STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT, SC. **SUPERIOR COURT**

(FILED: June 8, 2018)

STATE OF RHODE ISLAND	:	
	:	
v.	:	**C.A. No. K2-2017-0453A**
	:	
MEGAN KNIGHT	:	

DECISION

McGUIRL, J. This matter is before the Court on the State of Rhode Island's (the State) appeal of Superior Court Magistrate John F. McBurney, III's (Magistrate) decision to defer sentencing Megan Knight (Defendant) for one year, pursuant to G.L. 1956 § 12-19-19 (the deferred sentence statute). On appeal, the State challenges the deferred sentence statute's constitutionality. Jurisdiction is pursuant to G.L. 1956 § 8-2-11.1(d).

I

Facts and Travel

On July 20, 2017, the State charged Defendant with one count of violating G.L. 1956 § 11-32-3, "Obstruction of the judicial system," based on allegations that Defendant "maliciously and recklessly" influenced her four-year-old daughter's testimony in a separate criminal proceeding.[1] *See* Crim. Info., C.A. No. K2-2017-0453A at 1. At a plea hearing, held on

[1] The facts of the underlying case arise from Defendant's daughter's allegations of physical abuse against Defendant's boyfriend, who subsequently pled guilty to one count of second-degree child abuse. The Defendant's charge stems from an audio recording sent to law-enforcement. The audio recording captured Defendant's friend attempting to coax Defendant's daughter into recanting the abuse allegations while Defendant was present. The Defendant allowed the audio recorded conversation, despite a Consent Order issued by a Family Court magistrate that "enjoined and restrained [Defendant] from discussing the allegations or case in general . . . ." On appeal, the State only challenges the deferred sentence statute's

November 8, 2017, the Magistrate offered Defendant a one-year deferred sentence in consideration of her pleading *nolo contendere*. (Tr. I at 7.)

At that plea hearing, the Magistrate afforded the State an opportunity to place its objection to the deferred sentence agreement on the record: "As it relates to the deferred [sentence], the state is looking for two years' probation on this. And the amendment that removes the attorney general from the deferred sentence agreement violates the separation of powers provisions of the Rhode Island Constitution . . . ." *Id.* at 6. Thereafter, the Magistrate found that there was a sufficient factual basis to accept Defendant's plea and then entered a judgment deferring Defendant's sentence for one year. *Id.* at 7. The Magistrate added that Defendant will be "automatically eligible for expungement after that one-year sentence ends as long as she has not been involved in any other criminal proceedings."[2] *Id.*

On November 9, 2017, the State timely filed this appeal. This appeal is restricted to only a review of the deferred sentence statute's constitutionality. (State's Notice of Appeal at 2.) On November 29, 2017, the parties appeared before the Magistrate on "[D]efendant's motion to perfect a deferred sentence agreement." (Tr. at 1, Nov. 29, 2017) (Tr. II.) At that time, Defendant, Defendant's attorney, and the Magistrate signed a "Deferred Sentence Agreement" form, which reflected the terms of the November 8, 2017 plea agreement. *See* Deferred Sentence Agreement at 1, Nov. 29, 2017.

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constitutionality. *See* Tr. at 6-7, Nov. 8, 2017 (Tr. I). Therefore, the sufficiency of Defendant's sentence based on the underlying facts is not before this Court for review.

[2] The Court notes that the Magistrate's statement—that Defendant was "automatically eligible for expungement" at the end of the one-year period—does not comport with the language of the deferred sentence statute. For clarification purposes, once a court determines that Defendant has successfully completed the one-year deferred sentence, Defendant then becomes immediately eligible for a court to consider expunging the deferred sentence from Defendant's criminal record, pursuant to the requirements set forth in the expungement statutes.

II

Standard of Review

The Superior Court's review of a Magistrate decision is governed by § 8-2-11.1(d). Section 8-2-11.1(d) provides:

> "A party aggrieved by an order entered by the administrator/magistrate shall be entitled to a review of the order by a justice of the superior court. Unless otherwise provided in the rules of procedure of the court, the review shall be on the record and appellate in nature. The court shall, by rules of procedure, establish procedures for review of orders entered by the administrator/magistrate, and for enforcement of contempt adjudications of the administrator/magistrate." Sec. 8-2-11.1(d).

Rule 2.9(h) of the Superior Court Rules of Practice presently governs the standard of review. Rule 2.9(h) provides:

> "The Superior Court justice shall make a *de novo* determination of those portions to which the appeal is directed and may accept, reject, or modify, in whole or in part, the judgment, order, or decree of the magistrate. The justice, however, need not formally conduct a new hearing and may consider the record developed before the magistrate, making his or her own determination based on that record whether there is competent evidence upon which the magistrate's judgment, order, or decree rests. The justice may also receive further evidence, recall witnesses or recommit the matter with instructions." Super. Ct. R. P. 2.9(h) (emphasis added). [3]

Thus, the Superior Court justice conducts a *de novo* review of the portions of the record appealed. *See Paradis v. Heritage Loan and Inv. Co.*, 678 A.2d 440, 445 (R.I. 1996). The record on appeal includes "[t]he original papers and exhibits filed with the Superior Court, the transcript of the proceedings, and the docket entries." Super. Ct. R. P. 2.9(f).

[3] A review of this Court's authority for reviewing a magistrate decision appears to limit its review to only the issues appealed. *See* Super. Ct. R. P. 2.9(h). This Court does not necessarily agree with the sentence in this case. The underlying facts of Defendant's case, involving issues of an abuse of her four-year-old daughter and noncompliance with a court order, are cause for concern. Due to the nature of the charge, it is this Court's opinion that a different sentence would be warranted.

III

Analysis

On appeal, this Court's review of the Magistrate's decision is restricted to only those portions of the record that are appealed. In the instant matter, it is undisputed that the scope of this Court's review is limited to whether the deferred sentence statute violates the Rhode Island Constitution. The State contends that the deferred sentence statute violates the Rhode Island Constitution's separation of powers provision by infringing on the State's authority to criminally inform an individual, as well as its authority to dismiss criminal charges. (Tr. I at 6-7.) Specifically, the State asserts that the deferred sentence statute unconstitutionally grants the Court the authority to end the prosecution of a criminal case by permitting the Court and a criminal defendant to enter into a deferred sentence agreement without the State's consent. *Id.*

A

Constitutional Powers of Government

Article V of the Rhode Island Constitution declares that "[t]he powers of the government shall be distributed into three separate and distinct departments: the legislative, executive and judicial." R.I. Const. art. V. The distribution of "governmental power among the three departments of government indicates that the powers distributed to one department cannot be exercised at all by another department." *In re Advisory Op. to the Governor*, 732 A.2d 55, 102 (R.I. 1999) (citing *Narragansett Indian Tribe v. State*, 667 A.2d 280, 282 (R.I. 1995)).

The powers and duties of the Rhode Island Attorney General fall within the functions of the executive branch. R.I. Const. art. IX, § 12. Section 42-9-4(a) of the Rhode Island General Laws establishes the State's authority to prosecute criminal offenses: "The attorney general shall draw and present all informations and indictments, or other legal or equitable process, against

any offenders, as by law required, and diligently, by a due course of law or equity, prosecute them to final judgment and execution." Sec. 42-9-4(a). Our Supreme Court has stated: '"It is well settled in this state that the Attorney General is the only state official vested with prosecutorial discretion.'" *State v. Young*, 941 A.2d 124, 128 (R.I. 2008) (quoting *State v. Rollins*, 116 R.I. 528, 533, 359 A.2d 315, 318 (1976)); *see also State v. Lead Indus. Ass'n, Inc.*, 951 A.2d 428, 473 n.45 (R.I. 2008) (quoting *Orabona v. Linscott*, 49 R.I. 443, 445, 144 A. 52, 53 (1928)) ('"Under the Constitution and by long-established practice great power and responsibility for the enforcement of the criminal laws are lodged in the Attorney General."'); *In re House of Representatives (Special Prosecutor)*, 575 A.2d 176, 179 (R.I. 1990). Moreover, the power to dismiss criminal cases rests solely with the State. *See* Super. R. Crim. P. 48(a).

The powers granted to the judicial branch are set forth in article X, § 2 of our constitution:

> "The supreme court shall have final revisory and appellate jurisdiction upon all questions of law and equity. It shall have power to issue prerogative writs, and shall also have such other jurisdiction as may, from time to time, be prescribed by law. A majority of its judges shall always be necessary to constitute a quorum. The inferior courts shall have such jurisdiction as may, from time to time, be prescribed by law." R.I. Const. art. X, § 2.

The Rhode Island Supreme Court '"has long recognized that the Superior Court is statutory in origin and derives its powers from statutes duly enacted by the Legislature."' *State v. Briggs*, 934 A.2d 811, 815 (R.I. 2007) (quoting *State v. DiStefano*, 764 A.2d 1156, 1167-68 (R.I. 2000)). With respect to the Court's sentencing authority, the General Assembly prescribed that this Court "may, in its discretion, select the kind of punishment to be imposed, and, if the punishment is fine or imprisonment, its amount or term within the limits prescribed by law . . . ." Sec. 12-19-2(a); *see also State v. Fortes*, 114 R.I. 161, 173, 330 A.2d 404, 411 (1975) ("[T]he sentencing

process in the Superior Court involves an exercise of judicial discretion . . . ."). Unlike the State, the Court does not maintain the authority to dismiss a criminal case *sua sponte*. *State v. Strom*, 941 A.2d 837, 842 (R.I. 2008) (determining that the court "infringe[d] upon the constitutional powers of the Attorney General . . . [b]y prohibiting the . . . full[] prosecuti[on] [of] a felony information[] because of a *sua sponte* dismissal"); *see also Young*, 941 A.2d at 128 (finding that the trial justice could not dismiss information in the absence of a proper motion and without making appropriate findings).

Additionally, our constitution vests the legislative authority in the General Assembly to enact, amend, and repeal statutes. R.I. Const. art VI, § 2. It is well settled that '"legislative enactments of the General Assembly are presumed to be valid and constitutional."' *Narragansett Indian Tribe v. State*, 110 A.3d 1160, 1162 (R.I. 2015) (quoting *State v. Faria*, 947 A.2d 863, 867 (R.I. 2008)); *Mackie v. State*, 936 A.2d 588, 595 (R.I. 2007); *see also* 3 *Sutherland Statutory Construction* § 59:8 (7th ed. 2008) ("When reviewing the constitutionality of a penal statute, courts presume the statute is valid and that the legislature has not acted unreasonably or arbitrarily in enacting it."). Importantly, when the Legislature enacts a statute that is clear and unambiguous, the Court '"must interpret the statute literally and must give the words of the statute their plain and ordinary meanings."' *Iselin v. Ret. Bd. of Emps.' Ret. Sys. of R.I.,* 943 A.2d 1045, 1049 (R.I. 2008) (quoting *Accent Store Design, Inc. v. Marathon House, Inc.*, 674 A.2d 1223, 1226 (R.I. 1996)).

Accordingly, acts by an individual branch of government must not violate the separation of powers doctrine. The Rhode Island Supreme Court has defined what acts constitute a separation of powers violation:

> '"[A] constitutional violation of the separation of powers [i]s an assumption by one branch of powers that are central or essential to

> the operation of a coordinate branch, provided also that the assumption disrupts [throws into confusion or disorder] the coordinate branch in the performance of its duties and is unnecessary to implement a legitimate policy of the Government."' *State v. Jacques*, 554 A.2d 193, 196 (R.I. 1989) (quoting *Chadha v. Immigration and Naturalization Serv.*, 634 F.2d 408, 425 (9th Cir. 1980), *aff'd* 462 U.S. 919 (1983)).

Therefore, the "distribution of governmental power among the three departments of government indicates that the powers distributed to one department cannot be exercised at all by another department." *In re Advisory Op. to the Governor*, 732 A.2d at 102.

B

Deferred Sentence Statute

When a penal statute's constitutionality is challenged, "courts presume the statute is valid and that the legislature has not acted unreasonably or arbitrarily in enacting it." 3 *Sutherland Statutory Construction* § 59:8 (7th ed. 2008); *see also Mackie*, 936 A.2d at 595 (quoting *Cherenzia v. Lynch*, 847 A.2d 818, 822 (R.I. 2004)) (recognizing that when a statute's constitutionality is challenged, "this Court exercises the 'greatest possible caution'"). "[I]f two alternate interpretations are possible, [the Court] shall favor that which presents no potential constitutional difficulties." *Narragansett Indian Tribe*, 110 A.3d at 1164 (citing *Mosby v. Devine*, 851 A.2d 1031, 1045 (R.I. 2004)). In doing so, the Court must "'attach every reasonable intendment in favor of . . . constitutionality in order to preserve the statute.'" *Id.* at 1162 (quoting *State ex rel. City of Providence v. Auger*, 44 A.3d 1218, 1226 (R.I. 2012)). As such, "the underlying purpose of this court should be to determine the intention of the Legislature." *Blanchette v. Stone*, 591 A.2d 785, 787 (R.I. 1991) (citing *Landers v. Reynolds*, 92 R.I. 403, 407, 169 A.2d 367, 369 (1961)).

To glean the Legislature's intent in enacting the deferred sentence statute's most recent amendment, this Court observes the evolution of the statute for guidance. Prior to the General Assembly's 2017 amendment, subsection (a) of the deferred sentence statute provided:

> "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 attorney general 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 within five (5) years from and after the date of the written deferral agreement, unless during the five year (5) period, the person shall be declared to have violated the terms and conditions of the deferment pursuant to subsection (b) in which event the court may impose sentence." Sec. 12-19-19(a), as amended by P.L. 2016, ch. 204, § 2.

Subsection (c) of the deferred sentence statute—governing the expungement of deferred sentences from criminal records—has also undergone substantial changes. Prior to the 2010 addition of subsection (c), our Supreme Court, in *Briggs*, determined that "individuals who successfully complete deferred sentences can wipe their records clean only if they are covered by the umbrella of the expungement statute." 934 A.2d at 817. The Court further stated that "deferred sentences should be treated like probationary dispositions in the expungement context. [The Court] h[as] characterized a *nolo contendere* plea followed by probation as a conviction for purposes of expungement." *Id.*

In 2010, the General Assembly amended the language of the deferred sentence statute to include subsection (c). *See* § 12-19-19(c). At that time, subsection (c) instructed that upon the successful completion of a deferred sentence, "the person shall be exonerated of the charges for which sentence was deferred and records relating to the criminal complaint, information or indictment shall be sealed pursuant to the provision of chapter 1 section 12 of this title." Sec. 12-19-19(c), as amended by P.L. 2010, ch. 128, § 1 and ch. 256, § 1. In *State v. Morrice*, our

Supreme Court determined that the 2010 amendment instituted remedial changes to the deferred sentence statute, which "purports to exonerate any person who successfully complies with the terms and conditions of a written deferral agreement. . . ."[4] 58 A.3d 156, 163 (R.I. 2013).

However, in 2016, the General Assembly again amended the deferred sentence statute, at which time subsection (c) adopted its current form: "[T]he 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(c), as amended by P.L. 2016, ch. 202, § 2 and ch. 204, § 2. In doing so, the General Assembly removed the language that entitled a person to "be exonerated of the charges . . . ." *Id.*

Currently, subsection (a) of the deferred sentence statute provides:

> "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) in which event the court may impose sentence." Sec. 12-19-19(a).

Moreover, subsection (c) states:

> "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(c).

[4] In *Morrice*, the Court defined the term "exonerate" as "'to clear from accusation or blame: exculpate.'" *Morrice*, 58 A.3d at 163 n.5 (quoting Webster's Third New International Dictionary 797 (1961)).

The deferred sentence statute's most recent version reflects five notable alterations. As it is currently drafted, the statute (1) no longer requires that the State be a party to a deferred sentence agreement; (2) requires that a defendant and the Court enter into a deferred sentence agreement; (3) authorizes the Court alone to defer sentencing; (4) grants the Court the authority to determine whether a defendant has satisfied the conditions of the deferred sentence agreement after a hearing; and (5) allows the court to defer sentencing for a one to five year period. *See* § 12-19-19(a), as amended by P.L. 2017, ch. 345, § 1; and ch. 351, § 1. Moreover, the General Assembly removed the language requiring that courts exonerate a defendant at the end of a deferred sentence. *See* § 12-19-19(c), as amended by P.L. 2010, ch. 128, § 1 and ch. 256, § 1.

C

Implications of Deferred Sentence Statute

In this Court's opinion, the newly enacted deferred sentence statute is commendable for the fact that it seeks to protect those defendants whose crimes do not deserve the harsh implications associated with a tainted criminal record that far outlasts the duration of the actual sentence. As part of Rhode Island's probation reform efforts, the updated deferred sentence statute focuses on diversion rather than sentencing by providing an alternative to probation. The statute intends to reduce the number of individuals placed on probation and, thereby, lower recidivism rates.

However, this Court pauses to note that the technical issues arising from the practical application of this statute are cause for concern. One practical quandary facing a deferred sentence under this statute is that the statute does not articulate a viable method of supervision. Particularly, the statute does not identify a scheme by which the Court can monitor compliance

with the conditions established in the deferred sentence agreement. Subsection (b) of the deferred sentence statute provides, in relevant part,

> "[a] violation of any condition set forth by the written deferral agreement shall violate the terms and conditions of the deferment of sentence and the court may impose a sanction or impose sentence. The determination of whether a violation has occurred shall be made by the court in accordance with procedures relating to violation of probation in court rules and §§ 12-19-2 and 12-19-14." Sec. 12-19-19(b).

Once a sentence is deferred, neither the State nor the Department of Corrections Division of Rehabilitative Services (Probation) has been assigned the responsibility of monitoring a defendant's compliance with the deferred sentence agreement's terms and conditions. *See* § 12-19-14; Super. R. Crim. P. 32(f).

According to § 12-19-14(a), which governs probation violations, "[w]henever any person who has been placed on probation . . . violates the terms and conditions of his or her probation as fixed by the court, the police or department of corrections division of rehabilitative services shall cause the defendant to appear before the court." Once the police, or Probation, brings a defendant before the Court for an alleged probation violation, Rule 32(f) of the Rhode Island Superior Court Rules of Criminal Procedure provides that

> "[t]he court shall not revoke probation or revoke a suspension of sentence or impose a sentence previously deferred except after a hearing . . . . Prior to the hearing the State shall furnish the defendant and the court with a written statement specifying the grounds upon which action is sought . . . No revocation shall occur unless the State establishes by a fair preponderance of the evidence that the defendant breached a condition of the defendant's probation or deferred sentence. . . ." Super. R. Crim. P. 32(f).

Prior to the deferred sentence statute's 2016 amendment, eradicating the State's involvement in the deferred sentence agreement, the Rhode Island Supreme Court held that "[i]n moving for sentence . . . the attorney general is not exercising a judicial function. He [or she] is

simply conforming to the duty which he [or she] assumed in entering into a deferred sentence agreement." *Shahinian v. Langlois*, 100 R.I. 631, 637, 218 A.2d 461, 464-65 (1966). Moreover, the Court has found that

> "[t]he defendant and the state agree that the deferred sentence agreement is a contract between the two parties whose signatures appear on the document. The pertinent language on the agreement specifies that sentence . . . may be deferred not only so long as the defendant remains of good behavior, but further, so long as the Attorney General is satisfied that the defendant has not violated the criminal laws of any state since the date of the agreement." *State v. Ciarlo*, 122 R.I. 529, 533, 409 A.2d 1216, 1218 (1980).

The court now is the contracting party with a defendant, but the issue of monitoring and reporting violations remains. If Probation is tasked with supervising a defendant's compliance with a deferred sentence, as conditioned within the written agreement, it is still unclear who has the authority to "furnish the defendant and the court with a written statement specifying the grounds" for the violation or "establish[] by a fair preponderance of the evidence that the defendant breached a condition of the defendant's . . . deferred sentence." Super. R. Crim. P. 32(f).

Similarly, this issue presents itself in instances where a defendant violates the conditions of a deferred sentence agreement by committing a new crime. Even though the State has the constitutional power to prosecute the new crime, and by doing so, the State would effectively provide the Court notice of the deferred sentence violation, there is no guidance as to who would prosecute the violation. *See Young,* 941 A.2d at 128 ("[T]he Attorney General is the only state official vested with prosecutorial discretion."). Therefore, if this Court adhered to the principle established in *Ciarlo*—that a "deferred sentence agreement is a contract between the two parties whose signatures appear on the document"—the State's authority to present deferred sentence violations is weakened by the fact that the State is no longer a required party. 122 R.I. at 533,

409 A.2d at 1218. *See 1112 Charles, L.P. v. Fornel Entm't Inc.*, 159 A.3d 619, 625 (R.I. 2017) (When standing is at issue "a court must determine if the plaintiff whose standing is challenged is a proper party to request an adjudication of a particular issue . . . .").

D

State's Separation of Powers Challenge

As mentioned, it is well settled that "'legislative enactments of the General Assembly are presumed to be valid and constitutional.'" *Narragansett Indian Tribe*, 110 A.3d at 1162 (quoting *Faria*, 947 A.2d at 867); *Mackie*, 936 A.2d at 595. When a statute's constitutionality is challenged, "this Court exercises the 'greatest possible caution.'" *Mackie*, 936 A.2d at 595 (quoting *Cherenzia*, 847 A.2d at 822). A statute will be deemed unconstitutional only when the challenging party is able to "'prove beyond a reasonable doubt that the act violates a specific provision of the constitution or the United States Constitution . . . .'" *Id.* (quoting *Cherenzia*, 847 A.2d at 822). The Court "'will attach every reasonable intendment in favor of . . . constitutionality in order to preserve the statute.'" *Narragansett Indian Tribe*, 110 A.3d at 1162 (quoting *Auger*, 44 A.3d at 1226).

In *Narragansett Indian Tribe*, the Rhode Island Supreme Court held that it could not find the challenged act unconstitutional because of "the strong presumption of constitutionality and the heavy burden in mounting a facial challenge . . . ." *Id.* at 1166. In that case, the Narragansett Indian Tribe requested that the Court declare the Casino Act facially unconstitutional. *Id.* at 1161-62. The Court reasoned that such challenges are disfavored for several reasons, including that they "'threaten to short circuit the democratic process by preventing laws embodying the will of the people from being implemented in a manner consistent with the Constitution.'" *Id.* at 1166 (quoting *Wash. State Grange v. Wash. State Republican. Party*, 552 U.S. 442, 450, 451

(2008)). Therefore, when evaluating the constitutionality of a statute, "if two alternate interpretations are possible, [the Court] shall favor that which presents no potential constitutional difficulties." *Id.* at 1164 (citing *Mosby*, 851 A.2d at 1045).

In light of that reasoning, this Court finds that the State has not met its burden of proving beyond a reasonable doubt that the deferred sentence statute violates the Rhode Island Constitution's separation of powers provision. *See Mackie*, 936 A.2d at 595; *Cherenzia*, 847 A.2d at 822. Our Supreme Court has instructed that "'legislative enactments of the General Assembly are presumed to be valid and constitutional."' *Narragansett Indian Tribe*, 110 A.3d at 1162 (quoting *Faria*, 947 A.2d at 867). The statute at issue does not inhibit the State's authority to "present all informations and indictments, or other legal or equitable process, against any offenders, as by law required, and diligently, by a due course of law or equity, prosecute them to final judgment and execution." Sec. 42-9-4(a). The statute simply provides the Court with an alternative sentencing option.

Moreover, the deferred sentence statute does not disturb a criminal case's intersection of constitutional powers. As it does in all criminal cases, the State only enters to bring or dismiss charges against a defendant for violating criminal statutes. The Court then assesses the criminal charges brought by the State. The Court, the State, and the defendant discuss plea agreements in conference in an attempt to resolve the case. After the State has made its final plea offer, the defendant may accept the State's offer or go to trial.

However, in every criminal case, the Court ultimately determines and imposes a sentence. *See* § 12-19-2 ("[T]he court . . . may, in its discretion, select the kind of punishment to be imposed, and, if the punishment is fine or imprisonment, its amount or term within the limits prescribed by law . . . "); *see also Fortes*, 114 R.I. at 173, 330 A.2d at 411 ("[T]he sentencing

process in the Superior Court involves an exercise of judicial discretion . . . ."). The State is not required to agree to the sentence. If the State objects to the Court's sentencing decision, it has the opportunity in court to place its objection on the record. Furthermore, upon the completion of a deferred sentence, the State has an additional opportunity to be heard. *See* § 12-19-19(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 . . . 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.").

The Legislature is vested with the constitutional authority to determine sentencing parameters. *See Fortes*, 114 R.I. at 173, 330 A.2d at 411. Even though the Court sentences criminal defendants, it is the Legislature that has the authority to enact penal statutes that establish the sentences for each crime. *See Iselin*, 943 A.2d at 1049. The General Assembly has the authority to enact a statute that determines what happens to records of criminal charges. *See Badessa*, 869 A.2d at 64; *Manocchio*, 743 A.2d at 558. In such instances, the Court must then still "'interpret the statute literally and must give the words of the statute their plain and ordinary meanings.'" *Iselin*, 943 A.2d at 1049 (quoting *Accent Store Design, Inc.*, 674 A.2d at 1226). The Rhode Island Supreme Court has made it clear that "the Superior Court possesses no specific statutory authority to eradicate entries relating to criminal matters from a [criminal record] unless the request for relief in that regard falls within the criteria set out by the Legislature." *State v. Manocchio*, 743 A.2d 555, 558 (R.I. 2000); *see also State v. Badessa*, 869 A.2d 61, 64 (R.I. 2005).

E

The Expungement Statute

Importantly, the deferred sentence statute provides that after the Court determines a person has successfully completed a deferred sentence, "the person shall become immediately eligible for consideration for expungement pursuant to the provisions of §§ 12-1.3-2 and 12-1.3-3."[5] Sec. 12-19-19(c). The State contends that the deferred sentence statute acts as a Court dismissal of a criminal case without the consent of the State. The State equates the completion of a deferred sentence with a dismissal, a function that only the State has the authority to exercise. *See* Super. R. Crim. P. 48(a) (providing that "[t]he attorney for the State may file a dismissal of an indictment, information, or complaint and the prosecution shall thereupon terminate").

However, equating the completion of a deferred sentence with a dismissal of a criminal case is misguided. The comparison neglects to consider that the defendant completed the deferred sentence; and the case is neither dismissed nor does the statute still require that the defendant be exonerated. *See* §§ 12-1.3-2 and 12-1.3-3. Every criminal defendant seeking to

[5] Section 12-1.3-2(a), provides, in relevant part,

> "[a]ny person who is a first offender may file a motion for the expungement of all records and records of conviction for a felony or misdemeanor by filing a motion in the court in which the conviction took place; provided, that no person who has been convicted of a crime of violence shall have his or her records and records of conviction expunged; and provided, that all outstanding court-imposed or court-related fees, fines, costs, assessments, charges, and/or any other monetary obligations have been paid, unless such amounts are reduced or waived by order of the court." Sec. 12-1.3-2.

Moreover, § 12-1.3-3, entitled "Motion for expungement – Notice – Hearing – Criteria for Granting," establishes the considerations a court must make before it "may, in its discretion, order the expungement of the records of conviction of the person filing the motion . . . ." Sec. 12-1.3-3 (b).

expunge a criminal conviction following a completed sentence, including defendants who successfully complete a deferred sentence, must be eligible for expungement under the conditions enacted by the General Assembly. *See State v. Diamante*, 83 A.3d 546, 551 (R.I. 2014) (quoting *Manocchio*, 743 A.2d at 558) (holding that the Court "does not possess an 'inherent power to disregard the specific criteria and limitations on the expungement and sealing of . . . records that are set forth in the statute"'). With respect to expunging a criminal conviction, the same rights that are afforded to defendants who have completed a felony sentence are likewise afforded to a defendant who successfully completes a deferred sentence.

Subsection (c) of the deferred sentence statute as written does appear to present a conflict as to the amount of time that a defendant must wait before becoming eligible for an expungement hearing and that which is required by the expungement statutes. Upon the successful completion of a deferred sentence, a defendant "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(c). However, § 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).

This Court notes that § 12-1.3-2(e) does not disregard subsection (d), which states that "a person may file a motion for the expungement of records relating to a felony conviction after ten (10) years from the date of the completion of his or her sentence." Sec. § 12-1.3-2(d); *see also State v. Feng*, 421 A.2d 1258, 1264 (R.I. 1980) (quoting *Coastal Fin. Corp. v. Coastal Fin. Corp of N. Providence, R.I.*, 387 A.2d 1373, 1378 (1978)) (instructing that the court "shall not interpret a statue to include a matter omitted unless the clear purpose of the legislation would fail

without the implication"). Thus, there is a discrepancy between the deferred sentence statute's indication that a record is "immediately eligible" for expungement, and the language of § 12-1.3-2(d), establishing a ten-year waiting period before a felony record may become eligible.

Although notable, the inconsistent timing provisions are not currently at issue, as the scope of this Court's review is limited to determining the constitutionality of the deferred sentence statute. *See Paradis*, 678 A.2d at 445 (stating that the Superior Court conducts a *de novo* review of the portions of the record appealed when reviewing a magistrate decision). What is at issue is whether the expungement process established in subsection (c) of the deferred sentence statute infringes on the State's constitutional authority to prosecute criminal cases. Sec. 42-9-4(a); *see Young*, 941 A.2d at 128 (quoting *Rollins*, 116 R.I. at 533, 359 A.2d at 318) ("'It is well settled in this state that the Attorney General is the only state official vested with prosecutorial discretion.'").

As it is currently drafted, the deferred sentence statute explicitly requires that a defendant adhere to the expungement processes established in §§ 12-1.3-2 and 12-1.3-3. *See* § 12-19-19(c). Notwithstanding the previously discussed timing requirement, §§ 12-1.3-2 and 12-1.3-3 require that the Court conduct a hearing at which the State may object to a defendant's motion to expunge and may present relevant testimony and information that the Court must consider in deciding to grant or deny the motion. *See* § 12-1.3-3(b). Additionally, § 12-1.3-3(b)(1)(ii) explicitly provides that the Court may order a deferred sentence be expunged from a defendant's criminal record if the Court finds:

> "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 . . . 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." Sec. 12-1.3-3(b)(1)(ii)

Moreover, prior to the addition of subsection (c), our Supreme Court, in *Briggs*, determined that "individuals who successfully complete deferred sentences can wipe their records clean only if they are covered by the umbrella of the expungement statute." 934 A.2d at 817. The Court further stated that "deferred sentences should be treated like probationary dispositions in the expungement context. [The Court] h[as] characterized a *nolo contendere* plea followed by probation as a conviction for purposes of expungement." *Id.*

Interestingly, at the time of the deferred sentence statute's 2010 amendment, the newly enacted subsection (c) instructed that upon the successful completion of a deferred sentence, "the person shall be exonerated of the charges for which sentence was deferred and records relating to the criminal complaint, information or indictment shall be sealed pursuant to the provision of chapter 1 section 12 of this title." Sec. 12-19-19(c), as amended by P.L. 2010, ch. 128, § 1 and ch. 256, § 1. In *Morrice*, our Supreme Court determined that the 2010 amendment instituted remedial changes to the deferred sentence statute, which "purports to exonerate any person who successfully complies with the terms and conditions of a written deferral agreement." 58 A.3d at 163. The General Assembly later eliminated that provision and replaced it with the statute's current language. *See* § 12-19-19(c), as amended by P.L. 2016, ch. 202, § 2 and ch. 204, § 2.

IV

Conclusion

Having reviewed the record, this Court finds that the deferred sentence statute does not violate the separation of powers provision of the Rhode Island Constitution. As a result, this Court finds that the deferred sentence statute is constitutional. Accordingly, this Court affirms the Magistrate's decision. Counsel shall prepare an appropriate order.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**State of Rhode Island v. Megan Knight**
CASE NO:	**K2-2017-0453A**
COURT:	**Kent County Superior Court**
DATE DECISION FILED:	**June 8, 2018**
JUSTICE/MAGISTRATE:	**McGuirl, J.**
ATTORNEYS:	
For Plaintiff:	**Kaitlin Tracey, Esq.**
For Defendant:	**Samantha Slack, Esq.** **Michelle M. Alves, Esq.**