common |
| | : Pleas, Philadelphia County, Criminal |
| | : Division, at Nos. |
| MARK GREEN A/K/A MARK WALLACE, | : MC-51-CR-0001841-2007; |
| | : MC-51-CR-0007002-2001; |
| Appellee | : MC-51-CR-0020961-2007; |
| | : MC-51-CR-0412481-1990; |
| | : MC-51-CR-0512751-1992; |
| | : MC-51-CR-0512771-1992; |
| | : MC-51-CR-0904091-1988; |

: MC-51-CR-0911491-1988 and
: CP-51-CR-0204911-2001
:
: SUBMITTED: September 9, 2013

COMMONWEALTH OF PENNSYLVANIA, : No. 12 EAP 2013
:
Appellant : Appeal from the Order of the Superior
: Court entered on May 25, 2012 at No. 2166
: EDA 2010, vacating the Order entered on
v. : May 20, 2010 in the Court of Common
: Pleas, Philadelphia County, Criminal
: Division, at No. MC-51-CR-1157451-1998
MARK WALLACE, :
:
Appellee : SUBMITTED: September 9, 2013

COMMONWEALTH OF PENNSYLVANIA, : No. 13 EAP 2013
:
Appellant : Appeal from the Order of the Superior
: Court entered on May 25, 2012 at No. 2850
: EDA 2010, vacating the Order entered on
v. : July 6, 2010 in the Court of Common Pleas,
: Philadelphia County, Criminal Division, at
: No. CP-51-CR-1109501-1998
MARK WALLACE, :
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Appellee : SUBMITTED: September 9, 2013

COMMONWEALTH OF PENNSYLVANIA, : No. 14 EAP 2013
:
Appellant : Appeal from the Order of the Superior
: Court entered on May 25, 2012 at No. 2851
: EDA 2010, vacating the Order entered on
v. : October 6, 2010 in the Court of Common
: Pleas, Philadelphia County, Criminal
: Division, at Nos. MC-51-CR-1028961-1991
MARK WALLACE, : and MC-51-CR-1028971-1991
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Appellee : SUBMITTED: September 9, 2013
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| COMMONWEALTH OF PENNSYLVANIA, | | : No. 15 EAP 2013 |
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| | Appellant | : Appeal from the Order of the Superior |
| | | : Court entered on May 25, 2012 at No. 3026 |
| | | : EDA 2010, vacating the Order entered on |
| v. | | : October 6, 2010 in the Court of Common |
| | | : Pleas, Philadelphia County, Criminal |
| | | : Division, at No. MC-51-CR-0719321-1991 |
| JAMES SMITH, | | : |
| | | : SUBMITTED: September 9, 2013 |
| | Appellee | : |

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| COMMONWEALTH OF PENNSYLVANIA, | | : No. 16 EAP 2013 |
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| | Appellant | : Appeal from the Order of Superior Court |
| | | : entered on May 25, 2012 at No. 766 EDA |
| | | : 2011 vacating the Order entered on |
| v. | | : February 22, 2011 in the Court of Common |
| | | : Pleas, Philadelphia County, Criminal |
| | | : Division, at Nos. |
| MARK WALLACE, | | : MC-51-CR-06032521-1988; |
| | | : MC-51-CR-0920171-1988; |
| | Appellee | : MC-51-CR-0920181-1998; |
| | | : MC-51-CR-0218521-1998; |
| | | : MC-51-CR-0911487-1998; |
| | | : MC-51-CR-0632531-1998; |
| | | : MC-51-CR-0403331-1988 and |
| | | : CP-51-CR-0332611-1988 |
| | | : |
| | | : SUBMITTED: September 9, 2013 |

## CONCURRING OPINION

**MR. CHIEF JUSTICE CASTILLE** **DECIDED: July 21, 2014**

I join the Majority Opinion, and write separately only to highlight the following point of law.

Appellee relies on Commonwealth v. D.M., 695 A.2d 770, 773 (Pa. 1997), which broadly stated: "In cases of acquittal, . . . we hold that a petitioner is automatically entitled to the expungement of his arrest record." The Majority successfully resolves this case

through application of the settled factors on expungement from Commonwealth v. Wexler, 431 A.2d 877 (Pa. 1981), but does not speak to D.M. itself. In order that expungement matters may be conducted upon a clear understanding of our precedent, I believe some discussion of D.M. may be useful to the bench and bar.

The pronouncement in D.M. that acquittal automatically entitles an accused to expungement of his arrest record can, indeed, be read expansively. But, the D.M. case, like any other precedent, must be read against its facts. As we reaffirmed in Scampone v. Highland Park Care Center, L.L.C., 57 A.3d 582 (Pa. 2012): "[T]his Court's decisions are read against the facts because our decisional law generally develops incrementally, within the confines of the circumstances of cases as they come before the Court. . . . [W]e aspire to embrace precision and avoid the possibility that words or phrases or sentences may be taken out of context and treated as doctrines." Id. at 604-05 (quotation marks and internal citations omitted). In this case, the Commonwealth specifically challenges the propriety of reading this statement from D.M. too liberally. In my view, the Commonwealth's suggestion is persuasive.

In D.M., the defendant was a schoolteacher with no criminal background and no history of incarceration who sought expungement of his arrest record after being acquitted of charges of misdemeanor indecent assault and corruption of a minor, which arose from a single isolated incident involving disputed facts. In the present matter, the Commonwealth does not attack the result of D.M. on its facts, but rather draws the obvious distinction between appellee's lengthy career in crime, embracing decades and hundreds of criminal actions, leading to his current incarceration status, compared to cases where defendants seeking expungement "were attempting to obtain employment and protect their reputations while free members of society." Commonwealth's Brief at 14 (citing D.M. and Wexler (parents of minor child who dealt marijuana out of family

residence were charged with corruption, possession, and conspiracy offenses that were ultimately *nolle prossed* and dismissed; this Court held that expungement of parents' arrest records was permissible)). The Commonwealth emphasizes that our precedent "has never extended an expungement remedy to persons [like appellee] who have been convicted and are presently incarcerated." Id.

The Commonwealth's position is correct. The D.M. Court had no occasion to address, and did not address, a factual situation similar to the one presented in this case, nor indeed, the timing of just when expungement by right may or should occur. The broad statement in D.M. does not automatically require expungement of past criminal and arrest records of a still-incarcerated defendant.[1] Indeed, there are instances where offering the prospect of expungement to incarcerated individuals is obviously absurd, such as cases involving defendants sentenced to death or to life imprisonment. Query: why should executive and judicial resources be devoted to pruning away prior charges leading to acquittal for persons with no realistic prospect of ever reentering society? They should not be, as the Majority makes clear. To engage in an expungement procedure in this matter, given appellant's deplorable criminal history, would be merely an academic exercise.

Mr. Justice Eakin joins this opinion.

[1] In D.M., I joined a dissent by Madame Justice Newman, who argued against a bright-line view that expungement must be automatic in the instance of acquittals; the dissent in D.M. would apply the factor-based approach set forth in Wexler to acquittals in order to ensure the propriety of expungement. Because the offense in D.M. involved a schoolteacher's alleged sexual contact with a minor whose testimony was not discredited, Justice Newman did not perceive expungement to be appropriate.