

To: New Jersey Law Revision Commission

From: Adam Lipps

RE: In the Matter of the Expungement Application of P.H.

Date: 11/10/14

Memorandum

Part I: Introduction

In *In the Matter of the Expungement Application of P.H. (In re P.H.)*,¹ the Appellate Division addressed the issue of whether or not the applicant was entitled to an expungement under circumstances in which he admitted to a civil violation in exchange for the dismissal of the criminal complaint.² Although civil penalties cannot be expunged, the question is whether the records relating to the original criminal charges are eligible for expungement.³ The Court expressly stated that “the statutory provisions do not squarely address the circumstances presented and it appears unlikely the Legislature contemplated the unique situation when an indictable charge ultimately is resolved by imposition of a civil monetary penalty.”⁴

Part II: Case Overview

In 2012, P.H. was arrested after his dog died of asphyxiation after being hanged from a door by its leash and the State of New Jersey charged him with an indictable offense of animal cruelty and a disorderly persons offense of animal cruelty.⁵ The grand jury however did not find sufficient evidence to indict P.H. on the first count and both charges were downgraded to disorderly persons offenses and heard in municipal court.⁶ P.H. negotiated with an NJSPCA representative who was present in municipal court and agreed to plead to a violation of the civil statute N.J.S. 4:22–26(a)(1) and pay a \$1,000 civil penalty.⁷ The municipal prosecutor approved the agreement and presented it to the judge.⁸ The judge dismissed the disorderly persons offenses, imposed a \$1,000 fine, and also imposed on P.H. a five year prohibition on dog ownership.⁹

After the dismissal of the disorderly persons offenses, P.H. filed a petition to expunge the record of his arrest, detainment, complaint, and any other documents associated with the criminal

¹ *In re P.H.*, 436 N.J. Super. 427, 428 (App. Div. 2014).

² *Id.*

³ *Id.*

⁴ *Id.* at 436.

⁵ *Id.* at 428.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 429.

⁹ *Id.*

background of the case.¹⁰ The State objected to the petition.¹¹ “Specifically, the State argues P.H. was not acquitted or discharged without a finding of guilt and the charges were not dismissed. Rather, P.H. was ‘charged with indictable crimes ... which, ultimately after downgrade, remand, and then plea negotiations, were disposed of by way of imposition of a civil penalty,’ a disposition ‘ineligible for expungement.’”¹² In 2013, the trial court granted the expungement for the criminal record but not for the record of the civil penalty.¹³ The State appealed.¹⁴

The Appellate Division began its analysis by stating that only the Legislature can authorize an expungement,¹⁵ noting that there is no common law or constitutional right to obtain one.¹⁶ The relevant statute, N.J.S. 2C:52–6, reads

“[i]n all cases, except as herein provided, wherein a person has been arrested or held to answer for a crime, disorderly persons offense, petty disorderly persons offense or municipal ordinance violation under the laws of this State or of any governmental entity thereof and against whom proceedings were dismissed, or who was acquitted, or who was discharged without a conviction or finding of guilt, may at any time following the disposition of proceedings, present a duly verified petition as provided in *N.J.S.A. 2C:52–7* to the Superior Court in the county in which the disposition occurred praying that records of such arrest and all records and information pertaining thereto be expunged.”¹⁷

The Appellate Division indicated in its review that the “expressed design” of the statute is to “deal only with criminal charges and their consequences”¹⁸ and recognized that records of civil violations are not eligible to be expunged.¹⁹ The expungement statute “expresses a clear, ‘primary objective of providing relief to the one-time offender who has led a life of rectitude and disassociated himself [or herself] with unlawful activity.’”²⁰ The Appellate Division determined that “[t]he State’s position expressed in this case leads to an illogical and unfair result, which we find is at odds with this clearly expressed legislative intent of the expungement statute. Following the statute’s reasoning, had P.H. capitulated and pled to a DP, or even a petty DP offense, the criminal records would be subject to expungement.”²¹ The Appellate Division concluded that “the more reasonable common-sense interpretation favors expungement in this instance” and the facts presented fit within N.J.S.A. 2C:52–6(a) because P.H.’s criminal charges

¹⁰ *Id.*

¹¹ *Id.* at 430.

¹² *Id.* at 433.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 434.

¹⁶ *Id.*

¹⁷ N.J. Stat. Ann. § 2C:52-6 (West).

¹⁸ *In re P.H.*, 436 N.J. Super. 427, 435 (App. Div. 2014) (quoting *In re M.D.Z.* 286 N.J. Super. 82, 85 (App.Div.1995)).

¹⁹ *Id.*

²⁰ *In re P.H.*, 436 N.J. Super. 427, 436 (App. Div. 2014) (quoting *In re D.H.* 204 N.J. 7, 17 (2010) (quoting N.J.S.A. 2C:52–32)).

²¹ *In re P.H.*, 436 N.J. Super. 427, 437 (App. Div. 2014).

were “discharged without a conviction or finding of guilt” and “dismissed.”²² Finally, the Appellate Division addressed the fact “P.H. was not ‘found guilty,’ nor was a guilty plea entered. Rather, the record contains P.H.’s admission he violated a civil statute.”²³

Part III: Other Statutory Considerations

P.H.’s agreement to pay civil damages in lieu of prosecution arguably resembles what is called a conditional dismissal. A conditional dismissal is an agreement to dismiss criminal charges as long as certain conditions are met.²⁴ The reason a conditional dismissal is mentioned in this context is because a conditional dismissal may be expunged.²⁵

Part IV: Conclusion

Since the specific issues raised by this case have not yet been addressed by the Legislature, this case provides an opportunity to do so in a manner that is consistent with legislative determinations about what constitutes an appropriate result in similar circumstances. More importantly, the Legislature would be afforded the opportunity to decide how to address a situation when criminal charges are dropped and civil penalties are instead imposed in regards to an expungement.

²² *Id.*

²³ *Id.*

²⁴ N.J. Stat. Ann. § 2C:43-13 (West).

²⁵ N.J. Stat. Ann. § 2C:52-1 (West).