

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0658-11T2

IN THE MATTER OF THE
EXPUNGEMENT APPLICATION
OF D.J.B.

Submitted May 8, 2012 - Decided May 17, 2012

Before Judges Fisher and Carchman.

On appeal from the Superior Court of New
Jersey, Law Division, Somerset County,
Docket No. 11-191.

D.J.B., appellant pro se.

Geoffrey D. Soriano, Somerset County
Prosecutor, attorney for respondent State of
New Jersey (Anthony J. Parenti, Assistant
Prosecutor, of counsel and on the brief;
Michael D. Celentano, on the brief).

PER CURIAM

Petitioner D.J.B. appeals from the denial of his Petition for Expungement (the petition) to expunge his adult convictions, which included: a conviction for receiving stolen property (RSP), N.J.S.A. 2C:20-7a; and two disorderly persons convictions, one for contempt, N.J.S.A. 2C:29-9b; and one for harassment, N.J.S.A. 2C:33-4a; as well as the records of three arrests in Bridgewater Township. We affirm.

In that same petition, petitioner also sought, successfully, to expunge adjudications that occurred when petitioner was a juvenile. These juvenile offenses, if committed by an adult, included two separate charges of third-degree burglary, N.J.S.A. 2C:18-2; third-degree receiving stolen property, N.J.S.A. 2C:20-7; third-degree criminal attempt, N.J.S.A. 2C:5-1; third-degree theft, N.J.S.A. 2C:20-3a; possession of imitation controlled dangerous substance, N.J.S.A. 2C:35-11; possession of marijuana with intent to distribute, N.J.S.A. 2C:35-5a and N.J.S.A. 2C:35-5b(11); distribution of a controlled dangerous substance on school property, N.J.S.A. 2C:35-7; and third-degree credit card fraud, N.J.S.A. 2C:21-6d.

The juvenile offenses occurred during a nine-month span from August 4, 1993 to April 27, 1994, while petitioner was sixteen years old. The adult RSP offense occurred in the Fall 1995, when petitioner was eighteen years old. The disorderly persons offenses were committed when petitioner was twenty-two years old. Petitioner, now thirty-five, has no other offenses. He is married and gainfully employed in the insurance industry. Apparently, his adult RSP conviction is a barrier to his further career advancement.

On appeal, petitioner raises the following issues:

POINT ONE

THE TRIAL COURT AND THE PROSECUTOR ARE MISUNDERSTOOD IN THE FACTS THAT [PETITIONER] MEETS EVERY REQUIREMENT OF [N.J.S.A.] 2C:52-2 INDICTABLE OFFENSES WHICH INDICATES THAT HIS SOLE CRIME OF RECEIVING STOLEN PROPERTY CAN BE EXPUNGED. PARTS OF THIS POINT WERE NOT ACCURATELY ARGUED DURING THE HEARING.

POINT TWO

THE PRIMARY BASIS FOR TRIAL COURT'S DECISION AND THE PROSECUTOR'S ARGUMENT [IS] INCORRECT DUE TO THEIR SPECIFIC MISUNDERSTANDING OF N.J.S.A. 2C:52-2 AND N.J.S.A. 2C:52-4.1, AND HOW THEY RELATE TO EACH OTHER. THE TRIAL COURT CONSTRUED THEIR OWN LAW IN THIS DECISION AND CLEARLY DID NOT TAKE INTO ACCOUNT THAT AN EXPUNGEMENT CAN BE DENIED ONLY IF A [PETITIONER] [IS] NOT ELIGIBLE BY THE EXPLICIT TERMS OF THE STATUTE. [SEE STATE V. KING,] 340 [N.J. SUPER.] 390 (APP. DIV[.] 2001).

POINT THREE

THE TRIAL JUDGE, THE HONORABLE ANGELA F. BORKOWSKI[,] HAS DEMONSTRATED A MISUNDERSTANDING OF THE EXPUNGEMENT STATUTE IN GENERAL AND [PETITIONER'S] CASE FOR EXPUNGEMENT. IN ADDITION, CERTAIN LANGUAGE WITHIN HER WRITTEN OPINION INDICATE[S] A DISAGREEMENT OR PERCEIVED VIEW THAT THE EXPUNGEMENT STATUTE IS NOT WRITTEN FAIRLY. THE LAW AND THE STATUTE HAVE BEEN DISREGARDED WITH RESPECT[] TO [PETITIONER'S] CASE.

POINT FOUR

IT IS[,] IN FACT[,] THE STATE AND THE SOMERSET COUNTY PROSECUTOR'S OFFICE THAT ARE LOOKING FOR "TWO BITES OF THE APPLE" AND [THE] TRIAL COURT LET THIS HAPPEN. FOR THIS FOURTH[-]DEGREE CRIME OF RECEIVING STOLEN

PROPERTY, THEY DENIED PRE-TRIAL INTERVENTION FOR [PETITIONER] IN 1995 DUE TO THE PRESENCE OF HIS JUVENILE ADJUDICATIONS. NOW THE STATE IS CHALLENGING HIS EXPUNGEMENT OF THIS CRIME[] FOR THE SAME REASONS.

POINT FIVE

EVEN IF [PETITIONER'S] ARGUMENT[S] ON THE STATUTORY[] BAR[] ARE NOT CORRECT, THERE IS NO WAY THAT IT CAN BE CONSTRUED THAT THE STATUTE IS CLEARLY WRITTEN. AFTER [STATE V. KING], 340 [N.J. SUPER.] 390 (APP. DIV[.] 2001) IS TAKEN INTO ACCOUNT, WHICH STATES THAT AN EXPUNGEMENT CAN ONLY BE DENIED IF THE [PETITIONER] IS NOT ELIGIBLE BY THE EXPLICIT TERMS OF THE STATUTE. IF THIS ARGUMENT IS NOT HONORED, THEN [PETITIONER'S] EXPUNGEMENT REQUEST MUST TURN INTO A DISCRETIONARY SITUATION AND IT MUST BE DETERMINED WHAT IS [IN] THE INTEREST OF JUSTICE. AS MENTIONED IN SECTION N.J.S.A. 2C:52-2, "THE COURT CAN FIND IN ITS DISCRETION THAT EXPUNGEMENT IS IN THE PUBLIC INTEREST, GIVING DUE CONSIDERATION TO THE NATURE OF THE OFFENSE, AND THE APPLICANT'S CHARACTER AND CONDUCT SINCE CONVICTION."

We affirm substantially for the reasons set forth in Judge Angela F. Borkowski's thorough and thoughtful written opinion of September 8, 2011. We add the following comments.

The focus of petitioner's argument before the Law Division and now on appeal is the import of N.J.S.A. 2C:52-4.1. That statute provides that "[f]or purposes of expungement, any act which resulted in a juvenile being adjudged a delinquent shall be classified as if that act had been committed by an adult."

In analyzing the import of this provision, the judge noted:

While [petitioner] may be correct in his assertion that the phrase "adjudication of delinquency" does not expressly appear as a bar to expungement in N.J.S.A. 2C:52-2, the phrase is made applicable to that section through N.J.S.A. 2C:52-4.1. The text of N.J.S.A. 2C:52-4.1 reads, in part, "[f]or purposes of expungement, any act which resulted in a juvenile being adjudged a delinquent shall be classified as if that act had been committed by an adult." N.J.S.A. 2C:52-4.1(a). It is necessary to examine this part of the section within its context in order to determine the meaning of the word "classified." The text immediately follows instructions that acts committed by a juvenile which would be a crime if committed by an adult are properly petitioned under N.J.S.A. 2C:52-2, disorderly or petty disorderly persons offenses under N.J.S.A. 2C:52-3, and ordinance violations under N.J.S.A. 2C:52-4. It is, therefore, apparent that any act which resulted in a juvenile being adjudged a delinquent, and which would have been a crime if committed by an adult, must be considered a crime for purposes of expungement. Any other interpretation of this language would result in it being superfluous.

We agree with her analysis. The import of the statute reflects the legislative intent that a petitioner's juvenile record is a critical element in the expungement process.

We conclude that the judge properly analyzed the provisions of the expungement statute and harmonized their meaning and intent.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.

CLERK OF THE APPELLATE DIVISION