

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM JASPER COUNTY

Honorable Carmen T. Mullen, Circuit Court Judge

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Appellate Case No. 2016-001256

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**SC Court of Appeals**

Elise Caro-Medina,.....Respondent

v.

Fourteenth Judicial Circuit Solicitor's Office,.....Appellant.

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**INITIAL BRIEF OF RESPONDENT**

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**STATEMENT OF ISSUE ON APPEAL**

1. Did the Circuit Court correctly determine that Respondent's DUI first offense conviction does not preclude her from the expungement of a subsequent assault and battery third degree conviction under SC Code § 17-22-940?

## STATEMENT OF THE CASE

The Respondent was convicted of driving under the influence (DUI) first offense on December 04, 2008. Subsequently, the Respondent was convicted of assault and battery third degree on January 20, 2012 in the Jasper County Magistrate's Court. On May 12, 2015, the Plaintiff applied to the Fourteenth Judicial Circuit Solicitor's Office to have her January 20, 2012 conviction for assault and battery third degree expunged pursuant to SC Code § 17-22-940. The application for expungement was denied by the Solicitor's office on May 19, 2015. In a letter rejecting the application, the solicitor's office cited SC Code § 22-5-910 as the basis for the denial. The letter claimed that the Respondent's 2008 conviction for driving under the influence was considered the "first offense" under the statute, and therefore the Respondent was not eligible to have her subsequent assault and battery conviction expunged. The Respondent's SLED criminal records background check only included the Respondent's conviction for driving under the influence and assault and battery third degree, and no conviction appeared after the 2012 conviction for assault and battery. The Respondent had not previously applied to have a criminal record expunged nor has she ever received an expungement for a conviction on her record.

A hearing was held on March 29, 2016 concerning the Respondent's action for declaratory judgement. An order in favor of the Respondent was issued on April 6, 2016. In the order, the Circuit Court held that under SC Code § 22-5-910, the Respondent's prior DUI first offense conviction did not preclude her from expungement of her subsequent conviction of assault and battery third degree. The court used the following reasoning when making its conclusion:

The language "first offense conviction" contained in S.C. Code Ann. §22-5-910 refers to the conviction of a first offense of a

particular crime eligible for expungement, not a person's first overall conviction....The Fourteenth Circuit Solicitor's interpretation of SC Code Ann. § 22-5-910 is erroneous because it allows for absurd results in situations where a person receives a conviction that is not eligible for expungement and subsequently receives a conviction that is eligible for expungement. In this scenario, a person would not be allowed to have either conviction expunged solely due to the temporal order in which the convictions occurred.

Final Order p. 3.

The Circuit Court issued a declaratory judgment for the plaintiff holding that, under the South Carolina Code, her 2012 conviction for assault and battery third was eligible for expungement. This order was issued despite the Solicitor's argument that the 2008 conviction for driving under the influence operated as her 'first offense' under the statute, and that she was therefore not eligible to have the later assault and battery conviction expunged. On October 19, 2016, the Appellant served the Respondent with its initial brief arguing that the decision of the circuit court should be reversed because of language in SC Code §17-22- 910(F) reading that "[i]f the expungement is sought pursuant to...Section 22-5-910...the conviction for any traffic-related offense which is punishable only by a fine or loss of points will not be considered as a bar to expungement." Initial Brief of Appellant p. 5.

## ARGUMENT

**THE CIRCUIT COURT CORRECTLY HELD THAT THE RESPONDENT'S PRIOR DUI FIRST CONVICTION DOES NOT BAR THE EXPUNGEMENT OF A SUBSEQUENT CONVICTION OF ASSAULT AND BATTERY THIRD DEGREE UNDER SC CODE § 22-5-910.**

The Circuit Court correctly held that, under SC Code § 22-5-910, that the Respondent's DUI first conviction did not preclude the expungement of her subsequent assault and battery conviction. To be eligible for expungement, the conviction must have arisen from a first offense conviction, three years must have passed from the date of conviction, and only one conviction may be expunged. See SC Code § 22-5-910. The Circuit Court concluded that the Respondent met all of the requirements of SC Code § 22-5-910 to have her assault and battery conviction expunged. See Final Order p. 3-4.

The Appellant made the argument in the Circuit Court, and is making the argument on appeal, that the expungement of the assault and battery third degree conviction is not eligible for expungement because it occurred subsequent to a conviction that is not eligible for expungement. The argument of the Appellant follows an erroneous interpretation of the language contained in SC Code § 22-5-910, which allows for the expungement of "a first offense conviction." See SC Code § 22-5-910(A). The Circuit Court Judge properly held that that the language of "first offense conviction," found in SC Code § 22-5-910, "refers to the conviction of a first offense of a particular crime eligible for expungement, not a person's first overall conviction." Final Order p. 3. In the view of the lower court, this interpretation prevents the absurd result in situations where a person receives a conviction not eligible for expungement followed by a conviction that is eligible for expungement. See Final Order p. 3. The Circuit Court reasoned that "[i]n this

scenario, a person would not be allowed to have either conviction expunged solely due to the temporal order in which the conviction occurred.” Final Order p. 3.

When interpreting a statute in the State of South Carolina, “Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention.” State v. Sweat, 386 S.C. 339, 351 (2010). The Appellant’s contention, that only the first conviction on a person’s criminal record may be expunged, leads to some absurd results. For instance, if the Respondent would have received the assault and battery conviction in 2008 and the DUI conviction in 2012 instead of *vice versa*, under the Appellant’s argument, the statute would allow for the expungement of the assault and battery conviction. The mere fact that the assault and battery conviction came after the DUI in temporal order should not change the analysis on whether the conviction is eligible for expungement. It was also made clear by the Circuit Court that the legislature recently amended the expungement statutes to “allow more people to avail themselves of expungement and destruction of arrest records.” Final Order p. 3 (citing S.C. Gen. Assembly, 120<sup>th</sup> Session, Act No. 75 (June 24, 2013) and S.C. Gen. Assembly, 121<sup>st</sup> Session, Act No. 132 (Feb. 23, 2016)). The Appellant’s construction of the statute would severely limit the ability of people to receive expungements and would greatly limit which convictions would be eligible for expungement.

Additionally, “[a] statute should be so constructed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous.” In re Decker, 322 S.C. 215, 219 (1995). South Carolina Code § 22-5-910(B) contains the language that “[n]o person may have his records expunged under this section more than once.” SC Code § 22-5-910(B). The Circuit Court agreed with the Respondent, that if the expungement statute referred only to an applicant’s first temporal conviction, it would render the limiting language contained in Section 22-5-910(B)

redundant and superfluous. See Final Order p. 3. Common sense would dictate that if a person is only able to expunge the first temporal conviction on his or her record then only one conviction may be expunged.

The Appellant has made the argument that SC Code § 17-22-940(F) implicitly precludes the Respondent from receiving an expungement of her assault and battery third conviction. See Initial Brief of Appellant p.5-6. While the Respondent agrees with the Appellant that “[s]everal acts *in pari materia*, and relating to the same subject, are to be taken together,” the Appellant’s interpretation of how SC Code § 17-22-940(F) interacts with SC Code 22-5-910 is erroneous. See Initial Brief of Appellant p. 5 (citing Antonin Scalia & Bryan Garner, *Reading Law: The Interpretation of Legal Texts*, p. 252 (2012)).

The Appellant argues that the language of SC Code § 17-22-940(F), providing that “the conviction for any traffic-related offense which is punishable only by a fine or loss of points will not be considered as a bar to expungement,” has the effect of making any conviction for a traffic offense, punishable by jail time, a bar to expungement. SC Code § 17-22-940(F). Using the principles of statutory construction, the court should give words “their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute’s operation. Sloan v. S.C. Bd. Of Physical Therapy Exam’rs, 370 S.C. 452, 469 (2006). The Appellant’s argument is an example of forcing the construction of a statute for the purpose of limiting the statute’s operation. The plain language of SC Code § 17-22-940(F) gives no indication that the legislature intended for the statute provision to operate as a bar a category of expungements. On the contrary, the statute on its face increases the availability of expungements by providing that simple traffic convictions cannot serve as a bar to expungement. See SC Code § 17-22-940(F). This is important because otherwise a traffic conviction, within the three year period after a

conviction eligible for expungement pursuant to SC Code 22-5-910, would serve as a bar to the availability of expungement for that conviction. Accordingly, since the Respondent does not have a traffic conviction punishable only by a fine or loss of points, this statute should not be relevant to the present case.

The Appellant's argument attempts to take a statutory provision that on its face provides for a greater availability of expungable convictions and attempts to use the language to effectuate the opposite result. The Respondent argues that this reading of the statute goes against the clear intent of the legislature and has no basis under a plain reading of the expungement statutes. Under the applicable expunge statutes, if the Respondent's conviction meets the requirements of SC Code § 22-5-910 then that conviction should be expunged upon proper application to do so. Upon review, the Circuit Court determined that the Respondent's conviction did meet the requirements under SC Code § 22-5-910 and was therefore eligible for expungement. The ruling of the Circuit Court should, therefore, be upheld.

CONCLUSION

For the foregoing reasons, the order of the Circuit Court should be upheld.

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A handwritten signature in black ink, appearing to read 'Mark J. Devine', is written over a horizontal line.

Mark J. Devine

THE STATE OF SOUTH CAROLINA  
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Fourteenth Judicial Circuit Solicitor's Office,.....Appellant.

**CERTIFICATE OF SERVICE**

I hereby certify that on **February 8, 2017**, I served a copy of the Initial Brief of Respondent and the Respondent's Designation of Matter upon the other parties by depositing copies in the U.S. mail, postage prepaid, addressed as follows to their attorneys:

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February 8, 2017

**VIA USPS EXPRESS OVERNIGHT DELIVERY**

The Honorable Jenny Abbott Kitchings  
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Re: *Elise Caro-Medina v. Fourteenth Judicial Circuit Solicitor's Office*  
*Appellate Case Number: 2016-001256*

*Dear Ms. Kitchings:*

*Enclosed, please find the Respondent's Initial Brief, the Respondent's Designation of Matter to be Included on the Record on Appeal, and a certificate of service.*

With warm regards,



Mark J Devine

cc: T. Parkin C. Hunter, Esquire.

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