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1           **IN THE SUPREME COURT OF THE STATE OF NEW MEXICO**

2 Filing Date: March 23, 2017

3 **NO. S-1-SC-35912**

4 **CHRISTINE STUMP,**

5           Petitioner-Appellant,

6 v.

7 **ALBUQUERQUE POLICE DEPARTMENT,**  
8 **NEW MEXICO DEPARTMENT OF PUBLIC SAFETY,**  
9 **BERNALILLO COUNTY METROPOLITAN COURT,**  
10 **and ADMINISTRATIVE OFFICE OF THE COURTS,**

11           Respondents-Appellees.

12 **CERTIFICATION FROM THE NEW MEXICO COURT OF APPEALS**  
13 **Clay Campbell, District Judge**

14 Rodey, Dickason, Sloan, Akin & Robb, P.A.

15 Jocelyn C. Drennan

16 Edward R. Ricco

17 Albuquerque, NM

18 for Appellant

19 Office of the City of Albuquerque

20 Jessica Hernandez

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2 Albuquerque, NM

3 for Appellee

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13 Santa Fe, NM

14 Theresa Duncan  
15 Albuquerque, NM

16 for Amicus Curiae New Mexico Criminal Defense Lawyers Association

17 **DISPOSITIONAL ORDER OF AFFIRMANCE**

18 **VIGIL, Justice.**

19 {1} This matter having come before the Court by way of Certification from the  
20 Court of Appeals pursuant to NMSA 1978, § 34-5-14(C) (1972), and each member  
21 of the Court having studied the briefs, engaged in oral argument, and being otherwise

1 fully informed on the issues and applicable law; and

2 {2} The members of the Court having unanimously concurred that there is no  
3 reasonable likelihood that a decision or opinion of the Court, under the instant facts  
4 would materially advance the law of the State; and

5 {3} The members of the Court having unanimously agreed to invoke the Court's  
6 discretion under Rule 12-405 (B)(2) NMRA to dispose of a case by order, decision,  
7 or memorandum opinion rather than formal opinion;

8 **IT IS THEREFORE ADJUDGED THAT:**

9 {4} The underlying facts are undisputed and provide context for the Court's order.  
10 On November 27, 2008, Appellant Christine Stump (Stump), a paramedic for the  
11 Albuquerque Ambulance Services (AAS), responded to an emergency in which a  
12 female overdosed on medication in a suicide attempt. When Stump arrived at the  
13 scene, the patient was not cooperating with Albuquerque Police Department (APD)  
14 officers. As the situation between the patient and APD escalated, APD handcuffed the  
15 patient and escorted her to a transport gurney.

16 {5} In an effort to secure the patient to a transport gurney, an APD officer uncuffed  
17 one of the patient's hands. At this time, APD Officer Regina Sanchez (Officer  
18 Sanchez) perceived the patient to be moving in a hostile manner which endangered

1 Stump. Officer Sanchez “pushed the patient’s head and neck down.” Concerned that  
2 Officer Sanchez’s actions posed a threat to the patient’s safety, Stump shouted at  
3 Officer Sanchez to stop what she was doing and removed Officer Sanchez’s arm from  
4 the patient.

5 {6} That evening, Stump was arrested at her home for battery on a peace officer,  
6 a fourth degree felony. *See* NMSA 1978, § 30-22-24 (A) (1971) (“Battery upon a  
7 peace officer is the unlawful, intentional touching or application of force to the  
8 person of a peace officer while he is in the lawful discharge of his [or her] duties,  
9 when done in a rude, insolent, or angry manner.”). Stump’s arrest records are  
10 maintained by APD, the State of New Mexico Department of Public Safety Law  
11 Enforcement Records Bureau, and the Bernalillo Metropolitan Court.

12 {7} The parties agreed to use the City of Albuquerque’s Alternative Dispute  
13 Resolution Program to assure that APD and AAS could work together in future  
14 emergencies. Only Stump, Officer Sanchez, APD supervisors, AAS supervisors, and  
15 counsel participated in the negotiations. At the meeting, Stump learned that before  
16 she arrived at the scene, the patient had hit Officer Sanchez. Officer Sanchez said she  
17 saw the patient move in a manner she considered hostile. Officer Sanchez restrained  
18 the patient in an effort to protect Stump from potential physical harm.

1 {8} Stump interpreted the situation differently. Stump had not considered the  
2 patient a threat. Rather, Stump thought that the patient's movements were "flailing  
3 and uncoordinated." Stump said her priority was to transport the patient to the  
4 hospital due to the seriousness of her condition and believed Officer Sanchez's  
5 actions could have jeopardized the patient's safety.

6 {9} APD and AAS concluded that the conflict was a misunderstanding. To remedy  
7 this misunderstanding, the parties agreed that APD would contact the District  
8 Attorney's office to facilitate the dismissal of the charges against Stump with  
9 prejudice and would not pursue any further charges arising from the underlying  
10 incident. Additionally, APD agreed to support Stump with "the expungement  
11 process." In return, Stump agreed not to pursue a civil action so long as the charges  
12 were dropped and expungement was obtained. Stump's charges were dismissed "with  
13 prejudice because of insufficient evidence and upon the recommendation" of APD.

14 {10} Stump filed a request to have all records relating to the arrest expunged with  
15 the Second Judicial District Court. Following the filing of various forms of petitions  
16 seeking to expunge her arrest records, as well as a motion for reconsideration, and a  
17 post-remand petition, the district court issued an order denying Stump's request to  
18 expunge her arrest records. The district court did not expressly recognize its inherent

1 authority to expunge criminal records, but concluded that the circumstances in this  
2 case did not justify “the extraordinary power of expungement.” *Stump v. Albuquerque*  
3 *Police Department*, D-202-CV-2010-08145, Final Post-Remand Order, at 8 (Second  
4 Judicial District Court, June 23, 2015). It reasoned that “New Mexico’s strong public  
5 policy in favor of transparency [is] more compelling than the consensus among the  
6 parties concerning expungement.” Final Post-Remand Order, at 10.

7 {11} There is no statute, rule, or constitutional provision that provides for the  
8 expungement of an adult’s felony record in New Mexico.<sup>1</sup> We are asked then to

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6 <sup>1</sup>There have been at least eleven attempts since 2005 to pass a statute on  
7 expungement that would provide the type of relief Stump requests. S.B. 646, 47th  
8 Leg., 1st Sess. (N.M. 2005), *available at*  
9 <https://www.nmlegis.gov/Sessions/05%20Regular/bills/senate/SB0646.pdf> (last  
10 visited Mar. 23, 2017); S.B. 599, 48th Leg., 1st Sess. (N.M. 2007), *available at*  
11 <https://www.nmlegis.gov/Sessions/07%20Regular/final/SB0599.pdf> (last visited Mar.  
12 23, 2017); S.B. 1081, 48th Leg., 1st Sess. (N.M. 2007), *available at*  
13 <https://www.nmlegis.gov/Sessions/07%20Regular/bills/senate/SB1081.pdf> (last  
14 visited Mar. 23, 2017); S.B. 649, 49th Leg., 1st Sess. (N.M. 2009), *available at*  
15 <https://www.nmlegis.gov/Sessions/09%20Regular/final/SB0649.pdf> (last visited Mar.  
16 23, 2017); H.B. 866, 49th Leg., 1st Sess. (N.M. 2009), *available at*  
17 <https://www.nmlegis.gov/Sessions/09%20Regular/bills/house/HB0866.pdf> (last  
18 visited Mar. 23, 2017); S.B. 389, 50th Leg., 1st Sess. (N.M. 2011), *available at*  
19 <https://www.nmlegis.gov/Sessions/11%20Regular/bills/senate/SB0389.pdf> (last  
20 visited Mar. 23, 2017); S.B. 2, 50th Leg., 2nd Sess. (N.M. 2012), *available at*  
21 <https://www.nmlegis.gov/sessions/12%20Regular/final/SB0002.pdf> (last visited Mar.  
22 23, 2017); S.B. 294, 51st Leg., 1st Sess. (N.M. 2013), *available at*  
23 <https://www.nmlegis.gov/Sessions/13%20Regular/final/SB0294.pdf> (last visited Mar.  
24 23, 2017); H.B. 598, 51st Leg., 1st Sess. (N.M. 2013), *available at*

1 decide whether the district court had the inherent authority to compel expungement  
2 of Stump’s criminal record, and, if so, whether it abused its discretion in concluding  
3 that the circumstances in this case were not extraordinary and did not warrant  
4 expungement.

5 {12} Stump contends that the district court has the inherent authority to expunge her  
6 criminal records, and that it abused its discretion when it denied her request to do so.  
7 Specifically, Stump argues that the circumstances are extraordinary because the arrest  
8 stemmed from a misunderstanding and the parties do not contest her expungement  
9 request in district court. Whether the district court has the inherent authority to  
10 expunge criminal records is a question of law. *State v. M.D.T.*, 831 N.W.2d 276, 279  
11 (Minn. 2013). We review questions of law de novo. *Garcia v. Dorsey*,  
12 2006-NMSC-052, ¶ 13, 140 N.M. 746, 149 P.3d 62. We review the district court’s  
13 decision to decline to invoke its inherent authority to expunge arrest records under  
14 an abuse of discretion standard. *Ballard v. Markey*, 1964-NMSC-021, ¶ 6, 73 N.M.

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6 <https://www.nmlegis.gov/Sessions/13%20Regular/bills/house/HB0598.pdf> (last  
7 visited Mar. 23, 2017); S.B. 365, 52nd Leg., 1st Sess. (N.M. 2015), *available at*  
8 <https://www.nmlegis.gov/Sessions/15%20Regular/bills/senate/SB0365.pdf> (last  
9 visited Mar. 23, 2017); H.B. 531, 52nd Leg., 1st Sess. (N.M. 2015), *available at*  
10 <https://www.nmlegis.gov/Sessions/15%20Regular/bills/house/HB0531.pdf> (last  
11 visited Mar. 23, 2017).

1 437, 389 P.2d 205 (“[A district] court’s decision, by virtue of its inherent  
2 power . . . will not be disturbed on appeal in the absence of a showing of abuse of  
3 discretion.” (citation omitted)); *see also State ex rel. N.M. State Highway & Transp.*  
4 *Dep’t v. Baca*, 1995-NMSC-033, ¶¶ 11-12, 120 N.M. 1, 896 P.2d 1148.

5 {13} Courts which recognize the inherent authority to expunge arrest records have  
6 done so sparingly and only under extraordinary circumstances. *Toth v. Albuquerque*  
7 *Police Dep’t, City of Albuquerque*, 1997-NMCA-079, ¶ 8, 123 N.M. 637, 944 P.2d  
8 285 (citations omitted). Stump argues that this Court implicitly exercised its inherent  
9 authority to expunge criminal records in *Concha v. Sanchez*, which provides  
10 precedent for doing so in the instant case. 2011-NMSC-031, ¶ 20, 150 N.M. 268, 258  
11 P.3d 1060. We disagree.

12 {14} In *Concha*, this Court ordered that “the contempt convictions [be] vacated and  
13 [p]etitioners’ arrest and booking records expunged” in response to an unprecedented  
14 abuse of power by a judge who disregarded due process and ordered the mass arrest  
15 for criminal contempt of thirty-two courtroom spectators. 2011-NMSC-031, ¶¶ 2, 10,  
16 20. In so ordering, this Court held that it

17 has long recognized that our superintending control jurisdiction under  
18 Article VI, Section 3 of the New Mexico Constitution “will be exercised  
19 if the remedy by appeal is wholly or substantially inadequate, or if the  
20 exercise thereof will prevent irreparable mischief, great, extraordinary



1 or exceptional hardship, costly delays, or unusual burdens in the form  
2 of expenses.”

3 *Id.* ¶ 46 (citation omitted). *Concha* involved “the interrelated issues of contempt  
4 powers and limitations, courtroom control, and due process of law.” *Id.* ¶ 20. Thus,  
5 the authority exercised by this Court in *Concha* originated from its constitutional  
6 responsibility to remedy an extreme injustice inflicted upon citizens stemming from  
7 the egregious conduct of a district court judge. We agree with the district court that  
8 *Concha* is “not on point and inapplicable to the issue here concerning the  
9 expungement of an arrest record.” Final Post-Remand Order, at 9.

10 {15} Unlike *Concha*, where the petitioners were indiscriminately targeted and  
11 arrested without any individual factual particularity for the alleged offense, Stump  
12 does not argue that the criminal charges made against her were unconstitutional or  
13 unlawful. Rather, Stump asserts that the circumstances are extraordinary because the  
14 underlying arrest was based on a “misunderstanding” and because APD agreed in  
15 mediation not to oppose the request to expunge her criminal records. The district  
16 court found below, and we agree, that the Court “is not bound by the government’s  
17 concession or the agreement between or among the parties.” Final Post-Remand  
18 Order, at 10 (citing *State v. Caldwell*, 2008-NMCA-049, ¶ 8, 143 N.M. 792, 182 P.3d  
19 775 (“This Court . . . is not bound by the State’s concession and we conduct our own

1 analysis . . . .”).

2 {16} We conclude that the district court did not abuse its discretion in denying  
3 Stump’s request. The district court carefully considered Stump’s position, the  
4 underlying facts and circumstances leading to her arrest, as well as the settlement  
5 negotiations and agreement reached between the parties. After doing so, it concluded  
6 that the underlying facts do not justify “the extraordinary power of expungement” and  
7 denied Stump’s request for expungement. Final Post-Remand Order, at 11. Because  
8 the facts and circumstances did not reach a degree of egregiousness necessary to  
9 compel it to act, we affirm the district court.

10 {17} **WE AFFIRM.**

11 {18} **IT IS SO ORDERED.**

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**CHARLES W. DANIELS, Chief Justice**

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**PETRA JIMENEZ MAES, Justice**

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**EDWARD L. CHÁVEZ, Justice**

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**BARBARA J. VIGIL, Justice**

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**JUDITH K. NAKAMURA, Justice**