

**[J-168A&B-2008] [M.O. - TODD, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

ARTHUR W. HUNT,	: No. 40 MAP 2007
	:
Appellee	: Appeal from the Order of the
	: Commonwealth Court entered on
	: March 15, 2007 at No. 48 M.D. 2007
v.	:
	:
	:
PENNSYLVANIA STATE POLICE OF	:
THE COMMONWEALTH OF	:
PENNSYLVANIA,	:
	:
Appellant	: ARGUED: December 3, 2008

ARTHUR W. HUNT,	: No. 46 MAP 2007
	:
Cross Appellant	: Appeal from the Order of the
	: Commonwealth Court entered on
	: March 15, 2007 at No. 48 M.D. 2007
v.	:
	:
	:
PENNSYLVANIA STATE POLICE OF	:
THE COMMONWEALTH OF	:
PENNSYLVANIA,	:
	:
Appellee	: ARGUED: December 3, 2008

DISSENTING OPINION

MR. JUSTICE EAKIN

DECIDED: August 17, 2009

I respectfully dissent, as the Commonwealth Court erred in holding the State Police lacked standing to contest Hunt’s criminal record expungement. “The core concept of standing is that ‘a party who is not negatively affected by the matter [it] seeks

to challenge is not aggrieved, and thus, has no right to obtain judicial resolution of its challenge”’. In re Milton Hershey School, 911 A.2d 1258, 1261 (Pa. 2006) (citation omitted). A party is aggrieved if it can demonstrate it has “a substantial, direct, and immediate interest in the outcome of the litigation”. Id., at 1261-62. This Court has held:

A “substantial” interest is an interest in the outcome of the litigation which surpasses the common interest of all citizens in procuring obedience to the law. A “direct” interest requires a showing that the matter complained of caused harm to the party’s interest. An “immediate” interest involves the nature of the causal connection between the action complained of and the injury to the party challenging it.

In re Hickson, 821 A.2d 1238, 1243 (Pa. 2003) (citations omitted).

The Commonwealth Court relied on Commonwealth v. J.H., 759 A.2d 1269 (Pa. 2000), which held the State Police lacked sufficient interest in the case subject matter to possess standing to challenge an expungement order. Id., at 1271-72. The State Police’s involvement in J.H. stemmed from its response to the trial court’s rule directing it to show cause why the arrestee’s conviction records should not be expunged. Id., at 1270.

Here, in contrast to J.H., the State Police asserted standing from the procedural posture of mandamus and summary relief under the Criminal History Record Information Act (CHRIA), 18 Pa.C.S. § 9101 et seq. “A proceeding in mandamus is an extraordinary action at common law, designed to compel performance of a ministerial act or mandatory duty where there exists a clear legal right in the plaintiff, a corresponding duty in the defendant, and want of any other adequate and appropriate remedy”. Coady v. Vaughn, 770 A.2d 287, 289 (Pa. 2001) (citations omitted). This different procedural posture is not, as the majority states, “a distinction without a difference.” Majority Slip Op., at 14. The State Police was not a party to the

expungement request in J.H., whereas it is a named party to this action, which sought to compel it to take action.

As the State Police is a party to mandamus and summary relief actions, there is a clear causal connection between the action complained of (its refusal to comply with the expungement order) and the injury to the person challenging it (Hunt's inability to expunge his criminal record). Surely the State Police, as keeper of the criminal records, has a substantial interest and is thus aggrieved by the order, particularly as it has been ordered to pay attorney's fees. It appears anomalous to suggest it cannot be heard on a matter which directs it to perform an act it perceives as contrary to its statutory duties.

Further, the State Police's position is not frivolous, because the expungement of Hunt's record for indecent assault of a minor is expressly prohibited by 18 Pa.C.S. § 9122(b.1). If it lacks standing to challenge the expungement order, yet mandamus compels it to comply with the order and pay Hunt's attorneys' fees for its noncompliance, we are left with a result contrary to legislative intent.

This Court has recently held a county clerk of court lacked standing to challenge a court order directing the clerk to seal records of those completing ARD, as that office is a "ministerial" one, without discretion to interpret rules and statutes. In re Administrative Order No. 1-MD-2003, 936 A.2d 1, 9 (Pa. 2007). The clerk accordingly lacked authority — and thus, standing — to challenge the order in question. As the concurring opinion of Justice Saylor points out, there is a "tenuous relationship between [the clerk's] legal obligations and the statute at issue (CHRIA)." Id., at 11 (Saylor, J., concurring). Here, however, the relationship is not at all tenuous, but rather is called for by the CHRIA itself. The CHRIA requires the State Police to maintain records of pre-trial diversionary program participants.¹

¹ 18 Pa.C.S. § 9122(c) provides:
(continued...)

This Court has previously found the Gaming Control Board was aggrieved and had standing to challenge proposed ordinance amendments since the amendments would have thwarted the Board's statutory authority under the Gaming Act, 4 Pa.C.S. § 1101 et seq. See Pennsylvania Gaming Control Board v. City Council of Philadelphia, 928 A.2d 1255 (Pa. 2007). The State Police has even more than statutory authority; it has a statutory obligation as the central repository to maintain criminal record information, including expunged records, as well as those prohibited from expungement. 18 Pa.C.S. § 9122(b.1), (c). There is a clear and causal connection between the Commonwealth Court's ruling and the State Police's ability to fulfill its role as the central repository, and more importantly, the Commonwealth's highest police agency. The State Police, and the public in general, may be harmed if unable to fully and properly investigate the record of Hunt's prior crimes of indecent assault of a minor.

For the foregoing reasons, I dissent. I would vacate and remand for consideration of the remaining issues in the appeal and cross-appeal.

(...continued)

(c) Maintenance of certain information required or authorized.— Notwithstanding any other provision of this chapter, the prosecuting attorney and the central repository shall, and the court may, maintain a list of the names and other criminal history record information of persons whose records are required by law or court rule to be expunged where the individual has successfully completed the conditions of any pretrial or post-trial diversion or probation program. Such information shall be used solely for the purpose of determining subsequent eligibility for such programs and for identifying persons in criminal investigations. Criminal history record information may be expunged as provided in subsection (b)(1) and (2). Such information shall be made available to any court or law enforcement agency upon request.

Id.