

---

EXPUNGEMENT APPLICATION :  
OF CHARLES PSEUDONYM : SUPERIOR COURT  
 : OF NEW JERSEY  
 : LAW DIVISION  
 : MIDDLESEX COUNTY  
 : DOCKET M-380-17  
 :  
 : CRIMINAL ACTION

---

---

BRIEF AND APPENDIX ON  
BEHALF OF CHARLES PSEUDONYM

---

Law offices of Allan Marain  
100 Bayard Street  
P.O. Box 1030  
New Brunswick, NJ 08903  
Telephone: 732-828-2020  
Allan@MarainLaw.com  
File No. 7690  
Attorneys for Charles Pseudonym

On the Brief:

Allan Marain  
016001976

TABLE OF CONTENTS

PRELIMINARY STATEMENT . . . . . 1

PROCEDURAL HISTORY . . . . . 2

STATEMENT OF FACTS . . . . . 4

STATEMENT OF LAW

POINT ONE

THE STATE’S OBJECTION TO EXPUNGEMENT OF  
PETITIONER’S ORDINANCE CONVICTION ARISES  
FROM A FLAWED STATUTORY INTERPRETATION . . . . . 5

POINT TWO

JUDICIAL ECONOMY CALLS FOR CONSIDERATION  
OF PETITIONER’S TWO CONVICTIONS IN A  
SINGLE PROCEEDING . . . . . 13

POINT THREE

N.J.S. 2C:52-14e(1) ALLOWS BOTH  
CONVICTIONS TO BE EXPUNGED IN A SINGLE  
PROCEEDING . . . . . 17

CONCLUSION . . . . . 19

TABLE OF CONTENTS TO APPENDIX

Verified Petition for Expungement of Records . . . 1a

Order Fixing Hearing Date . . . . . 9a

(Unsigned) Final Order for Expungement  
of Records . . . . . 11a

State's Letter Objecting to Expungement  
of Ordinance . . . . . 18a

Petitioner's Reply Letter . . . . . 20a

(Unsigned) Final Order That Omits  
Reference to Ordinance . . . . . 22a

(Unsigned) Final Order That Expunges  
Ordinance . . . . . 29a

TABLE OF AUTHORITIES

CASES CITED

Carpenter Technology Corp. v. Admiral Ins. Co., 172 N.J. 504 (2002)	11
J.N.G., In re, 244 N.J. Super. 605 (App. Div., 1990)	16
Marino v. Marino, 200 N.J. 315 (2009)	9
State v. A.N.J., 98 N.J. 421 (1985)	11
State v. Gelman, 195 N.J. 475 (2008)	8, 14
State v. Greeley, 178 N.J. 340 (2004)	12
State v. Hotel Bar Foods, 18 N.J. 115 (1955)	7, 14
State v. McKeon, 385 N.J. Super. 559 (App.Div., 2006)	10

STATUTES CITED

L.1981, c. 290	11
L.2009, c. 188	11
L.2015, c. 261	11, 12
N.J.S. 2A:168A-1	9
N.J.S. 2C:35-10	2

N.J.S. 2C:5-2 . . . . .	2
N.J.S. 2C:52-1 . . . . .	14
N.J.S. 2C:52-14 . . . . .	11, 12
N.J.S. 2C:52-14e(1) . . . . .	6-8, 12, 14, 17-19
N.J.S. 2C:52-2 . . . . .	9, 13
N.J.S. 2C:52-24 . . . . .	3
N.J.S. 2C:52-3 . . . . .	11-13
N.J.S. 2C:52-4 . . . . .	5-8, 12
N.J.S. 2C:52-9 . . . . .	3

ORDINANCE CITED

Kearny 16-12.1H . . . . .	2
---------------------------	---

RULES OF EVIDENCE CITED

N.J.R.E. 201(b)(2) . . . . .	4
N.J.R.E. 201(b)(3) . . . . .	14

OTHER AUTHORITIES CITED

<https://www.njexpungements.com/faq.php> . . . . . 15

Orwell, George,  
    *Animal Farm* (1945) . . . . . 4

Sandford, Scott A.,  
    *Apples and Oranges: a Comparison*, *Annals of*  
    *Improbable Research*, *The Journal of Record*  
    *for Inflated Research and Personalities*,  
    May/June 1995 . . . . . 19

Shakespeare,  
    *Hamlet*, Act III, Scene I . . . . . 8

## **PRELIMINARY STATEMENT**

Petitioner has applied for expungement of records relating to various arrests and convictions. The State opposes Petitioner's application with respect to one of the matters for which expungement is sought.

Stripped to its basics, the question that Petitioner's application presents is this: If accomplishment of Task A is a prerequisite to consideration of Task B, can both Task A and Task B be processed in a single proceeding? The State says no. Petitioner says yes.

"Task A" in this case is expungement of an indictable conviction. "Task B" is expungement of a conviction of violating a township ordinance. The relevant statute specifies that a township ordinance conviction can be expunged despite conviction of an indictable offense provided that the indictable conviction has also been expunged.

Petitioner demonstrates herein that logic, legislative history, sound principles of statutory

construction, and judicial economy all point to an affirmative answer to the question presented.

### **PROCEDURAL HISTORY**

The Court filed Petitioner's seven-count Verified Petition for Expungement of Records on June 9, 2017 (Pa1)<sup>1</sup>. Accompanying his Petition were a form of Order Fixing Hearing Date, and form of Final Order for Expungement of Records (Pa11).

Count Six of his Petition recited a 1999 Municipal Court conviction for possession of alcohol in public, contrary to Kearny Ordinance 16-12.1H (Pa5). Count Seven recited a 2002 Middlesex County conviction of conspiracy to possess a controlled dangerous substance, contrary to N.J.S. 2C:5-2 and N.J.S. 2C:35-10 (Pa6).<sup>2</sup>

On June 16, 2017, the Court fixed a hearing date of July 21, 2017 (Pa9). By way of letter dated October 20, 2017, the State objected to expungement of Count

---

<sup>1</sup>"P" stands for Petitioner.

<sup>2</sup>The interplay of Counts Six and Seven are the only two counts at issue in this application.



Six (Pa18).<sup>3</sup> Explaining the State's objection, the

---

<sup>3</sup>N.J.S. 2C:52-9 provides:

Upon the filing of a petition for relief pursuant to this chapter, the court shall, by order, fix a time not less than 35 nor more than 60 days thereafter for hearing of the matter.

In setting a hearing date of July 21, 2017, this Court complied with both the letter and the spirit of N.J.S. 2C:52-9. In enacting N.J.S. 2C:52-24, the Legislature contemplated that, within that time, the county prosecutor would verify the accuracy of the Petition and notify the court of "any facts which may be a bar to, or which may make inappropriate the granting of, such relief."

Despite the Court having ordered a hearing for July 21, it was not until October 20, three months later, that the prosecutor informed the Court of the State's position. Now Petitioner's hearing is listed for January 19, 2018, three additional months, and a total gap exceeding seven months from the filing of the Petition.

Petitioner acknowledges that delays of this nature arise in the first instance from failure of New Jersey State Police to complete its own investigation and inform the prosecutor of its results. But prosecutors then add to processing time when they delay reviewing State Police results and notifying courts of their recommendations. Courts countenance this foot-dragging by both the State and New Jersey State Police by considering expungement petitions only after the State has provided its input. Courts then further exacerbate this delay by affording expungement applications low judicial priority.

State's letter specified (Pa18, emphasis in original):

**1. Petitioner's (1) indictable conviction precludes any ordinance violations from being expunged.**

**N.J.S.A. 2C:52-4.** Pursuant to N.J.S.A. 2C:52-4, an ordinance violation is not eligible for expungement if the Petitioner has been convicted of a prior or subsequent indictable crime. Accordingly, Petitioner's 3/15/02 arrest resulting in an indictable conviction renders Petitioner's 08/20/00 arrest resulting in an ordinance violation, ineligible for expungement.

Petitioner responded to the State's objection on October 27, 2017 (Pa20).

**STATEMENT OF FACTS**

On August 20, 2000, Petitioner was convicted of violating a municipal ordinance. On March 15, 2002, Petitioner was convicted of an indictable offense. Petitioner now seeks expungement of both convictions.<sup>4</sup>

---

Delays of this nature are discouragingly routine. It is the rare expungement application that is completed within the legislatively specified time frame, N.J.R.E. 201(b)(2). It would appear that some statutes are more equal than others. See George Orwell, *Animal Farm*.

<sup>4</sup>As suggested above, this recitation is highly simplified. Inasmuch as the State's objection

The State lodges no objection to expungement of Petitioner's 2002 indictable conviction. However, the State maintains that Petitioner's conviction of an indictable offense requires that expungement of the ordinance conviction be denied. Petitioner disagrees.

## **STATEMENT OF LAW**

### **POINT ONE**

#### **THE STATE'S OBJECTION TO EXPUNGEMENT OF PETITIONER'S ORDINANCE CONVICTION ARISES FROM A FLAWED STATUTORY INTERPRETATION**

In opposing expungement of Petitioner's ordinance conviction, the State relies upon N.J.S. 2C:52-4 (Pa18). That statute provides (emphasis added):

In all cases wherein a person has been found guilty of violating a municipal ordinance of any governmental entity of this State **and who has not been convicted of any prior or subsequent crime**, whether within this State or any other jurisdiction, and who has not been adjudged a disorderly person or petty disorderly person on more than two occasions, may, after the expiration of a period of 2 years from

---

implicates none of the other counts, Petitioner refrains from burdening the reader with details of counts not touching upon issues at hand. Petitioner's appendix contains those details (Da1 to Da8).

the date of his conviction, payment of fine, satisfactory completion of probation or release from incarceration, whichever is later, present a duly verified petition as provided in section 2C:52-7 herein to the Superior Court in the county in which the violation occurred praying that such conviction and all records and information pertaining thereto be expunged.

Petitioner seeks expungement of a municipal ordinance conviction. And Petitioner has a subsequent criminal conviction. At first glance, the highlighted language would appear to preclude expungement of Petitioner's ordinance conviction. Statutes, however, do not exist in a vacuum.

Germane to this inquiry is N.J.S. 2C:52-14e(1). That statute initially reaffirms the bar that N.J.S. 2C:52-4 creates. But N.J.S. 2C:52-14e(1) then continues in pertinent part (emphasis added):

A petition for expungement filed pursuant to this chapter shall be denied when...[a] person has had a previous criminal conviction expunged regardless of the lapse of time between the prior expungement, or sealing under prior law, and the present conviction. **This provision shall not apply...[w]hen the person is**

**seeking the expungement of a municipal ordinance violation[.]**

N.J.S. 2C:52-14e(1) thus relaxes the otherwise absolute bar contained in N.J.S. 2C:52-4. More particularly, expungement of a criminal conviction removes the impediment to expungement of a municipal ordinance conviction otherwise mandated by N.J.S. 2C:52-4.

To the extent that N.J.S. 2C:52-4 and N.J.S. 2C:52-14e(1) are incompatible with one another, the more general statute will yield to the more specific statute. The general statute here is N.J.S. 2C:52-4. It precludes expungement of an ordinance conviction if there has also been a criminal conviction. The specific statute is N.J.S. 2C:52-14e(1). That subsection carves out an exception. The exception arises when the prior criminal conviction has been expunged. The exception is specific. It takes precedence over the general, *State v. Hotel Bar Foods*, 18 N.J. 115 (1955).

Also to be considered is the rule of lenity. To the extent that tension between N.J.S. 2C:52-14e(1) and

N.J.S. 2C:52-4 cannot be resolved by either the statutes' text or extrinsic aids, lenity requires that ambiguity be resolved in favor of a defendant (or, in this case, a petitioner), *State v. Gelman*, 195 N.J. 475, 482 (2008).

The question (and the *only* question) before the Court, therefore, is whether Petitioner's present application to expunge his township ordinance arrest and conviction enjoys the benefit of 14e(1)'s relaxation.

To qualify for the N.J.S. 2C:52-14e(1) relaxation, Petitioner must satisfy two requirements. The first requirement is that what Petitioner seeks to expunge be a conviction for violation of a municipal ordinance. There is no dispute that Petitioner satisfies that requirement.

The second requirement ("Aye, there's the rub")<sup>5</sup> is that the criminal conviction must itself have been expunged. It is satisfaction *vel non* of this second condition that is now at issue.

---

<sup>5</sup>Shakespeare, *Hamlet*, Act III, Scene I.

As this brief is being written, the criminal conviction has not been expunged. And as the Court is first reading this brief, that criminal conviction has not been expunged. But along with his application for expungement of the ordinance conviction, Petitioner is seeking expungement of that previous criminal conviction. And the State does not dispute that under N.J.S. 2C:52-2, Petitioner qualifies for expungement of that criminal conviction. The issue, therefore, is whether Petitioner can obtain expungement of both the ordinance conviction and the criminal conviction in this single proceeding.

If the State's objection truly reflected legislative intent, then this Court would be obliged to sustain its objection, *Marino v. Marino*, 200 N.J. 315 (2009). But is the State's interpretation of legislative intent correct? Again we resort to principles of statutory interpretation.

In our efforts to determine legislative intent, Petitioner first points to N.J.S. 2A:168A-1. That statute, adopted in the context of, not expungements,

but rehabilitation of convicted offenders, provides in pertinent part:

The Legislature finds and declares that it is in the public interest to assist the rehabilitation of convicted offenders by removing impediments and restrictions upon their ability to obtain employment or to participate in vocational or educational rehabilitation programs based solely upon the existence of a criminal record.

But the public interest that the Legislature recognizes in the context of rehabilitating convicted offenders would apply to expungement of criminal records, for identical reasons.

The interpretation that Petitioner now advances in the expungement context is faithful to the principle of (among numerous cases) *State v. McKeon*, 385 N.J. Super. 559 (App.Div., 2006): Statutes are to be read sensibly rather than literally, and the controlling legislative intent is to be presumed as consonant to reason and good discretion.

Where a literal reading will lead to a result not in accord with the essential purpose and design of the



act, the spirit of the law will control its letter, *Carpenter Technology Corp. v. Admiral Ins. Co.*, 172 N.J. 504 (2002). If different interpretations of the statute are arguable, courts are obliged to look beyond its language, to discover the spirit of the law, *Id.* "When the plain language of an act presents apparent inconsistencies, we seek the interpretation that will make the most consistent whole of the statute." *State v. A.N.J.*, 98 N.J. 421, 424 (1985).

History, too, assists us in determining our Legislature's intent. N.J.S. 2C:52-14 has remained unchanged since 2009, L.2009, c. 188, effective March 13, 2010. And until April 18, 2016, a person having both a criminal conviction and a disorderly persons conviction could have the criminal conviction expunged, but not the disorderly persons conviction, N.J.S. 2C:52-3, as modified by L.1981, c. 290, effective September 24, 1981.

L.2015, c. 261 changed that. C. 261 enabled expunction of up to two disorderly persons convictions

along with a qualifying criminal conviction. Meanwhile, c. 261 left N.J.S. 2C:52-14 unchanged. Why?

The sensible answer is simple: The Legislature made no change to N.J.S. 2C:52-14 because it discerned that existing legislation already provided for simultaneous expunctions. The Legislature was presumably aware of both N.J.S. 2C:52-4 and N.J.S. 2C:52-14e(1)<sup>6</sup>. Mindful of that awareness, the Legislature could reasonably have anticipated that courts would treat both statutes *in pari materia*, sensibly addressing both the ordinance conviction and the criminal conviction in a single proceeding.

N.J.S. 2C:52-14e(1), as it has existed since 2010, lent itself to expungement of both convictions in that single proceeding. The former N.J.S. 2C:52-3 did not. Thus N.J.S. 2C:52-14e(1) remained unchanged, while N.J.S. 2C:52-3 was changed to allow for disorderly

---

<sup>6</sup>When ascertaining legislative intent, court can infer that the Legislature was familiar with its own enactments, *State v. Greeley*, 178 N.J. 340 (2004).

persons convictions what N.J.S. 2C:52-14e(1) already allowed for ordinances<sup>7</sup>.

The contrary theory would be that the Legislature actually wanted the two-step procedure discussed under the next point heading. While such contrary theory can be imagined, it defies logic and it defies common sense. It should be rejected.

## **POINT TWO**

### **JUDICIAL ECONOMY CALLS FOR CONSIDERATION OF PETITIONER'S TWO CONVICTIONS IN A SINGLE PROCEEDING**

The State would have this Court now expunge just Petitioner's criminal conviction<sup>8</sup>, and leave expungement of his ordinance conviction for another day. Were Petitioner inclined to then pursue expungement of his remaining ordinance conviction, the State would have

---

<sup>7</sup>To be more precise, when expunction of both an indictable conviction and a disorderly persons conviction is sought, provisions for expunction of the disorderly persons conviction are moved from N.J.S. 2C:52-3 to N.J.S. 2C:52-2, and governed thereby.

<sup>8</sup>Petitioner again reminds the Court that he seeks expungement of other counts for which he concededly qualifies.

Petitioner prepare, verify, and file a new Petition<sup>9</sup>. The State would have Petitioner pay another \$75.00<sup>10</sup> filing fee. The State would have the Court initially review this new Petition and satisfy itself that it is in proper form.

The State would have this Court then set a new hearing date. The State would have Petitioner then serve all statutory recipients, all by certified mail. The State would have Petitioner then monitor receipt by all recipients, and prepare and file a new proof of service. The State would have New Jersey State Police again satisfy itself of compliance with all requirements of N.J.S. 2C:52-1 et seq. The State would then have New Jersey State Police again communicate that finding to

---

<sup>9</sup>Petitioner takes liberties in asserting here and elsewhere in this brief what the State would have him do. The State's letter in fact makes no reference at all to the exception that N.J.S. 2C:52-14e(1) creates. The four corners of the State's objection would seem to preclude expunction of Petitioner's township ordinance permanently. While possibly mistaken, Petitioner doubts that that actually represents the State's position. See *State v. Hotel Bar Foods*, supra, and *State v. Gelman*, supra.

<sup>10</sup>N.J.R.E. 201(b)(3).

the State. The State, in turn, would have to again communicate that finding to the Court (hopefully without another three-month delay).

The State would then have the Court, after its own independent review, sign an Order expunging the identical provision that Petitioner seeks to expunge now, and to which the State presumably agrees Petitioner qualifies but for previous expunction of his indictable conviction.<sup>11</sup> The State would then have Petitioner serve all specified statutory recipients, again by certified mail return receipt requested, and monitor actual delivery. Finally, the State would have Petitioner wait an additional four to five months before New Jersey State Police actually processes this final order, and clears Petitioner record.<sup>12</sup> And all for what?

---

<sup>11</sup>The governmental tasks recited here, both judicial and administrative, would cost the State and the county (i.e. the taxpayers) far more than what is generated by Petitioner's \$75.00 fee. What these tasks would accomplish is nothing more than to bring us to the same position in which we find ourselves right now.

<sup>12</sup>See <https://www.njexpungements.com/faq.php> at Question 11.

Judicial economy shapes court policy even without benefit of statute. When statutory venue requirements seemingly required that expungement applications of unrelated matters in different counties be separately filed in the different counties, judicial economy considerations intervened. Thus *In re J.N.G.*, 244 N.J. Super. 605, 610-611 (App. Div., 1990), allowed expungement of both a Monmouth County criminal conviction and a Union County arrest in a single proceeding (internal citations, quotations marks, and footnote omitted, emphasis added):

Although the statute fixes the venue for proceedings under N.J.S.A. 2C:52-6, we find no reason to infer that the legislature intended that provision to be jurisdictional. Nor is there reason to infer that the legislature intended to foreclose resort to court rules and decisional law relaxing normal venue requirements in particular circumstances. If these two expungement applications had been brought in separate counties, they could have been consolidated. Venue could also have been changed upon a showing as to the convenience of parties and witnesses in the interest of justice. **Permitting the two actions to be joined initially in a single action surely has the virtue of**

**avoiding such a two-step process in order to place related claims before the same court.**

So here. Judicial economy would have both of the convictions in question expunged together.

**POINT THREE**

**N.J.S. 2C:52-14e(1) ALLOWS BOTH CONVICTIONS TO BE EXPUNGED IN A SINGLE PROCEEDING**

Petitioner provides the Court, as Appendix items herein, two additional forms of Order. The first form (Pa22) expunges all of Petitioner's takings into custody, arrests, and convictions, except for his ordinance conviction. The second form (Pa29) expunges Petitioner's ordinance conviction and related proceedings only.

The Court can sign Petitioner's first appendix Order, thus expunging Petitioner's indictable conviction. The alleged impediment to expungement of the municipal ordinance conviction would be thereby eliminated. Seconds later, the Court can sign the second appendix Order.

A literal reading of N.J.S. 2C:52-14e(1), *supra*, supports this procedure. Reiterating the pertinent portion of that statute, we see (added emphasis from previous quotation now repositioned):

A petition for expungement filed pursuant to this chapter shall be denied when...[a] person has had a previous criminal conviction expunged **regardless of the lapse of time between the prior expungement, or sealing under prior law, and the present conviction.** This provision shall not apply...[w]hen the person is seeking the expungement of a municipal ordinance violation[.]

"[R]egardless of the lapse of time" can mean three years. It can also mean three months, or three seconds. "Regardless" means "regardless." If we are to literally construe statutes, then consistency demands that that literal construction encompass the seconds of delay that N.J.S. 2C:52-14e(1) appears to countenance<sup>13</sup>.

---

<sup>13</sup>Admittedly, Petitioner is here mixing metaphorical apples and oranges. The "apples" are the lapse of time between the original expungement and the ordinance violation for which expungement is sought. The "oranges" are the lapse of time between the first and second expungements.



These machinations are, of course, completely unnecessary. Nonetheless, they would follow N.J.S. 2C:52-14e(1) to the letter and, in the process, overcome the State's objection.

### CONCLUSION

Logic, judicial economy, N.J.S. 2C:52-14e(1), and sound principles of statutory interpretation all speak

---

Note, however, that NASA/Ames Research Center, Moffett Field, California, has proven that apples and oranges actually *can* be compared, Scott A. Sandford, *Apples and Oranges: a Comparison*, Annals of Improbable Research, The Journal of Record for Inflated Research and Personalities, May/June 1995, at 2. Dr. Sandford sets forth his conclusions thusly:

Not only was this comparison easy to make, but it is apparent from the figure that apples and oranges are very similar.

Thus, it would appear that the comparing apples and oranges defense should no longer be considered valid. This is a somewhat startling revelation. It can be anticipated to have a dramatic effect on the strategies used in arguments and discussions in the future.

Petitioner submits that the logic that persuaded our Legislature to provide the "apples" would apply equally to Petitioner's metaphorical "oranges."

with one voice: Petitioner's criminal conviction and municipal ordinance conviction should both be expunged in the present proceeding.

This Court should overrule the State's objection and, in the process, help save a tree.

Respectfully submitted,

LAW OFFICES OF ALLAN MARAIN

By: Allan Marain