STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT, SC. **SUPERIOR COURT**

(FILED: June 8, 2018)

STATE OF RHODE ISLAND	:	
	:	
v.	:	**C.A. No. K2-2016-0354A**
	:	
MITCHELL PARENTEAU	:	

DECISION

K. RODGERS, J. This matter is presently before this Court on the State's appeal from the entry of a deferred sentence agreement by a Magistrate of the Superior Court, pursuant to Rule 2.9 of the Superior Court Rules of Practice.

In its Notice of Appeal, the State contends that a judicial officer's imposition of a deferred sentence, in the absence of agreement by the Office of Attorney General, violates the doctrine of separation of powers. For the reasons that follow, this Court accepts the Magistrate's entry into the deferred sentence agreement and denies the State's appeal.

I

Facts and Travel

Defendant, Mitchell Parenteau (Defendant), was charged with possession of a controlled substance, to wit, Alprazolam, arising from an incident in Coventry on April 1, 2016. He was also charged with resisting arrest and disorderly conduct. On April 9, 2018, Defendant pled *nolo contendere* to each of the aforementioned charges before a Magistrate of the Superior Court. In accordance with G.L. 1956 § 12-19-19, the Magistrate formally deferred sentencing Defendant

for a period of three years.[1] At that hearing, it appears[2] that the State presented little more than a standard objection for the record. The State filed its Notice of Appeal on April 10, 2018.

II

Standard of Review

Rule 2.9(h) of the Superior Court Rules of Practice governs this Court's review of a Superior Court Magistrate's decision. This Court is required to make a *de novo* determination of those portions of the Magistrate's decision to which the appeal is directed, and it may accept, reject or modify, in whole or in part, the judgment, order, or decree of the Magistrate. R.P. 2.9(h). This Court is not required to formally conduct a new hearing, and it may consider the record developed before the Magistrate in making its own determination whether there is competent evidence upon which the Magistrate's judgment rests.[3]

It is well settled that one who challenges the constitutionality of a statute bears the burden of proving beyond a reasonable doubt that the act violates a specific provision of the Rhode Island Constitution. *Narragansett Indian Tribe v. State*, 110 A.3d 1160, 1162 (R.I. 2015); *Oden v. Schwartz*, 71 A.3d 438, 456 (R.I. 2013); *Mackie v. State*, 936 A.2d 588, 595 (R.I. 2007); *State v. Garnetto*, 75 R.I. 86, 93, 63 A.2d 777, 781 (1949). "'[L]egislative enactments of the General Assembly are presumed to be valid and constitutional.'" *State v. Faria*, 947 A.2d 863, 867 (R.I. 2008) (quoting *Newport Court Club Assocs. v. Town Council of Middletown*, 800 A.2d 405, 409

[1] Although required by § 12-19-19(a), the written deferral agreement does not appear in the electronic file. Review of that document is not necessary for this Court to render its decision on the issues raised in the State's Notice of Appeal. That written deferral agreement will, however, be required to be reviewed in the event Defendant is alleged to have violated the terms thereof and/or Defendant seeks immediate expungement, in accordance with §§ 12-19-19(b) and (c), respectively.

[2] No transcript of the plea colloquy was provided on appeal as required by Rules 2.9(f) and (g) of the Superior Court Rules of Practice. This Court declines to dismiss this appeal in accordance with R.P. 2.9(g), however, as it raises an issue that continues to arise and warrants adjudication.

[3] The issue before this Court is a legal issue for which no evidentiary analysis is required.

(R.I. 2002)). Accordingly, "[w]hen reviewing a challenge to a statute's constitutionality, this Court [must] exercise[ ] the 'greatest possible caution.'" *Mackie*, 936 A.2d at 595 (quoting *Cherenzia v. Lynch*, 847 A.2d 818, 822 (R.I. 2004)). Further, this Court is required to "attach every reasonable intendment in favor of * * * constitutionality in order to preserve the statute." *Gem Plumbing & Heating Co. v. Rossi*, 867 A.2d 796, 808 (R.I. 2005) (internal quotation omitted).

III

Analysis

In support of its contention that § 12-19-19 violates the doctrine of separation of powers, the State maintains that, in its present form, the statute removes the Attorney General from the deferred sentence agreement and infringes on the Attorney General's authority to criminally inform an individual or dismiss an information or indictment because, upon the completion of a deferred sentence to which the Office of Attorney General had not agreed, the case is disposed and the person is immediately eligible for expungement. State's Notice of Appeal, at 1. According to its Notice of Appeal, the State asserts that "[t]his is effectively a dismissal and requires the Attorney General's filing a dismissal under Rule 48A [*sic*] of the Superior Court Rules of Criminal Procedure." *Id.*

As amended, § 12-19-19 authorizes a judicial officer to defer sentencing an individual who enters a plea of guilty or *nolo contendere*. The statute presently reads in pertinent part:

> "(a) Whenever any person is arraigned before the superior court and pleads guilty or nolo contendere, he or she may be at any time sentenced by the court; provided, that if at any time the court formally defers sentencing, then *the person and the court* shall enter into a written deferral agreement to be filed with the clerk of the court. When a court formally defers sentence, the court may only impose sentence up to five (5) years from and after the date of the written deferral agreement, unless during the required period,

> the person shall be declared to have violated the terms and conditions of the deferment pursuant to subsection (b) [of this section] in which event the court may impose sentence.
>
> . . . .
>
> "(c) If a person, after the completion of the deferment period is determined by the court *after a hearing* to have complied with all of the terms and conditions of the deferral agreement including, but not limited to, the payment in full of any court-ordered fines, fees, costs, assessments, and restitution to victims of crime, then the person shall become *immediately eligible for consideration* for *expungement* pursuant to the provisions of §§ 12-1.3-2 and 12-1.3-3." Sec. 12-19-19 (amend. eff. Sept. 28, 2017) (emphasis added).

Section 12-19-19 has been amended in two ways that are pertinent to the issues before this Court. First, § 12-19-19(a) had previously authorized the person pleading guilty or *nolo contendere* and the Attorney General, rather than the defendant and the Court, to enter into a written deferral agreement. *Cf.* P.L. 2017, ch. 345, § 1; P.L. 2017, ch. 351, § 1 (amend. eff. Sept. 28, 2017). Second, the statute previously required that a person who completed the deferment period be "exonerated of the charges for which sentence was deferred." *See* P.L. 2010, ch. 128, § 1; P.L. 2010, ch. 256, § 1 (amend. eff. June 25, 2010).

The State's argument that § 12-19-19 violates the separation of powers doctrine improperly equates an individual's eligibility for expungement with a dismissal filed in accordance with Super. R. Crim. P. 48(a). There is simply no support in our statutes or case law to validate the State's analogy. A comparison of the pertinent statutes clearly reveals that an expungement is not the legal equivalent of a dismissal and thereby does not infringe upon the powers of the Office of Attorney General.

The General Assembly has defined "[e]xpungement of records and records of conviction" as "the sealing and retention of all records of a conviction and/or probation and the removal from active files of all records and information relating to conviction and/or probation." Sec. 12-1.3-

1(2). "Records" and "records of conviction and/or probation" has been defined as "all court records, all records in the possession of any state or local police department, the bureau of criminal identification and the probation department, including, but not limited to, any fingerprints, photographs, physical measurements, or other records of identification." Sec. 12-1.3-1(5). The hearing procedure and the effect of an expungement of records are further specified in Title 12, chapter 1.3 of the Rhode Island General Laws. Section 12-1.3-2 specifies who may file a motion seeking to expunge records, in which court, and when he or she may file the motion in relation to the completion of the sentence. As it relates to individuals who had entered into a deferred sentence agreement, § 12-1.3-2(e) provides:

> "Subject to § 12-19-19(c), and without regard to subsections (a) through (c) of this section, a person may file a motion for the expungement of records relating to a deferred sentence *upon its completion*, after which the *court will hold a hearing* on the motion." Sec. 12-1.3-2(e) (emphasis added).

Section 12-1.3-3 sets forth the manner in which notice of a motion to expunge records shall be given, as well as the criteria to be applied in granting a motion to expunge records. As it relates to deferred sentences, the statute provides:

> "(b) The court, after the hearing at which all relevant testimony and information shall be considered, may, *in its discretion*, order the expungement of the records of conviction of the person filing the motion if it finds:
>
> "(1) . . .
>
> "(ii) That *after a hearing* held under the provisions of § 12-19-19(c), the court finds that the *person has complied with all of the terms and conditions of the deferral agreement* including, but not limited to, the payment in full of any court-ordered fines, fees, costs, assessments, and restitution to victims of crimes; there are no criminal proceedings pending against the person; and he or she has established good moral character. Provided, that no person who has been convicted of a crime of violence shall have their records relating to a deferred sentence expunged;
>
> . . . .
>
> "(2) That the petitioner's *rehabilitation has been attained to the court's satisfaction* and the expungement of the records of his or her conviction is consistent with the public interest." Sec. 12-1.3-3(b) (emphasis added).

Finally, § 12-1.3-4 specifies the effect of an expungement of records and the individual's continuing obligation to disclose the fact of a conviction, including when the individual is an applicant for a position in law enforcement, for a teaching certificate, for a coaching certificate, as an operator or employee of an early childhood education facility, or as a member of the bar of any court. Sec. 12-1.3-4(b). In all other respects, a person whose records are expunged "may state that he or she has never been convicted of the crime," *id.*, and the custodian of the records relating to that crime is prohibited from disclosing the existence of such records unless the inquiry is from the individual himself or herself, that of a sentencing court following the conviction of the individual, or associated with the individual's application to a bar of any court or for a position in law enforcement. Sec. 12-1.3-4(c).

By contrast, the records associated with a dismissed criminal case may be sealed in accordance with §§ 12-1-12 and 12-1-12.1. Section 12-1-12.1 provides, in pertinent part:

> "(a) Any person who is acquitted or *otherwise exonerated* of all counts in a criminal case, *including, but not limited to, dismissal* or filing of a no true bill or no information, may file a motion for the sealing of his or her court records in the case, provided, that no person who has been convicted of a felony shall be entitled to relief under this section except for those records in cases of acquittal after trial." Sec. 12-1-12.1(a) (emphasis added).

Importantly, the custodian of records that are the subject of a motion to seal, whether based upon an acquittal after trial, the filing of a no true bill or no information, a dismissal filed by the prosecution, or any other exoneration, have different obligations than when records have been expunged. In the case of the former, it is required that:

> "[a]ny fingerprint, photograph, physical measurements, or other record of identification, heretofore or hereafter taken by or under the direction of the attorney general, the superintendent of state police, the member or members of the police department of any city or town or any other officer authorized by this chapter to take them, of a person under arrest, prior to the final conviction of the person for the offense then charged, *shall be destroyed by all offices or departments having the custody or possession within sixty (60) days* after there

> has been an acquittal, dismissal, no true bill, no information, or the person has been otherwise exonerated from the offense with which he or she is charged, and the *clerk of court* where the exoneration has taken place shall, consistent with § 12-1-12.1, *place under seal* all records of the person in the case including all records of the division of criminal identification established by § 12-1-4." Sec. 12-1-12(a)(1) (emphasis added).

In the case of an expungement, the custodian has an obligation to remove from public inspection all index and other references to the subject records; there is no destruction of the records and, as previously stated, there remains an obligation to disclose the existence of an expunged record under limited circumstances. Secs. 12-1.3-1(2), 12-1.3-3(c), 12-1.3-4(b)-(c). Thus, the State's reliance on an individual's immediate eligibility for an expungement as being effectively a dismissal is entirely off the mark.

Additionally, the State fails to consider that in the case of a motion to expunge immediately upon the completion of the deferred period, a hearing must still take place, there must be a finding that the individual has complied with all the terms and conditions of the deferred sentence agreement, and the Court must be satisfied that the petitioner has been rehabilitated and the expungement of the records is consistent with the public interest. Sec. 12-1.3-3(b)(1)(ii), (b)(2). It is within the Court's discretion to order the expungement of records. Sec. 12-1.3-3(b); *see also State v. Alejo*, 723 A.2d 762, 764 (R.I. 1999). No such discretion exists when there is an acquittal, dismissal, no true bill, no information, or other exoneration; if the Court, after hearing, determines that an individual is entitled to the sealing of records under § 12-1-12.1, then the Court is required to order the sealing of the court records and the clerk of the court is mandated to seal the records within forty-five days of the order of the Court. Sec. 12-1-12.1(c)-(d).

A deferred sentence in no way infringes on the authority of the Office of Attorney General to dismiss counts and/or cases. The State has wholly failed to demonstrate that an entry

into a deferred sentence agreement or the expungement of records associated with a deferred sentence is so analogous to a dismissal, reserved for the Office of Attorney General pursuant to Rule 48(a) of the Superior Court Rules of Civil Procedure, as to constitute an assumption by the judicial branch of powers that are central or essential to the operation of the executive branch of our State government. *See In re Advisory Op. to the Governor (Ethics Comm'n)*, 612 A.2d 1, 18 (R.I. 1992) (defining a constitutional violation of separation of powers doctrine). To the contrary, the expungement of any record under Title 12, chapter 1.3 of the Rhode Island General Laws is distinct from the sealing of records following a dismissal under Title 12, chapter 1. Simply because the Office of Attorney General is no longer a signatory to or approves of a deferred sentence agreement under § 12-19-19, as amended,[4] does not render the Court's entry into such an agreement a usurpation of executive power.

IV

Conclusion

The State has failed to prove beyond a reasonable doubt that a court's entry into a deferred sentence agreement with a criminal defendant, in accordance with § 12-19-19 as amended and in the absence of agreement by the Office of Attorney General, is a violation of the doctrine of separation of powers. The entry of a deferred sentence agreement by a Magistrate of this Court and Defendant, Mitchell Parenteau, is accepted, and the State's appeal is denied.

[4] Had § 12-19-19(c) not been amended since 2010 and still required that a person who completed the deferment period be "exonerated of the charges for which sentence was deferred," *see* P.L. 2010, ch. 128, § 1; P.L. 2010, ch. 256, § 1 (amend. eff. June 25, 2010), then the State's argument may have been persuasive. However, that is not the state of § 12-19-19 in its present form, and this Court need to delve into whether "an exoneration" is effectively a dismissal.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**State of Rhode Island v. Mitchell Parenteau**
CASE NO:	**K2-2016-0354A**
COURT:	**Kent County Superior Court**
DATE DECISION FILED:	**June 8, 2018**
JUSTICE/MAGISTRATE:	**K. Rodgers, J.**
ATTORNEYS:	
For Plaintiff:	**Kaitlin Tracey, Esq.**
For Defendant:	**Daniel P. Griffin, Esq.**