

RECORD IMPOUNDED

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-6087-08T4

IN THE MATTER OF THE APPLICATION
OF R.W.B., JR., FOR THE EXPUNGEMENT
OF RECORDS.

Submitted March 9, 2010 - Decided March 23, 2010

Before Judges Wefing and Grall.

On appeal from Superior Court of New
Jersey, Law Division, Middlesex County,
Docket No. M-502-08.

Allan Marain, attorney for appellant
R.W.B., Jr.

Bruce J. Kaplan, Middlesex County
Prosecutor, attorney for respondent
State of New Jersey (Simon Louis Rosenbach,
Assistant Prosecutor, of counsel and on
the brief).

PER CURIAM

R.W.B., Jr., appeals from the denial of his verified petition to expunge his 1997 convictions for conspiring to possess, possess with intent to distribute and distribute a controlled dangerous substance, N.J.S.A. 2C:5-2 and N.J.S.A. 2C:35-10 and N.J.S.A. 2C:35-5. R.W.B., Jr., was twenty-one years of age or younger when he committed the crimes, and his request for expungement of his convictions was filed pursuant to

N.J.S.A. 2C:52-5. His petition also included a request to expunge the record of his arrest in 1992 pursuant to N.J.S.A. 2C:52-6, which the trial judge granted. With respect to R.W.B., Jr.'s convictions, however, the judge concluded that N.J.S.A. 2C:52-2c barred relief. The State concedes that N.J.S.A. 2C:52-2c is inapplicable. We agree and reverse.

Expungement is a statutory remedy enacted by the Legislature to "give a one-time offender who has changed his or her life a second chance." State v. N.W., 329 N.J. Super. 326, 333 (App. Div. 2000). As explained in N.W., the Legislature has stated general rules authorizing the remedy and exceptions for designated offenses; courts construe the exceptions narrowly in accordance with the Legislature's remedial purpose. Ibid.

The trial judge focused on an exception applicable to specified drug crimes. In pertinent part, N.J.S.A. 2C:52-2 provides:

c. In the case of conviction for the sale or distribution of a controlled dangerous substance or possession thereof with intent to sell, expungement shall be denied except where the crimes relate to:

(1) Marijuana, where the total quantity sold, distributed or possessed with intent to sell was 25 grams or less, or

(2) Hashish, where the total quantity sold, distributed or possessed with intent to sell was five grams or less.

The provision has no application because R.W.B., Jr., was not convicted of sale, distribution or possession with intent to sell. He was convicted of inchoate crimes – conspiring to possess, conspiring to possess with intent to distribute and conspiring to distribute.

Where the Legislature has deemed it appropriate to bar expungement of convictions for conspiring to commit designated crimes, the Legislature has expressed that intention with unmistakable clarity. Three provisions of N.J.S.A. 2C:52-2, the statute at issue here, expressly bar expungement of convictions for conspiracy to commit designated crimes. Subsection b of N.J.S.A. 2C:52-2 identifies, in three separate paragraphs, convictions for specific crimes committed under prior law, committed under the New Jersey Code of Criminal Justice and committed by a person holding a public office, position or employment. N.J.S.A. 2C:52-2b. In each instance, conspiracies and attempts to commit the designated crimes are expressly included in the ban. Ibid. Under the reasoning of N.W., with which we agree, courts should construe the exceptions to the general rule strictly, leaving the scope of the statutory exclusions to the Legislature and applying the statutory language in accordance with the plain meaning of its terms. N.W., supra, 329 N.J. Super. at 331, 333-34.

Reversed and remanded for entry of an order in conformity
with this opinion.

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



CLERK OF THE APPELLATE DIVISION