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January 10, 2018

Refer to File No.
7749

Hon. James X. Sattely, J.S.C.
Bergen County Justice Center
10 Main Street, Courtroom 417
Hackensack NJ 07601

Re: Expungement Application of **Axxxxxxxx A. Mxxx**
Docket S-1997-000668-1530 STAFFORD
S-2005-210243-0223 HACKENSACK

Dear Judge Sattely:

Introduction

The above expungement application was listed for consideration before your Honor for January 5, 2018. By way of letter dated January 5, the State objected. This is Petitioner's response to the State's objection.

Procedural Evenhandedness

The State bases its objection upon the unremarkable proposition that procedural requirements must be followed. Petitioner agrees. Your Honor ordered that any objections be filed no later than January 2, 2018. Here, the State filed no objection at all until January 5, 2018, the same day that the matter was to be considered by the Court.

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The State never sought Petitioner's consent for an extension of time. The State never sought leave of court to file an objection out of time. The State offers no explanation as to why its objection was not, and could not have been, timely filed.

Since procedure must be followed, a modicum of evenhandedness requires that procedural requirements be enforced as to all parties. The State's objection was out of time; this Court should disregard it.

Venue Analysis

Turning to the merits, venue in expungement applications is not jurisdictional. If venue for any one of the arrests for which expungement is sought is proper, then other matters for which expungement is sought may be joined in that application, *IMO J.N.G.*, 244 N.J. Super. 605, 611 (App.Div., 1990).

Beyond that, there is only one Superior Court of New Jersey. N.J. Const. art.6, § 3, par. 2 gives the Superior Court original general jurisdiction throughout the State in all causes. Each judge exercises, subject to the Rules, all the power of the court, *State ex rel. William Eckelmann, Inc., v. Jones*, 4 N.J. 374 (1950). Thus, independently of statute, the New Jersey Constitution confers jurisdiction over this matter upon your Honor.

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Constitution aside, Petitioner seeks expungement in Bergen County of his Hackensack arrest and dismissal, pursuant to N.J.S. 2C:52-6b. That subsection provides in pertinent part (emphasis added), "[T]he person may at any time following the disposition of proceedings, present a duly verified petition as provided in N.J.S.2C:52-7 to the Superior Court **in the county in which the disposition occurred[.]**" The county in which this disposition occurred is Bergen County. Petitioner has presented his application in Bergen County. Petitioner's application satisfies the venue requirements of subsection b.

The State fixates upon language in N.J.S. 2C:52-3 in support of its contention that Bergen County lacks jurisdiction. N.J.S. 2C:52-3 confines itself to expungement of disorderly persons convictions. N.J.S. 2C:52-3 says nothing about the county in which *dismissals* may be heard. The reason for that omission is that expungement of dismissals (disorderly persons or otherwise) is governed by a different statute.

Eligibility for disorderly persons convictions is measured by N.J.S. 2C:52-3; eligibility for dismissals is measured by N.J.S. 2C:52-6. The two statutes operate independently of one another. Each section furnishes its own venue specification.

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The State would elevate the venue specifications of N.J.S. 2C:52-3 over those of N.J.S. 2C:52-2, N.J.S. 2C:52-4, N.J.S. 2C:52-4.1, N.J.S. 2C:52-5, and (as in this case) N.J.S. 2C:52-6. Nothing in any of these statutes would support such exaltation. Nor has Petitioner has been able to locate any suggestive legislative history.

The lesson of *J.N.G.*, supra, is that satisfying the venue requirements of any one event satisfies venue for the entire application. Thus while Ocean County would have jurisdiction over Petitioner's application, that does not diminish the jurisdiction of Bergen.

The essence of the State's objection is to be found in these two sentences on page two of its January 5 letter:

Here, Mxxx did apply for an expungement of a conviction of a disorderly persons offense that occurred in Ocean County. Therefore, it is procedurally improper for Mxxx's expungement application to be heard in Bergen County because it is not the county in which the most recent conviction occurred.

The State's conclusion arises from its premise that the venue that N.J.S. 2C:52-3 establishes is exclusive. The flaw in that premise, unencumbered by citation, is that nothing in N.J.S. 2C:52-3 betokens exclusivity. Interpreted in context, the significance of N.J.S. 2C:52-3 is this: If expungement of more

than one disorderly persons conviction is sought, and if those convictions occurred in more than one county, a restriction exists concerning which of those disorderly persons convictions may be used to establish venue. The following hypothetical situation is illustrative:

Nature of Charge	Date and Disposition	County of Disposition
Disorderly Persons	March 1, 2005, guilty	Atlantic
Disorderly Persons	March 1, 2006, dismissed	Cape May
Disorderly Persons	March 1, 2007, guilty	Hudson

In this scenario, venue in Cape May County would be proper, pursuant to N.J.S. 2C:52-6. Venue in Hudson County would also be proper, pursuant to N.J.S. 2C:52-3. Venue in Atlantic County would be improper because the requirements of N.J.S. 2C:52-3 are not satisfied, *and no independent basis for jurisdiction exists.*¹

The operative auxiliary verb in N.J.S. 2C:52-3, "may", reinforces absence of exclusivity. N.J.S. 2C:52-2, N.J.S. 2C:52-4, N.J.S. 2C:52-4.1, N.J.S. 2C:52-5, and N.J.S. 2C:52-6 also all

¹Petitioner refers here to lack of independent *statutory* basis. As indicated above, N.J. Const. art.6, § 3, par. 2 does provide an independent constitutional basis. Since Petitioner should prevail here upon both procedural and statutory grounds, the Constitutional argument can be saved for another day.

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use "may". Had the Legislature intended to exalt the venue specifications of N.J.S. 2C:52-3, surely it would have provided some clue. For example, the Legislature could have specified "shall". Or it could have stated that the venue specifications of N.J.S. 2C:52-3 trump the specifications of those other inferior statutes. It did neither.

Public Policy

Petitioner fails to discern any legitimate State's interest in telling Petitioner to start all over again in Ocean County. Petitioner has specified all of his arrests; all interested parties have been served; New Jersey State Police has verified the accuracy and completeness of Petitioner's recitations; all agree that Petitioner substantively qualifies for the expungement that he seeks.

The New Jersey Legislature has declared that removal of disabilities and barriers to employment occasioned by existence of a criminal record is in the public interest, N.J.S. 2A:168A-1. Application of the State's contentions would thwart New Jersey public interest; rejection of the State's contention would further those interests.

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Conclusion

Procedure, substance, and public policy all speak with one voice: The State's objection lacks merit. Petitioner qualifies, procedurally and substantively, for the expungement that he seeks. This Court has jurisdiction.

Petitioner asks the State to withdraw its objection. Absent such withdrawal, the State's objection should be overruled. Either way, Petitioner's application should be granted.

Respectfully yours,

Law offices of Allan Marain

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cc: Asst. Pros. Christina Caputo
Mr. Axxxxxxxx Mxxx