

**NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION**

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-3812-21

IN THE MATTER OF THE  
EXPUNGEMENT OF THE  
CRIMINAL/JUVENILE  
RECORDS OF MICHAEL LISA.

---

Argued September 13, 2023 – Decided October 16, 2023

Before Judges Currier and Susswein.

On appeal from the Superior Court of New Jersey, Law  
Division, Monmouth County, Docket No. 21-2314.

Edward C. Bertuccio argued the cause for appellant  
Michael Lisa (Law Office of Edward C. Bertuccio,  
Esq., LLC, attorneys; Edward C. Bertuccio, of counsel  
and on the brief).

Monica do Outeiro, Assistant Prosecutor, argued the  
cause for respondent State of New Jersey (Raymond S.  
Santiago, Monmouth County Prosecutor, attorney;  
Monica do Outeiro, of counsel and on the brief).

PER CURIAM

Petitioner appeals from the June 24, 2022 order denying his petition for  
expungement. We affirm.

In 2021, petitioner filed a petition for expungement under the Clean Slate statute, N.J.S.A. 2C:52-5.3, seeking to expunge July 2008 convictions of "dispensing" of CDS, N.J.S.A. 2C:35-5(b)(5), and third-degree aggravated assault, N.J.S.A. 2C:12-1(b)(7). Petitioner also sought to expunge certain juvenile adjudications of delinquency. The State objected to the petition.

Petitioner's convictions arose out of his interactions with the seventeen-year-old victim, Mandy.<sup>1</sup> During his plea hearing, petitioner admitted he had "vigorous" sexual relations with Mandy during which she suffered "significant bodily injury." He agreed his conduct was reckless. He also admitted giving Mandy methadone. Petitioner completed his four-year sentence and was released from prison in June 2011.

On June 24, 2022, the court issued a well-reasoned written opinion and accompanying order, denying the expungement petition. The court found petitioner was eligible to file the petition under N.J.S.A. 2C:52-5.3 because the filing was more than ten years after his release from prison. N.J.S.A. 2C:52-5.3(b).

The court then noted the burden shifted to the State to present a reason supporting a denial of the petition. Here, the State relied on N.J.S.A. 2C:52-

---

<sup>1</sup> We use a pseudonym to protect the victim's privacy. See R. 1:38-3(c)(12).

14(b), which states an expungement must be denied when "[t]he need for the availability of the records outweighs the desirability of having a person freed from any disabilit[y associated with their availability]." The State asserted the victim's family had an interest in the criminal records remaining public and the nature of the convictions required their continuing availability to certain segments of the community.

In considering the petition, the court carefully noted the convictions and the particular circumstances of the crimes. The court also reviewed the report detailing the forensic examination of Mandy during which the examining nurse found multiple tears to the victim's cervix, vagina and anus, describing it as "by far the most injuries [she had] ever seen on one person after a report of an assault." The court found "[p]etitioner committed an aggravated assault in which he reckless[ly] caused those injuries during sex."

In determining whether the State met its burden to establish the need for the availability of the records outweighed the desirability of freeing petitioner from any disabilities of having the records available, the court stated:

Those injuries, and the circumstances of this crime, are essential in understanding the need for the availability of the records regarding same. The court finds the need for the availability of the records is significant and has a far-reaching scope.

Initially, there is a need for the records to be available to potential employers, community or volunteer organizations, or others with whom petitioner may seek employment or any positions. That would include any such employment or other position placing petitioner in a position of trust over others, or which places others in a sensitive position under petitioner. Further, there would be an even more particularized need for the records to be available to organizations or employers focused on care or support for women, or women-focused clientele, co-workers, or focused upon women-related issues. The same would be true for other organizations or employers, including those involved with vulnerable populations as co-employees or clientele, especially if petitioner would be placed in a position of trust or authority over such persons. The records need to be available for the foregoing to know petitioner had the capacity to engage in, and in fact engaged in, the conduct for which he pled guilty as part of their decision-making process in assessing petitioner's suitability for any position.

Moreover, there is the need for the records to be available to women who may encounter petitioner and potentially become involved in a relationship with him. Again, this was not a minor incident or insignificant incident. Petitioner admitted he caused the significant bodily injury to Mandy recklessly during sex. As explained by the SANE nurse, there were "by far the most injuries" she ever saw in the over 150 examinations she performed and thousands of records she reviewed. There is a need for the availability of the records for any woman that might become involved with petitioner for her to be aware he had the capacity to, and in fact did, engage in such conduct in the past.

While petitioner's future employment, volunteer or community organization, or other pursuits or

encounters are unknown. The particularized need for the availability of records does not have to be related to a particular identified entity or person; the above-mentioned areas of a particularized need are sufficient. In fact, a specific employer or person cannot usually be identified in this type of application before the court as the future is unknown. However, what is known is the records of petitioner's crime need to be available for any of those referenced herein to have the information about the circumstances of petitioner's crime to know he had the capacity to commit such a crime as a consideration in their determination. Overall, specifically or generally, there are a vast array of entities, organizations, and persons that would need the records for the outlined reasons.

The court finds the need for the availability of records based upon the foregoing analysis focused on the aggravated assault conviction alone. However, when considering both convictions in conjunction with one another, the court's above finding of need for the availability of records is only strengthened and underscored.

The other crime was committed on the same day as the assault. Petitioner admitted he gave Mandy drugs the night he assaulted her. At the time of his plea[,] petitioner was asked, "did you give her[, Mandy,] methadone?" He said yes. Petitioner was then asked[,] "did you do that knowingly?" He said yes. The questioning continued, "[a]nd by that I mean, did you know it was methadone you were giving her?" Again, petitioner responded yes. That was summed up with the question, "[a]nd did you give it to her with the intention to give it to her? Petitioner again responded yes. Upon the next question, asking "did you know that was illegal," petitioner said yes.

At the time of his plea[,] petitioner did not state whether he gave the drugs to Mandy before or after the assault. But that is of no consequence, petitioner indicated he gave Mandy drugs on the same day, and therefore either before assaulting her during sex, or after he had assaulted her during sex. Petitioner admitted he gave Mandy drugs on the same day he committed the aggravated assault during sex. That underscores the need as outlined above, including those who would need to have the records available—whether entities, organizations, or individuals—and the same reasons they would need to have that information available.

The court also finds the State carried its burden to establish the need for the availability of those records outweighs the desirability of having petitioner freed from any disabilities of having the records available. As pointed out above, there is a far-reaching scope of the need for availability of the records. There is also a significant need for the availability of those records. The court assesses that need qualitatively and, considering the circumstances of petitioner's crimes, and the far-reaching scope and significance of the need for the availability of the records as identified above, the court in fact finds the need for the availability of the records far outweighs any desirability for petitioner to be freed from any disabilities of same as would be provided by the expungement.

[(all but first, third, and last alterations in original)  
(citations omitted).]

Therefore, the court denied the expungement petition.

On appeal, petitioner contends the court erred in denying his petition for expungement. At a minimum, he asserts the CDS conviction and all juvenile records should be expunged.

Petitioner does not contend the court misinterpreted the expungement statute; he instead challenges the court's weighing of the competing factors under N.J.S.A. 2C:52-14(b). We review the "court's balancing of competing factors for abuse of discretion." In re Kollman, 210 N.J. 557, 577 (2012). "Under that standard, a reviewing court should not substitute its judgment if the trial court's ruling was within 'a range of acceptable decisions.'" Ibid. (quoting Parish v. Parish, 412 N.J. Super. 39, 73 (App. Div. 2010) (Ashrafi, J., concurring and dissenting)). However, the "trial court's interpretation of the law . . . [is] not entitled to . . . special deference." Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995) (citing State v. Brown, 118 N.J. 595, 604 (1990)). We review legal questions de novo. See State v. Gandhi, 201 N.J. 161, 176 (2010).

The trial court found petitioner was "presumptively eligible for expungement of 'all' his convictions pursuant to N.J.S.A. 2C:52-5.3." However, the court denied the petition under N.J.S.A. 2C:52-14(b), finding the State demonstrated the need for the availability of the records outweighed the

desirability of freeing petitioner from any disabilities incurred by the records' availability.

As our Supreme Court has stated:


Section 14(b) calls for a qualitative assessment of the public and private interests at stake, which does not turn on the fact of a conviction . . . . [T]he section places the burden on the objector to assert grounds that might weigh against expungement. Those grounds could include, among other things, the circumstances of a particular offense, details about what the applicant did, and the harm the person caused.

[In re Petition for Expungement of Crim. Rec. Belonging to T.O., 244 N.J. 514, 536 (2021).]

Here, the court carefully considered the circumstances of the offenses, the nature of petitioner's actions and the harm he caused the victim. We discern no reason to disturb the well-reasoned analysis and affirm substantially for the reasons expressed by the trial court. The State has established the need for specific segments of society—employers, community and volunteer organizations, and women, generally—to access records pertaining to defendant's admitted criminal conduct.

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION