

**The State of New Hampshire
Superior Court**

Rockingham S.S.

STATE OF NEW HAMPSHIRE

V.

S.T.¹

NO. 218-2015-CR-01774

ORDER GRANTING PETITION TO ANNUL

S.T., the petitioner, was found not guilty of all charges—two counts of aggravated felonious sexual assault (AFSA) and two counts of felonious sexual assault (FSA)—after a three-day jury trial in June 2016. He now seeks to annul the court and arrest records associated with these charges. By order dated September 20, 2016, the Court rejected the State's argument that RSA 651:5, V (2016) "imposes a categorical bar to annulments for anyone whose 'case' involved a violent crime, regardless of whether that case ultimately resulted in a conviction." Order Scheduling Hr'g Pet. Annul 4. After concluding that the petition to annul was "timely" under RSA 651:5, I, the Court scheduled a hearing on the merits of the petition. At this hearing, the State withdrew its objection to the petition.

After considering the merits of the annulment petition in light of the applicable law, the Court hereby GRANTS the petition to annul for the reasons stated below.

¹ The Court uses the petitioner's initials because it has granted the annulment petition. Despite granting the petition to annul, this order provides a detail analysis for litigation of these issues in future cases. As a result, the Court intends to publish this order on the judicial branch website. By using the petitioner's initials and describing the case only in the broadest terms, publication of this order will not undermine the value of the annulment. This is consistent with the current New Hampshire Supreme Court practice in other types of cases where the court seeks to protect the privacy of individuals involved in the litigation.

Analysis

“RSA 651:5 sets forth both procedural prerequisites and categorical bars to obtaining annulments.” United States v. Howe, 167 N.H. 143, 146 (2014). Paragraph I of the statute provides:

Except as provided in paragraphs V-VIII, the record of arrest, conviction and sentence of any person may be annulled by the sentencing court at any time in response to a petition for annulment which is timely brought in accordance with the provisions of this section **if in the opinion of the court, the annulment will assist in the petitioner’s rehabilitation and will be consistent with the public welfare.** The court may grant or deny an annulment without a hearing, unless a hearing is requested by the petitioner.

RSA 651:5, I (bolding and emphasis added). In its September 20, 2016 order, the Court concluded that the current petition was “timely brought” pursuant to paragraph II of the statute. See Order Scheduling Hr’g Pet. Annul 3, 28. That paragraph provides:

Any person whose arrest has resulted in a finding of not guilty, or whose case was dismissed or not prosecuted, may petition for annulment of the arrest record or court record, or both, at any time in accordance with the provisions of this section.

RSA 651:5, II (emphases added). Because the petitioner requested a hearing on the merits of his timely brought petition, the Court scheduled such a hearing. See RSA 651:5, I; Order Scheduling Hr’g Pet. Annul 28.

At that hearing, the State withdrew its objection to the petition. This objection was withdrawn not because the State agreed that the petition should be granted, but rather because the Court’s September 20, 2016 order had rejected the only argument the State had offered in its objection—that RSA 651:5, V imposed a categorical bar to annulment in this case. In effect, the State chose not to supplement its objection by addressing the merits of the petition to annul and instead took no position on the issue.

Although the State has withdrawn its objection to the petition, albeit on procedural grounds, the Court must still assess the merits of the annulment petition. See McGann v. Steenstra, 130 N.H. 411, 412 (1988) (“We construe the language in [former Superior Court] Rule 58 as requiring that a trial judge decide whether or not to grant the motion only after the judge has considered the law and the pleadings before the court.”); see also Super Ct. Civ. R. 13 (“Failure to object shall not, in and of itself, be grounds for granting the motion.”); accord N.H. R. Crim. Pro. 15(b)(5) (containing identical provision for pretrial motions in Superior Court criminal cases); cf. State v. Baker, 164 N.H. 296, 298–300 (2012) (remanding annulment petition to trial court for consideration of factors identified by Supreme Court, even though State had not objected to petition at trial court level and had not opposed part of petition on appeal).

The New Hampshire Supreme Court has never directly addressed whether this Court must apply the standard set forth in paragraph I to a petition to annul arrest records and court records from a case that falls within paragraph II of the statute. Indeed, in a recent non-precedential final order, the Supreme Court declined to reach the defendant’s argument that “RSA 651:5, II does not require a judicial finding that annulment of a non-conviction must be consistent with the public welfare.” State of New Hampshire v. Angelo Palmer, No. 2014-0272 (N.H. Jan. 20, 2015) (citation and quotation omitted). That argument has not been raised here, however. Accordingly, the Court assumes, without deciding, that the standard from paragraph I applies to cases resulting in an acquittal. Pursuant to this standard, the Court may grant the petition if it finds that the annulment of the arrest records and court records “will assist in the petitioner’s rehabilitation and will be consistent with the public welfare.” RSA 651:5, I.

While the New Hampshire Supreme Court has identified a number of “potential factors” the trial court may consider in deciding whether to grant a petition to annul under the standard set forth in paragraph I, Baker, 164 N.H. at 300, there is a dearth of authority regarding what factors the trial court should consider in applying that standard to cases that did not result in a conviction. The absence of any guidance on this issue makes this Court’s task more challenging, given that many of the factors identified as relevant to public welfare in the conviction context have limited applicability in cases resulting in acquittal. The following excerpt from Baker illustrates this point:

In deciding whether annulment is consistent with the public welfare, the trial court should weigh the factors in favor of annulment, such as evidence of the defendant’s exemplary conduct and character since his last conviction, against the public interest in keeping his convictions a matter of public record. Cf. In re Lobasso, 33 A.3d 540, 548 (N.J. Super. Ct. App. Div. 2012) (discussing expunging criminal records under statute requiring State to prove that “need for the availability of records” outweighs “desirability of having a person freed from any disabilities” associated with criminal record (quotations omitted)). Thus, in exercising its discretion, the court may consider such factors as the number and circumstances of the convictions at issue, the defendant’s age at the time of each conviction, the time span of the convictions, and the particular manner in which annulment would aid the defendant’s rehabilitation—for example, by allowing him to obtain a professional license or to pursue a calling otherwise prohibited to those convicted of a crime. By identifying potential factors, we do not intend to limit the court’s discretion to consider any relevant factor.

Baker, 164 N.H. at 300 (emphases added).

With a view towards filling the void of authority on this subject, the Court herein suggests factors that may be relevant in applying the standard to non-conviction cases. The Court first examines how annulment may assist in the “rehabilitation” of a petitioner whose case did not result in a conviction, before turning to factors the Court should weigh in deciding whether that annulment would be “consistent with the public welfare.”

I. Whether the Annulment Will Assist in the Petitioner's Rehabilitation

The decision in Baker directs the Court to consider “the particular manner in which annulment would aid the defendant’s rehabilitation.” Id. In general, an annulment aids a person’s rehabilitation by “reduc[ing] the collateral consequences of a criminal arrest.” Grafton County Attorney’s Office v. Canner, 169 N.H. ___, ___, 147 A.3d 410, 412 (2016). These collateral consequences often materialize when the individual seeks employment. See Order Scheduling Hr’g Pet. Annul 13. They are not limited to the employment context, however; they also arise when the individual seeks housing or otherwise engages in an activity that requires a criminal background check. See id. at 18; see also Com. v. Malone, 366 A.2d 584, 588 (Pa. Super. Ct. 1976) (“Opportunities for schooling, employment, or professional licenses may be restricted or nonexistent as a consequence of the mere fact of an arrest, even if followed by acquittal or complete exoneration of the charges involved.” (quotation omitted)); cf. United States v. Schnitzer, 567 F.2d 536, 539 (2d Cir. 1977) (“It is sufficient to say here that an arrest record alone can create serious adverse consequences for those who have been arrested in the past, notwithstanding the ultimate disposition of the case.”).

One of the ways in which an annulment can aid an individual’s rehabilitation is “by allowing him to obtain a professional license or to pursue a calling otherwise prohibited to those” with a criminal record. Baker 164 N.H. at 300. Furthermore, even where an arrest record does not expressly disqualify an individual from a profession, the practical consequence of having such a record is often equivalent to disqualification because of the reluctance of employers to hire someone with a criminal record. See United States v. McKnight, 33 F. Supp. 3d 577, 585–86 (D. Md. 2014). “For many

employers, the bar on hiring anyone with a criminal record includes applicants whose records consist of only an arrest, not a conviction: a group that constitutes one-third of all felony arrests.” Id. at 586 (quoting Paul-Emile, Beyond Title VII: Rethinking Race, Ex-Offender Status and Employment Discrimination in the Information Age, 100 VA. L. REV. 893, 896 (2014)). As such, individuals like the petitioner have a significant “interest in being free from the career-stifling effects of an arrest record.” Com. v. Hanna, 964 A.2d 923, 927 (Pa. Super. Ct. 2009).

By removing the stigma associated with past involvement in the criminal justice system, annulment improves the individual’s ability to seek gainful employment. This is because New Hampshire law specifies that any question about a person’s criminal record on an “application for employment, license or other civil right or privilege” must specify that it is limited to arrests and convictions that have not been annulled. RSA 651:5, X(f). And once an annulment is granted, the person’s official criminal history record is amended to remove references to the annulled entries. See discussion infra.

At the hearing on the merits of the annulment petition, the petitioner’s counsel informed this Court that his client’s employment involves bidding for contracts with the federal government, and that every such contract requires a background check. According to his counsel, the petitioner recently lost a contract and believes this was a consequence of the sexual assault charges appearing on his background check. The petitioner is understandably concerned that despite his acquittal, he will be passed over for future contracts so long as these accusations remain on his criminal record, which will adversely affect his ability to earn a living.

“Given the substantial interest of an accused in his good name and in freedom from the disability flowing from an arrest record,” Malone, 366 A.2d at 589, and based upon the representations made by the petitioner’s counsel at the hearing, the Court finds that annulment of the arrest and court records pertaining to these charges will aid the petitioner’s rehabilitation.

II. Whether the Annulment Will Be Consistent with the Public Welfare

In order to grant the petition to annul, the Court must find not only that “the annulment will assist in the petitioner’s rehabilitation,” but also that the annulment “will be consistent with the public welfare.” RSA 651:5, I. As noted above, the only existing New Hampshire authority on this issue focuses on factors that measure the petitioner’s progress from law-breaker to law-abider in the time period since the conviction(s) for which he seeks annulment. See Baker, 164 N.H. at 300. Where the petitioner was acquitted or the charges were dismissed or nolle prossed, different considerations necessarily come into play. The following discussion provides a starting point for further development of a framework which New Hampshire trial courts can use to evaluate the merits of petitions to annul records from cases that did not result in a conviction.

In Baker, the Supreme Court identified as relevant to the public welfare inquiry “the public interest in keeping [the petitioner]’s convictions a matter of public record.” Id. By citing to New Jersey’s standard for expungement, the Supreme Court then suggested that the “public interest” consideration is grounded in the “need for the availability of [these] records.” Id. (quoting Lobasso, 33 A.3d at 548).

Where the case has not resulted in a conviction, the records subject to annulment are the petitioner’s “arrest record” and the “court record[s]” relating to that

case. RSA 651:5, II. To properly assess the public interest as it relates to these types of records, the Court describes what happens to those records “upon entry of an order of annulment.” RSA 651:5, X. The Court then discusses how the need for the availability of those records might depend upon whether the charges were dismissed or nolle prossed compared to an acquittal.

A. Measuring the Public Interest

The annulment statute directs the court to “notify the state police criminal records unit, the prosecuting agency, and the arresting agency” that the petitioner’s “arrest, conviction, and sentence” have been annulled. RSA 651:5, X(b). The statute further specifies the disposition of records held by the state police criminal records unit, the arresting police department and the prosecutor’s office, and the court itself.

1. Official Criminal History Record

The New Hampshire Department of Safety, through a subdivision called the state police criminal records unit, operates a central repository of criminal history record information for all individuals convicted or arrested in this state. See RSA 106-B:14, I; N.H. Admin. Rules, Saf-C 5701.04; see also State v. Doyle, 126 N.H. 153, 159 (1985). Access to an individual’s criminal history record information is limited by statute to law enforcement personnel, the individual whose record it is, and any person whom the individual authorizes to receive said information by executing a written release. RSA 106-B:14, I. In other words, it is not available to the general public.

Once a petition to annul has been granted, and “[u]pon payment of a fee not to exceed \$100 to the state police, the state police criminal records unit shall remove the annulled criminal record and inform all appropriate state and federal agencies of the

annulment.” RSA 651:5, X(d). As a result, annulled entries no longer appear on the person’s official criminal history record, which is the record provided to potential employers and licensing agencies upon the execution of a release. See RSA 106-B:14, I-a(d); cf. Wolfgram v. New Hampshire Dep’t of Safety, 169 N.H. 32, 38 (2016) (“In New Hampshire, a person’s motor vehicle record is available, upon request and with permission of the individual whose record is requested, to members of the public, including potential employers and insurance agencies.”).

As discussed below, law enforcement agencies still have access to annulled records other than through the person’s official criminal history record. Accordingly, unlike in other states, annulment of criminal history record information does not affect the ability of law enforcement personnel to “identify repeat offenders and establish modus operandi information, should the accused offender be subsequently charged with a similar crime.” Com. v. Persia, 673 A.2d 969, 972 (Pa. Super. Ct. 1996). Instead, the only practical effect of annulment on the person’s criminal history record—and part of the public interest to be weighed in determining whether annulment is consistent with the public welfare—is the removal of entries from the official criminal record provided to potential employers and others who conduct background checks.

In assessing the State’s interest in preserving arrest records, some jurisdictions, such as Pennsylvania, make a distinction between cases in which the petitioner was “tried and acquitted of the offenses charged” versus cases in which the prosecution was “terminated without conviction or acquittal, for reasons such as nolle prosequere of the charges.” Com. v. Moto, 23 A.3d 989, 993 (Pa. 2011). In cases resulting in an acquittal, “the petitioner is ‘automatically entitled to the expungement of his arrest

record.” Id. (quoting Com. v. D.M., 695 A.2d 770, 772–73 (Pa. 1997)). Where the charges have instead been nolle prossed, the court must consider a “non-exhaustive list of factors,” including “the strength of the [State]’s case against the petitioner,” and “balance the individual’s right to be free from the harm attendant to maintenance of the arrest record against the Commonwealth’s interest in preserving such records.” Id. (quoting Com. v. Wexler, 431 A.2d 877, 879 (Pa. 1981)).

The rationale for treating acquittals differently is that “the law offers no greater absolution to an accused than acquittal of the charges.” D.M., 695 A.2d at 772 (quotation omitted). As the Pennsylvania Supreme Court explained, where “a defendant has achieved the strongest vindication possible under our criminal tradition, laws, and procedures[,] . . . he is entitled to expunction of the arrest record.” Id. at 773.

This Court agrees that the public welfare inquiry should take into account, at least to some degree, the reason the charge was dismissed or nolle prossed in determining whether it should remain on the person’s criminal history record and thus available to potential employers and others who conduct background checks. Where the nature of the accusation is relevant to the petitioner’s line of work, the public interest in keeping this information on that person’s official criminal history record may be greater, especially if the charge was not pursued for procedural reasons (e.g., expiry of the statute of limitations), as opposed to an absence of evidence to sustain the charge. At the same time, the Court should consider, in assessing the rehabilitation factor of the annulment inquiry, whether the accusation stigmatizes the non-convicted petitioner to such a degree that it prevents the person from obtaining employment in his or her chosen profession. See Com v. A.M.R., 887 A.2d 1266, 1271 (Pa. Super. Ct. 2005)

(describing the “deleterious effects” of the petitioner’s arrest for library theft on his ability “to obtain work as a school librarian or even secure an interview for same”).

The more difficult question is whether the Court should look behind a not-guilty verdict and assess the reasons for the acquittal when considering whether a charge should remain on a person’s official criminal history record. In a different context, the New Hampshire Supreme Court has recognized that “an acquittal merely means that the State failed to carry its burden of proving beyond a reasonable doubt one or more elements of the charged crime. Such failure can result from a variety of factors.” State v. White, 145 N.H. 544, 548 (2000), rev’d sub nom. White v. Coplan, 399 F.3d 18 (1st Cir. 2005) (citations omitted). On the other hand, a trial requiring proof of guilt beyond a reasonable doubt is the last of a series of obstacles imposed by our criminal justice system to protect individuals from suffering lifelong consequences as a result of government error. To deny an individual an annulment on the reasoning that he still might be guilty would undermine these protections significantly. For these reasons, the Pennsylvania Supreme Court

regard[s] it as improper to go behind a verdict of acquittal and purport to assess the strength of the prosecution’s case. A defendant enters a trial cloaked in the presumption of innocence and when the fact-finder reaches a verdict of acquittal, there is no justification to search for reasons to undermine the verdict.

D.M., 695 A.2d at 772–73.

The legislature has determined that when a defendant has been acquitted he is eligible to have those charges annulled. For the reasons articulated above, an acquittal carries significant legal and constitutional significance. That being said, there may be special circumstances in a particular case that warrant a closer look at the effect of an

acquittal on the request for annulment. For example, if there was compelling evidence of the defendant's guilt that was suppressed as the result of police misconduct, there may be at least a few reasons the acquittal weighs less heavily in the analysis. First, the acquittal would provide a less compelling indication of the defendant's actual innocence in this situation. This is relevant to whether potential employers and others who conduct background checks should be made aware of the arrest via the defendant's official criminal history record. It is also relevant where the defendant is subject to a suspended sentence such that acquitted conduct may factor into the imposition of that sentence. See State v. Gibbs, 157 N.H. 538, 540–42 (2008). Second, for the reasons discussed in more detail below, the public may have an interest in evaluating the police misconduct that led to the suppression of evidence which may have contributed to the defendant's ultimate acquittal.

This Court concludes that absent extraordinary circumstances, such as a pretrial ruling suppressing definitive evidence of guilt, it will not independently examine the State's evidence in deciding whether to grant the annulment petition of a person who was acquitted at trial. Here, no such extraordinary circumstances exist. Rather, "a panel of [the petitioner]'s peers hear[d] the evidence, weigh[ed] credibility and render[ed] a verdict" of not guilty. Persia, 673 A.2d at 972. The public interest in keeping the charges on the petitioner's official criminal history record is low, and annulling those entries would significantly aid the petitioner's rehabilitation.

2. Records of the Arresting and Prosecuting Agencies

Once a petition to annul has been granted, "[t]he arresting agency and the prosecuting agency shall clearly identify in their respective files and in their respective

electronic records that the arrest or conviction and sentence have been annulled.” RSA 651:5, X(e). However, “nothing in [RSA 651:5] shall affect any right . . . [o]f law enforcement officers to maintain arrest and conviction records and to communicate information regarding the annulled record of arrest or conviction to other law enforcement officers for legitimate investigative purposes” RSA 651:5, XI(b). Accordingly, unlike in other states, annulment does not prevent New Hampshire law enforcement agencies from maintaining records of annulled arrests and charges and from using information in those records to further legitimate investigation.

The New Hampshire Supreme Court has also suggested that some of these records may be open to public inspection. In Canner, the Supreme Court addressed “[w]hether records maintained by arresting and prosecuting agencies pertaining to an annulled arrest and the related prosecution are categorically exempt from public inspection under the Right-to-Know Law.” Canner, 147 A.3d at 411. To resolve this issue, the Supreme Court considered the interaction between the annulment statute and the Right-to-Know Law and concluded that those types of records were not categorically exempt from disclosure to the public. See id. at 411–12, 414–15.

Accordingly, even though, as discussed below, annulment seals court records from the general public, the records from the arresting and prosecuting agencies may vindicate the public’s “substantial interest in understanding how investigations of alleged crimes are conducted, and how prosecutors exercise their discretion when deciding whether to prosecute, reach a plea agreement, or try cases.” Id. at 416. The practical effect of an annulment is to obscure the availability of the information to the public, not to erase the events giving rise to the charges from the history books. See id. at 415.

3. Court Records

Perhaps the most important consideration on the public interest side of the equation is the effect of annulment on public access to court records. Both the New Hampshire Constitution and this state's Right-to-Know Law protect and facilitate "increas[ed] public access to all public documents and governmental proceedings [in order] to provide the utmost information to the public about what its government is up to." *Id.* at 412 (quoting Prof'l Firefighters of New Hampshire v. Local Gov't Ctr., Inc., 159 N.H. 699, 705 (2010)); see also N.H. CONST. pt. I, art. 8.

The annulment statute has a different objective. Except for two limited circumstances relating to sentencing and habitual offender designation, "[t]he person whose record is annulled shall be treated in all respects as if he or she had never been arrested, convicted or sentenced." RSA 651:5, X(a). In order to facilitate this, the statute practically eliminates public access to the corresponding court records:

The court records relating to an annulled arrest, conviction, or sentence shall be sealed and available only to the person whose record was annulled, his or her attorney, a court for sentencing pursuant to subparagraph (a), law enforcement personnel for legitimate law enforcement purposes, or as otherwise provided in this section.

RSA 651:5, X(c).

Subparagraph (a) relates to the trial court's authority to consider annulled records in making certain decisions. See Wolfgram, 169 N.H. at 36–37. "[U]pon conviction of any crime committed after the order of annulment has been entered, the prior conviction may be considered by the court in determining the sentence to be imposed, and may be counted toward habitual offender status under RSA 259:39." RSA 651:5, X(a). "[T]hese exceptions reflect the fact that, although annulment creates a legal fiction that a person

has never been arrested, convicted, or sentenced, prior convictions remain a historical reality and can be considered in limited circumstances.” Wolfgram, 169 N.H. at 38.

Similarly, law enforcement agents may access these sealed court records “for legitimate law enforcement purposes.” RSA 651:5, X(c). This is in addition to the power “[o]f law enforcement officers to maintain arrest and conviction records and to communicate information regarding the annulled record of arrest or conviction to other law enforcement officers for legitimate investigative purposes” RSA 651:5, XI(b). Because law enforcement agencies can maintain records of annulled arrests and convictions in order to further legitimate investigative purposes, granting a petition to annul arrest and court records would not impede “the important function of promoting effective law enforcement.” Schnitzer, 567 F.2d at 539.

The foregoing illustrates that the public interest in keeping court records public is exactly that—to allow members of the public to inspect these court records. This is by no means an insignificant interest. “Public scrutiny can expose corruption, incompetence, inefficiency, prejudice and favoritism.” Prof'l Firefighters of New Hampshire, 159 N.H. at 709. In the context of court records, maintaining a complete public record of the petitioner’s prosecution, including all of the testimony about the allegations, allows the public to evaluate for itself what really happened. Court records also “shed light on the government’s actions giving rise to [the defendant]’s arrest, prosecution, and acquittal.” Canner, 147 A.3d at 415. The county attorney is an elected official and the police are hired or appointed by elected officials. An interested voter can use the public record of court proceedings to evaluate the performance of these government actors in deciding whether these individuals should continue in their

official capacity. In addition, indigent defense is funded, in part, by the legislature, and thus court records allow the public to similarly evaluate the quality of the representation provided to defendants through the use of public funds. Lastly, maintaining a record of the trial allows the public to evaluate how well or poorly the jury system functions, which may be important if there is a need to institute reform in the judicial process.

An annulment, by design, impedes the public's ability to obtain information about that case by sealing all aspects of the court file from the public. In doing so, annulment obscures a significant record of the conduct of public officials, thereby frustrating the interests outlined above. However, "[m]atters of public policy are reserved for the legislature," CaremarkPCS Health, LLC v. N.H. Dep't of Admin. Servs., 167 N.H. 583, 590–91 (2015) (citation and quotation omitted), and the legislature necessarily considered the impact annulment would have on the availability of public records when it enacted RSA 651:5. By enacting paragraph II, which allows for annulment of records where the case did not result in a conviction, the legislature recognized that (1) an acquittal, dismissal, or nolle prosequi does not protect the accused from the collateral consequences of that accusation, and (2) allowing annulment of those records would reduce these collateral consequences. The legislature also chose to require that the court records be sealed upon entry of the order of annulment, see RSA 651:5, X(c), which necessarily precludes these records from being used by members of the public in the ways outlined above.

Because the legislature has already balanced relevant general public policy considerations by allowing for the annulment of court records despite this state's robust Right-to-Know Law, the Court does not consider, as part of its public welfare inquiry,

how annulment will hamper the public's ability to evaluate the criminal justice system in general. Cf. Baker, 164 N.H. at 300 (requiring specific inquiry into "facts and circumstances" of petitioner's convictions, instead of relying on existence of convictions to deny petition to annul, because legislature had already determined that these offenses were eligible for annulment). Instead, the Court considers the importance of the public availability of court records only as it relates to this particular case and to this particular petitioner. Cf. id. (remanding to trial court to consider the particular circumstances of the petitioner and his convictions). Factors that are potentially relevant to that calculus include whether the case has already attracted significant media attention,² whether the case involves accusations of official misconduct, and other similar indications that the public may have an interest in the records of this particular case remaining unsealed after its conclusion.

B. Application of the Balancing Test

In sum, the Court determines "whether annulment is consistent with the public welfare" in cases resulting in an acquittal by weighing the factors in favor of annulment against the public interest in maintaining complete criminal history record information on the petitioner for the purposes of background checks and in keeping the court records related to this case available to the general public.

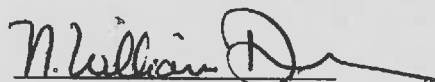
Here, the factors in favor of rehabilitation outweigh the public interest in keeping these charges on the petitioner's official criminal history record and in maintaining a public record of the court proceedings. The petitioner has demonstrated the deleterious impact of the arrest on his career. On the other side of the equation, maintaining a

² The public availability of information already existing about the case may also weigh in favor of denying the petition if it diminishes the likelihood that annulment will reduce the stigmatizing effect of the charges.

public record of the petitioner's case would not promote public welfare in a meaningful way such that annulment should be denied. The case presented no specific concerns about the conduct of the police, prosecutors, or the jury system. Nor was there any reason to doubt that the jury's verdicts represented anything other than a straightforward exoneration on the merits of the charges. Accordingly, the petition to annul is GRANTED.

SO ORDERED.

12/23/2016
DATE


N. William Delker
N. William Delker
Presiding Justice