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THE APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
MONMOUTH COUNTY
LAW DIVISION, CRIMINAL PART
DOCKET NOS. XP- 21-0276
XP- 21-1767

STATE OF NEW JERSEY,

Plaintiff,

v.

R. O.-S.,¹

Defendant.

APPROVED FOR PUBLICATION

December 12, 2022

COMMITTEE ON OPINIONS

STATE OF NEW JERSEY,

Plaintiff,

v.

C.C.,²

Defendant.

Decided: November 19, 2021

¹ The court uses initials to protect the confidentiality of the participants in these proceedings. R. 1:38-3(c)(7).

² Throughout the opinion, where appropriate, C.C. and R.O.-S. are collectively referred to as Petitioners. When there is a need to distinguish between the two Petitioners, they are referred to by their initials.

Michael Costanzo, Special Deputy Attorney General/ Acting Assistant Prosecutor, for plaintiff (Lori Linskey, Acting Monmouth County Prosecutor, attorney).

Danielle Hughes, for defendants/petitioners (Katherine O'Brien Law, attorneys).

O'MALLEY, J.S.C.

I. INTRODUCTION

This case raises a question of first impression: whether the recently enacted amendment to the expungement statute, N.J.S.A. 2C:52-5.3, includes violations of local ordinances. Petitioners, C.C. and R.O.-S. have applied for “clean slate” expungements of multiple convictions under this statute including violations of local ordinances. Because Petitioners raise the same issue regarding expungement eligibility, this court has consolidated these matters.

II. FACTS

C.C.'s criminal record includes twelve indictable convictions, eleven disorderly persons convictions and one acquittal. C.C. has also been convicted of two borough ordinances: “Creating a Disturbance” and “Operating an ATV in a Public Park.” His 2001 conviction for “Creating a Disturbance” was originally charged as Simple Assault, in violation of N.J.S.A. 2C:12-1(a)(1).

On May 10, 2021, C.C. filed an application for expungement of his entire criminal history under the “clean slate” statute. On July 13, 2021, the State

objected to the application citing ineligibility under N.J.S.A. 2C:52-2, N.J.S.A. 2C:52-3 and N.J.S.A. 2C:52-4. On July 16, 2021, the State withdrew the objection after reconsideration of the application under the “clean slate” statute. In a subsequent letter, the State acknowledged that C.C.’s criminal convictions, disorderly persons convictions, and acquittals are eligible for expungement under N.J.S.A. 2C:52-5.3. However, the State objected to the expungement of C.C.’s two borough ordinance convictions arguing that these violations are not covered by the “clean slate” statute.

R.O.-S.’s criminal record includes two indictable convictions, four disorderly persons convictions and one borough ordinance conviction for “Loitering.” The borough ordinance conviction was originally charged as Theft, in violation of N.J.S.A. 2C:20-3.

On February 17, 2021, R.O.-S. filed an application for expungement of his entire criminal history under the “clean slate” statute. On June 8, 2021, the State objected to the application citing ineligibility under N.J.S.A. 2C:52-2 and N.J.S.A. 2C:52-4. On September 10, 2021, the State withdrew the objection after reconsideration of the application under the “clean slate” statute. In a subsequent letter, the State acknowledged that R.O.-S.’s criminal convictions, and disorderly persons convictions are eligible for expungement under N.J.S.A. 2C:52-5.3. However, the State objected to the expungement of the borough

ordinance conviction arguing that this violation is not covered by the “clean slate” statute.

In Petitioners’ brief, counsel concedes that N.J.S.A. 2C:52-5.3 does not provide for the expungement of local ordinance convictions.³ In these cases, however, Petitioners argue an exception to the rule. Here, both Petitioners were originally charged with a Title 2C violation which was subsequently amended to a local ordinance violation. Because it originated as a criminal offense, Petitioners argue that both the plain language and legislative intent of the statute call for the expungement of that conviction.

The parties submitted briefs in support of their respective positions and oral argument was heard on November 10, 2021.

III. LEGAL ANALYSIS

Petitioners seek expungement pursuant to the recently-enacted “clean slate” statute, N.J.S.A. 2C:52-5.3. This statute reads:

³ At oral argument on November 10, 2021, Petitioners clarified this position indicating that N.J.S.A. 2C:52-5.3 simply does not address local ordinance violations and therefore it is unclear whether local ordinances are eligible for expungement under this statute. Petitioners maintained, however, that because local ordinances that do not arise from Title 2C violations do not carry the same stigma or paper trail as those that do originate from Title 2C violations, the expungement of such charges is not of equal significance. Because the issue before the court today is the expungement of local ordinances arising from Title 2C violations, the court will limit its decision to that issue.

a. A person, who is not otherwise eligible to present an expungement application pursuant to any other section of chapter 52 of Title 2C of the New Jersey Statutes or other section of law, may present an expungement application to the Superior Court pursuant to this section if the person has been convicted of one or more crimes, one or more disorderly persons or petty disorderly persons offenses, or a combination of one or more crimes and offenses under the laws of this State, unless the person has a conviction for a crime which is not subject to expungement pursuant to subsection b. or c. of N.J.S.2C:52-2. The person may present an application pursuant to this section regardless of whether the person would otherwise be ineligible pursuant to subsection e. of N.J.S.2C:52-14 for having had a previous criminal conviction expunged, or due to having been granted an expungement pursuant to this or any other provision of law.

b. The person, if eligible, may present the expungement application after the expiration of a period of ten years from the date of the person's most recent conviction, payment of any court-ordered financial assessment, satisfactory completion of probation or parole, or release from incarceration, whichever is later. The term "court-ordered financial assessment" as used herein and throughout this section means and includes any fine, fee, penalty, restitution, and other form of financial assessment imposed by the court as part of the sentence for the conviction or convictions that are the subject of the application, for which payment of restitution takes precedence in accordance with chapter 46 of Title 2C of the New Jersey Statutes. The person shall submit the expungement application to the Superior Court in the county in which the most recent conviction for a crime or offense was adjudged, which includes a duly verified petition as provided in N.J.S.2C:52-7 praying that all the person's convictions, and all records and information pertaining thereto, be expunged. The petition appended

to an application shall comply with the requirements set forth in N.J.S.2C:52-1 et seq.

In the present case, the parties believe that the granting or denying of Petitioners' request turns on the phrase: "has been convicted of one or more crimes, one or more disorderly persons or petty disorderly persons offenses, or a combination of one or more crimes and offenses under the laws of this State." Ibid. The State and Petitioners advance competing interpretations. The State proposes a strict interpretation arguing that, under the plain language, only crimes and offenses can be expunged. Because it is neither a crime nor an offense, the State submits that the relief granted by this statute does not apply to local ordinances.

Petitioners submit that a plain reading of N.J.S.A. 2C:52-5.3 does not prohibit the expungement of municipal ordinance convictions that resulted from downgraded Title 2C charges. Rather, Petitioners believe the language at issue was intended to act as a prerequisite to eligibility under the Statute.⁴

⁴ According to Petitioners, this along with the following two requirements are the only requirements for a "clean slate" expungement: a petitioner must not have a conviction for an indictable offense that is ineligible for expungement and ten years must have elapsed from the date of petitioner's most recent conviction, payment of a court-ordered financial assessment, satisfactory completion of probation or parole or release from incarceration, whichever is later. C.C.'s most recent conviction occurred in 2004. R.O.-S.'s most recent conviction was in 2009.

To resolve a question of statutory interpretation like the one raised here, “we must discern and give effect to the Legislature’s intent.” In re Expungement of the Arrest/Charge Recs. of T.B., 236 N.J. 262, 274 (2019). Courts must first look to the statute’s plain language, viewing the statute as a whole, with a focus on its general intent. Ibid. “[W]here a statutory provision is clear and not unreasonable or illogical in its operation, a court may not go outside the statute to give it a different meaning.” In re Expungement Petition of J.S., 223 N.J. 54, 72 (2015) (citing Norman J. Singer & J.D. Shambie Singer, 1A Sutherland on Statutory Construction § 46:1, at 137-41 (7th ed. 2007)). If the statute remains ambiguous after this initial analysis, the court must consult extrinsic evidence like legislative history. Id., at 72-73.

Here, Petitioners and State point to the following language as critical to the court’s analysis: “has been convicted of one or more crimes, one or more disorderly persons or petty disorderly persons offenses, or a combination of one or more crimes and offenses under the laws of this State.” N.J.S.A. 2C:52-5.3. Of note, this language is contained in subsection “a” of N.J.S.A. 2C:52-5.3, which defines the eligibility requirements for relief. The highlighted language is but a small portion of that section. Although important, it cannot be viewed in isolation. Rather, the court must consider the paragraph—and indeed, the statute—as a whole, to determine its meaning.

N.J.S.A. 2C:52-5.3(a) begins with, “[a] person, who is not otherwise eligible to present an expungement application pursuant to any other section of chapter 52 of Title 2C of the New Jersey Statutes or other section of law, may present an expungement application to the Superior Court pursuant to this section if” before proceeding to the language highlighted by the parties. Such a sweeping proclamation announces an intention to expand expungement eligibility far beyond what had previously been contemplated within the parameters of Chapter 52. In other words, individuals who had previously been ineligible for relief because of the strict requirements of the expungement statute have been afforded a new and more forgiving pathway.

Prior to the codification of the “clean slate” statute, the Criminal Code permitted, for example, the expungement of indictable offenses under N.J.S.A. 2C:52-2, disorderly and petty disorderly persons offenses under N.J.S.A. 2C:52-3, local ordinances under N.J.S.A. 2C:52-4 and juvenile matters under N.J.S.A. 2C:52-4.1. Each of these statutes has different requirements for who is eligible, what is eligible, and when a petition is eligible for consideration.

Undoubtedly, the Legislature was aware of existing expungement statutes when it crafted N.J.S.A. 2C:52-5.3. See State v. Goodwin, 224 N.J. 102, 113 (2016) (“[The Legislature] is presumed to [be] thoroughly conversant with its own [prior] legislation and the judicial construction of its statutes.”) (alterations in original,

internal quotations omitted). By drafting a statute for individuals “not otherwise eligible,” the Legislature acknowledged the barriers and signaled an intent to remove them. N.J.S.A. 2C:52-5.3(a). This is further evidenced by the fact that where and when the Legislature intended to continue a previously imposed barrier—for example, the requirement that a petitioner not be convicted of certain enumerated offenses as outlined in N.J.S.A. 2C:52-2(b)—it expressly used such language in N.J.S.A. 2C:52-5.3.

It is with this understanding that the court must approach the remaining language in N.J.S.A. 2C:52-5.3. After a broad, introductory clause, N.J.S.A. 2C:52-5.3 states,

A person... may present an expungement application to the Superior Court pursuant to this section if the person has been convicted of one or more crimes, one or more disorderly persons or petty disorderly persons offenses, or a combination of one or more crimes and offenses under the laws of this State, unless the person has a conviction for a crime which is not subject to expungement pursuant to subsection b. or c. of N.J.S.2C:52-2.

[Emphasis added.]

Significantly, this paragraph does not specify which offenses are eligible for expungement. Rather, the language describes who may present an application under this statute. The references to crimes, disorderly persons offenses and petty

disorderly persons offenses follow the terms “an individual may present.” It is clear, therefore, that these terms relate to eligibility for the application.

To conclude otherwise, as Petitioners point out, would lead to absurd results. If the court were to accept the State’s literal reading of this statute, then only convictions for crimes, disorderly persons offenses and petty disorderly persons offenses would be eligible for expungement. This would preclude the expungement of acquittals and dismissed charges under this statute. If the court were to accept this interpretation, petitioners would be required to engage in a two-step process whereby convictions would be expunged under N.J.S.A. 2C:52-5.3 and dismissed charges would be expunged under N.J.S.A. 2C:52-6.

Such a laborious process not only undermines judicial economy and resources but also contradicts subsection “d” of N.J.S.A. 2C:52-5.3. This last subparagraph of the statute states: “No expungement applications may be filed pursuant to this section after the establishment of the automated clean slate process.” Considering that the Legislature has sought to automate the expungement under N.J.S.A. 2C:52-5.3, the court finds it hard to believe that it envisioned a bifurcated process for petitioners who also seek to rid their history of acquittals and dismissals.

That the Legislature sought to automate the “clean slate” process is significant for another reason. Specifically, it further underscores the importance of this new statute and the Legislature’s desire to make this remedy

accessible to the masses. In other words, the Legislature intended N.J.S.A. 2C:52-5.3 to be expansive, accessible and immediate. The “clean slate” statute is designed to be inclusive, not exclusive.

Extrinsic evidence of the intent behind N.J.S.A. 2C:52-5.3 further supports this interpretation. First, as previously noted, the “clean slate” statute is a recent addition to Chapter 52, codified in 2019. According to the Legislative statement submitted to accompany the bill, the purpose of the “clean slate” statute was designed to be a “broad form of . . . relief.” See S. 4154 (2019). The Legislature made this amendment recognizing that, “an eligible person could file for “clean slate” expungement relief even if that person had a previous criminal conviction expunged, which is normally a disqualifier for expungement pursuant to N.J.S. 2C:52-14.” Id.

The Legislature’s expressed intent to increase the number of convictions eligible for expungement is consistent with the general purpose of the expungement statute to “eliminate the collateral consequences imposed upon otherwise law-abiding citizens who had a . . . brush with the criminal justice system.” In re Kollman, 210 N.J. 557, 568 (2012). Indeed, it is designed to provide relief to the “reformed offender who has led a life of rectitude and disassociated himself with unlawful activity” N.J.S.A. 2C:52-32.

Moreover, as remedial legislation, the expungement statute should be interpreted liberally. Maglies v. Est. of Guy, 193 N.J. 108, 123 (2007).

The general intent and purpose of the expungement statute is significant when considering the issue presently before the court. Here, C.C. was charged with Simple Assault, in violation of N.J.S.A. 2C:12-1(a)(1). This charge was ultimately resolved as a local ordinance, specifically “Disturbing the Peace.” Likewise, R.O.-S. was charged with Theft, in violation of N.J.S.A. 2C:20-3. This charge was ultimately resolved as a local ordinance, specifically “Loitering.” That these “convictions” originated from offenses within our criminal code is important. Criminal charges—whether they are indictable offenses, disorderly persons offenses, or petty disorderly persons offenses—carry a stigma that have the potential to impact an individual’s career prospects, housing opportunities, and access to education. Typically, these charges are accompanied by police and arrest reports, fingerprint cards, “mug shots,” complaint warrants or summonses and most importantly, they are included on an individual’s criminal case history or “RAP” sheet. Absent an expungement of the local ordinance that resulted from the Title 2C offense, C.C. is left with an arrest record for Simple Assault and R.O.-S. is left with a criminal record for Theft. This persistent criminal history is not what the “clean slate” statute

intended. Indeed, it undermines the very purpose and intent of N.J.S.A. 2C:52-5.3.

For these reasons, the court finds that expungement of C.C.'s and R.O.-S.'s entire criminal histories, including for the violation of any local ordinance that originated from a Title 2C violation is consistent with N.J.S.A. 2C:52-5.3 and legislative intent. Consequently, Petitioners' motion for expungement is granted.