

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DARREN D. ARNOLD,<sup>1</sup>

Petitioner Below,  
Appellant,

v.

STATE OF DELAWARE,

Respondent Below,  
Appellee.

§

§ No. 640, 2011

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§ Court Below – Family Court  
§ of the State of Delaware,

§ in and for New Castle County

§ File No. JN96-0228

§ Petition No. 11-27936

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Submitted: July 18, 2012

Decided: July 31, 2012

Before **STEELE**, Chief Justice, **HOLLAND**, **BERGER**, **JACOBS** and **RIDGELY**, Justices, constituting the Court *en Banc*.

Upon appeal from the Family Court. **REVERSED and REMANDED.**

John X. Denney, Jr., Esquire, Mattleman, Weinroth & Miller, P.C., Newark, Delaware, for appellant.

Paul R. Wallace, Esquire, Department of Justice, Wilmington, Delaware, for appellee.

**HOLLAND**, Justice:

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<sup>1</sup> This Court *sua sponte* assigned a pseudonym to the appellant by Order dated November 29, 2011. Supr. Ct. R. 7(d).

The defendant-appellant, Darren Arnold (“Arnold”), appeals from a Family Court judgment denying Arnold’s petition for expungement of his entire juvenile record. Arnold’s petition followed a gubernatorial pardon of his adult conviction for Misdemeanor Terroristic Threatening. Arnold contends that the Family Court erred as a matter of law by failing to give effect to title 10, section 1013 of the Delaware Code, which provides for automatic expungement of an individual’s juvenile record after that individual receives a gubernatorial pardon.

We have concluded that Arnold’s statutory argument is correct. Therefore, the judgment of the Family Court must be reversed. This matter is remanded for further proceedings in accordance with this opinion.

### ***Facts and Procedural History***

From December 1995 to January 1997, Arnold, who was between the ages of 13 and 15, was arrested and charged with committing ten separate offenses. The Family Court found Arnold delinquent for seven of those offenses.<sup>2</sup> Of the remaining offenses, Arnold was found not delinquent for one, another was resolved with a *nolle prosequi*, and the other was dismissed.

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<sup>2</sup> Arnold was adjudicated delinquent on charges of Assault in the Third Degree; Felony Receiving Stolen Property; Felony Theft; Unlawful Sexual Intercourse in the First Degree; Attempted Unlawful Sexual Intercourse in the First Degree; Unlawful Sexual Contact in the Second Degree; and a second charge of Felony Receiving Stolen Property.

In 2002, at the age of 20, Arnold was arrested and charged with Terroristic Threatening. Arnold pled guilty to that charge on February 21, 2003.

Approximately seven years later in August 2010, Arnold filed a Petition for a Pardon with the Board of Pardons of the State of Delaware (“Pardon Petition”) seeking the Board’s recommendation that the Governor grant a pardon of the Terroristic Threatening conviction. Among other reasons, Arnold sought the pardon because the Terroristic Threatening conviction was “preventing and/or severely limiting his ability to obtain alternate employment since [it] must be listed whenever he applies for a new job or applies for additional education and training.”

In Arnold’s case, as with all pardon applications, the Board of Pardons had a copy of Arnold’s complete criminal history, which includes all of his juvenile offenses.<sup>3</sup> The State did not oppose Arnold’s request for a pardon. The Board of Pardons recommended that a pardon be granted “based upon the changes the applicant has made in his life, the passage of time since the offense occurred and the lack of opposition from the State.”

The Delaware Pardon Process is a constitutionally created procedure giving the Governor the power to pardon an applicant unconditionally,

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<sup>3</sup> Applicants seeking recommendations from the Board for a pardon must include a criminal history with the petition pursuant to Delaware Board of Pardon Rule 3(b)(1).

conditionally, or not at all after receiving a recommendation by the Board of Pardons.<sup>4</sup> Pursuant to Article VII, Section 2 of the Delaware Constitution, the Board of Pardons consists of the Chancellor, Lieutenant Governor, Secretary of State, State Treasurer, and Auditor of Accounts. Article VII, Section 1 of the Delaware Constitution states:

no pardon, or reprieve for more than six months, shall be granted, nor sentence commuted, except upon the recommendation in writing of a majority of the Board of Pardons after full hearing; and such recommendation, with the reasons therefor at length, shall be filed and recorded in the office of the Secretary of State, who shall forthwith notify the Governor thereof.

The Governor is also aware of the applicant's complete criminal history when evaluating a pardon request, since it is attached to the Pardon Petition. On May 5, 2011, "based upon the recommendation of the Board of Pardons," the Governor granted Arnold an unconditional pardon for his conviction of Terroristic Threatening.

Arnold filed a Petition for Expungement of Juvenile Record ("Expungement Petition") seeking an "automatic expungement" pursuant to title 10, section 1013. Arnold appended the gubernatorial pardon to the Expungement Petition. The State opposed the Expungement Petition on the

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<sup>4</sup> Del. Const. art. VII, §§ 1, 2; *In re McKinney*, 138 A. 649, 650 (Del. 1927). For a summary of the operation of the pardon process and the import of an unconditional pardon, see *Heath v. State*, 983 A.2d 77, 80 (Del. 2009).

grounds that “[t]here were subsequent convictions and/or adjudications of delinquency,” which precluded relief under section 1001(a).<sup>5</sup>

The Family Court entered an order denying the Expungement Petition. The Family Court ruled that Arnold was “not eligible for expungement . . . under 10 *Del. C.* § 1001(a)-(b),” on the ground that Arnold did not qualify for expungement “given the frequency and nature of [his] charges.” Arnold moved for reargument on the basis that section 1013 was the applicable statute.<sup>6</sup> The Family Court denied Arnold’s motion for reargument.

### *Parties’ Contentions*

Arnold contends that the Family Court erred in viewing his Expungement Petition as “discretionary,” thereby failing to give effect to the mandatory expungement aspect of title 10, section 1013 of the Delaware Code. Arnold submits that section 1013 is unambiguous and under its plain language, he has “the right to an expungement of his juvenile record following his receipt of an unconditional Gubernatorial Pardon.”

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<sup>5</sup> Del. Code Ann. tit. 10, § 1001(a) (1999) (*repealed by* 78 Del. Laws ch. 188, § 1 (2011)). That section permitted expungement if: “(i) three years have elapsed with no subsequent adjudication being entered against the child, (ii) there is no ‘material objection,’ and (iii) no reason appears to the contrary.” *State v. Fletcher*, 974 A.2d 188, 190 (Del. 2009). Section 1001 has been replaced by sections 1014-1020. *See* 78 Del. Laws ch. 188, §§ 2-3 (2011) (effective January 1, 2012).

<sup>6</sup> Del. Code Ann. tit. 10, § 1013 (Supp. 2010). Section 1013 has not been amended or repealed.

The State responds to Arnold’s position with two arguments. First, the State submits that section 1013 is unambiguous, and that the Family Court correctly read the statute to mean that an automatic expungement of juvenile records is applicable only when the records arise from the pardoned crime. In this case, according to the State, because the gubernatorial pardon for Terroristic Threatening did not arise from Arnold’s juvenile arrests and adjudications of delinquency, section 1013 is not applicable. Second, as an alternative argument, the State contends that a literal interpretation of the words in section 1013 would lead to an absurd or unreasonable result that could not have been intended by the General Assembly.

### ***Standard of Review***

This Court reviews questions of statutory interpretation *de novo*.<sup>7</sup> “[T]he meaning of a statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain . . . the sole function of the courts is to enforce it according to its terms.”<sup>8</sup> Thus, if statutory text is unambiguous, this Court’s role is limited to an application of the literal meaning of the statute’s words.<sup>9</sup> A statute is ambiguous if it is reasonably

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<sup>7</sup> *Heath v. State*, 983 A.2d at 80.

<sup>8</sup> *Friends of H. Fletcher Brown Mansion v. City of Wilmington*, 34 A.3d 1055, 1059 (Del. 2011) (quoting *Caminetti v. United States*, 242 U.S. 470, 485 (1917)). See also *Board of Adjustment of Sussex County v. Verleysen*, 36 A.3d 326, 331 (Del. 2012) (citing *State v. Skinner*, 632 A.2d 82, 85 (Del. 1993)).

<sup>9</sup> *Dennis v. State*, 41 A.3d 391, 393 (Del. 2012).

susceptible to different interpretations, or if giving a literal interpretation to the words of the statute would lead to an unreasonable or absurd result that could not have been intended by the legislature.<sup>10</sup>

### ***Section 1013 Is Unambiguous***

Title 10, section 1013 of the Delaware Code is entitled “Automatic Expungement of Juvenile Record by Effect of a Delaware Gubernatorial Pardon.” The statute states, in its entirety:

Any individual who receives a Delaware gubernatorial pardon shall, as an effect of said pardon, automatically have that individual’s juvenile record, if any, expunged.<sup>11</sup>

“[T]he mandatory ‘shall’ . . . normally creates an obligation impervious to judicial discretion.”<sup>12</sup> Here, the statute unambiguously states that anyone who receives a gubernatorial pardon “shall” have their “juvenile record” automatically expunged.

The State argues that the statute should be interpreted as providing that “when a pardon is granted, ‘an effect of said pardon’ would be the automatic expungement of ‘that individual’s juvenile record, if any,’ *arising from the pardoned crime.*” The State contends that because Arnold’s pardon application and the pardon itself refer only to the Terroristic Threatening

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<sup>10</sup> *Id.*

<sup>11</sup> Del. Code Ann. tit. 10, § 1013.

<sup>12</sup> *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998).

conviction, the pardon does not mandate expungement of Arnold's juvenile record for unrelated matters. The problem with the State's reading is that the statute does not refer to a juvenile record "arising from the pardoned crime."

Rather, the statute refers to the individual's "juvenile record" without qualification. Moreover, the State's construction would substantially narrow the statute's application. As Arnold points out, an item on a juvenile's record generally is an adjudication of delinquency, not a conviction.<sup>13</sup> Thus, under the State's interpretation, the statute could only apply where a juvenile is prosecuted as an adult.<sup>14</sup> Otherwise, there would be no "conviction" for the Governor to pardon in the first instance. The statute's plain language does not support the narrow application advocated by the State.

Instead, the literal meaning of section 1013's text support's Arnold's statutory argument – once an individual receives a gubernatorial pardon, he or she is entitled to have their juvenile record "automatically" expunged. The use of the words "juvenile record," as opposed to an "offense" or "adjudication," reflects that the General Assembly intended a pardoned individual to have the benefit of receiving his entire juvenile record

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<sup>13</sup> See Del. Code. Ann. tit. 10, § 1002 ("Except as provided in § 1010, no child shall be deemed a criminal by virtue of an allegation or adjudication of delinquency, nor shall a child be charged with or prosecuted for a crime in any other court.").

<sup>14</sup> Del. Code Ann. tit. 10, § 1010 (1999 & Supp. 2010).



expunged. Nothing in the text of section 1013 limits the scope of expungement of juvenile records, nor does it afford the Family Court discretion in reviewing such a petition.<sup>15</sup>

The General Assembly could have narrowed the statute to mandate expungement only where the pardon is granted for certain crimes. But it did not, and we must apply the unambiguous language of the statute as written. The plain language of section 1013 mandates that an individual's juvenile record be expunged if he or she receives a gubernatorial pardon for any crime.

### ***Reasonable Result***

The question then becomes whether a literal interpretation of section 1013 leads to an unreasonable or absurd result that was unintended by the General Assembly. We conclude that it does not for three reasons. First, “[t]he role of this Court when construing a statute is to give effect to the policy intended by the General Assembly.”<sup>16</sup> The synopsis to the original bill provides guidance about the “intent” of the General Assembly when it enacted section 1013. The synopsis states, in its entirety: “This Bill

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<sup>15</sup> Cf. Del. Code Ann. tit. 11, § 4375 (Supp. 2010) (affording Superior Court's discretion to expunge records relating to certain convictions of misdemeanors or violations following a pardon).

<sup>16</sup> *State v. Fletcher*, 974 A.2d 188, 196-97 (Del. 2009) (citing *Giuricich v. Emtrol Corp.*, 449 A.2d 232, 238 (Del. 1982)).

provides for the automatic expungement of a juvenile record of an individual when said individual receives a Delaware gubernatorial pardon.”<sup>17</sup> The synopsis contains no conditional language. Specifically, the synopsis did not limit the statute’s application to the juvenile record, if any, “arising from the pardoned crime.”

Second, this Court can give effect to both juvenile expungement statutes. A discretionary juvenile expungement statute has been part of Delaware law since 1953,<sup>18</sup> whereas the mandatory and automatic expungement statute, title 10, section 1013, became effective on July 12, 2005.<sup>19</sup> Where two statutes conflict, a reviewing court must, if possible, read them so as to give effect to both.<sup>20</sup> As this Court has recognized:

If inconsistencies exist between two statutes, we will presume the General Assembly’s intent that the more specific, later-enacted statute limits the effect of the former. If the statutes narrowly conflict, we will try to give effect to both, unless the General Assembly expressly intended the latter to repeal the former.<sup>21</sup>

In this case, the two juvenile expungement statutes do not conflict. They address the expungement of juvenile records in two different circumstances. Section 1001(a) provides a discretionary mechanism by

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<sup>17</sup> 75 Del. Laws ch. 146, synopsis (2005).

<sup>18</sup> See *State v. Fletcher*, 974 A.2d at 194 n.16.

<sup>19</sup> 75 Del. Laws ch. 146, § 1 (2005).

<sup>20</sup> See Sutherland, *Statutory Construction* § 23.09 at 338 (5th ed. 1992).

<sup>21</sup> *Heath v. State*, 983 A.2d at 81 (citing *State v. Fletcher*, 974 A.2d at 193).

which the Family Court can grant an expungement, whereas section 1013 provides for mandatory “automatic expungement” in cases involving a gubernatorial pardon. This Court can give effect to both provisions.

Third, the literal interpretation of the words stating that the unconditional pardon of any adult crime results in the expungement of the juvenile record does not produce an unreasonable or absurd result. The pardon process demonstrates that a literal interpretation of this unambiguous statute is reasonable. The State claims, but does not articulate, any absurdity or unreasonableness of such a result.

In Arnold’s case, as with all pardon applications, the Board of Pardons had a copy of Arnold’s complete criminal history, which includes all of his juvenile offenses.<sup>22</sup> After considering Arnold’s application in light of his prior juvenile offenses, the Board nonetheless decided to recommend a pardon. The Governor considered the recommendation of the Board of Pardons and had Arnold’s complete criminal history when evaluating his pardon request. Because the Board and the Governor had an opportunity to consider Arnold’s juvenile record, it is reasonable to interpret section 1013, in accordance with its unambiguous language, as affording Arnold the right

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<sup>22</sup> *See id.* at 80 (noting that applicants seeking recommendation from Board for pardon must include a criminal history with the petition); Delaware Board of Pardon Rule 3(b)(1).

to “automatic expungement” after he received an unconditional gubernatorial pardon.

*Automatic Expungement Consistent With Public Policy*

Enforcing the plain language of the statute is also consistent with the public policy of the General Assembly, as articulated in a prior advisory opinion by this Court. There, referencing section 1013, we stated:

Through these statutory sections, the General Assembly has announced a clear social policy that, although children may commit acts that would expose them to criminal penalties if they were adults, their transgressions should nevertheless be treated in a manner that promotes rehabilitation and avoids creating a permanent stigma for those infractions. The General Assembly has also avoided permanent branding by providing for automatic expungement of a juvenile’s record after a gubernatorial pardon.<sup>23</sup>

The unambiguous language in section 1013 that provides for expungement of one’s juvenile record is consistent with the stated policy of treating juvenile transgressions “in a manner that promotes rehabilitation and avoids creating a permanent stigma for those infractions.”<sup>24</sup> Although no other state statute is directly analogous to section 1013, four other states have provided for automatic expungement of a juvenile record upon the

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<sup>23</sup> *In re Request of Governor for Advisory Opinion*, 950 A.2d 651, 656 (Del. 2008) (citing Del. Code Ann. tit. 10, § 1013).

<sup>24</sup> *Id.*

satisfaction of certain conditions.<sup>25</sup> The mandate of section 1013 is in the same spirit as these other statutes.

### *Conclusion*

The only condition precedent to the expungement provisions in section 1013 is the issuance of a gubernatorial pardon. The Family Court erred by failing to give effect to the unambiguous mandate of the statute. Arnold's juvenile record must be expunged pursuant to section 1013.

The judgment of the Family Court is reversed. This matter is remanded for further proceedings in accordance with this opinion.

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<sup>25</sup> See Ark. Code Ann. § 9-27-309 (West 2009) (providing for automatic expungement of juvenile record upon individual's twenty-first birthday); Conn. Gen. Stat. Ann. § 54-76o (providing for automatic expungement of juvenile record upon individual's twenty-first birthday if no subsequent felony conviction); Fla. Stat. Ann. § 943.0515 (West 2012) (providing for automatic expungement of juvenile record five years after minor turns twenty-one, unless he is convicted of a violent felony after age 18); Ohio Rev. Code Ann. § 2151.358 (West 2010) (providing for automatic expungement of sealed juvenile record upon individual's twenty-third birthday or five years after court issues a sealing order, whichever date is earlier).