

RECORD IMPOUNDED

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This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2577-16T3

IN THE MATTER OF THE
EXPUNGEMENT OF E.M.¹

Submitted January 22, 2018 – Decided February 8, 2018

Before Judges Sabatino and Ostrer.

On appeal from Superior Court of New Jersey,
Law Division, Essex County, Docket No. MX-470-
15.

Essex-Newark Legal Services, attorneys for
appellant E.M. (Felipe Chavana, Executive
Director, of counsel and on the brief;
Elizabeth A. Duelly, on the brief).

Robert D. Laurino, Acting Essex County
Prosecutor, attorney for respondent State of
New Jersey (Frank J. Ducoat, Special Deputy
Attorney General/Acting Assistant Prosecutor,
of counsel and on the brief).

PER CURIAM

After E.M. fulfilled all but one condition of pretrial
intervention, the trial court entered a June 2013 order dismissing
the indictment charging him with second-degree conspiracy to

¹ We grant petitioner's renewed request, which is unopposed, to shield his name and to impound the record.

commit theft; second-degree theft; and second-degree financial facilitation of criminal activity. The one remaining unfulfilled condition was payment of restitution of over \$58,000. Defendant had dutifully paid \$102 a month, as ordered, but a balance of over \$55,000 remained. The court ordered entry of a civil judgment in favor of the Probation Division for that amount. Over two years later, still dutifully reducing his amount due, E.M. filed a verified petition to expunge the record of his arrest, indictment and related proceedings, pursuant to N.J.S.A. 2C:52-6.

The prosecutor initially opposed the petition, contending that (1) the arrest was "the subject matter of civil litigation," N.J.S.A. 2C:52-14(d); and (2) "the need for the availability of the records outweigh[ed] the desirability" of expungement, N.J.S.A. 2C:52-14(b). The trial court thereafter dismissed defendant's petition without prejudice "because petitioner owes a balance."

E.M. appeals, arguing that his outstanding financial obligation is not an impediment to expungement. Abandoning its position before the trial court, the State now agrees. Noting that the trial court did not rely on its "need for the availability of records" argument, the State also does not renew that position before us.

We agree with the parties and write briefly because the issue is capable of repetition. The question is a purely legal one that we review de novo. In re Expungement Petition of J.S., 223 N.J. 54, 72 (2015). We need look no further than the plain, unambiguous language of the statute. In re Kollman, 210 N.J. 557, 568 (2012). A person is generally entitled "to expungement of all records and information relating to [an] arrest or charge" after dismissal, acquittal, or discharge without a conviction or finding of guilt. N.J.S.A. 2C:52-6(a). However, "[a]ny person who has had charges dismissed against him [or her] pursuant to a program of supervisory treatment pursuant to N.J.S.[A.] 2C:53-12 [pretrial intervention] . . . shall be barred from the relief provided . . . until six months after the entry of the order of dismissal." N.J.S.A. 2C:52-6(c)(1).


E.M. satisfied those prerequisites. Therefore, he was presumptively entitled to expungement, and the burden shifted to the State to establish a basis for denying relief under N.J.S.A. 2C:52-14. See Kollman, 210 N.J. at 569-70 (discussing shifting burdens).

As the State now concedes, an outstanding judgment, consisting of a restitutionary balance due, does not render E.M.'s "arrest . . . the subject matter of civil litigation." N.J.S.A. 2C:52-14(d). That provision refers to pending civil litigation.

State v. J.R.S., 398 N.J. Super. 1, 5 (App. Div. 2008). Also, the "civil litigation" exception was apparently designed to assure that the litigant is not deprived of the information necessary to prosecute or defend the litigation. Id. at 5-6. There is no pending litigation here, nor does the Probation Division need to use E.M.'s arrest records to enforce the civil judgment, which shall survive the expungement.

Therefore, we reverse the trial court's order and remand for entry of an order of expungement.

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


CLERK OF THE APPELLATE DIVISION