THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM JASPER COUNTY

Honorable Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2016-001256

Elise Caro-Medina, ...Respondent,

v.

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

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ARGUMENT

Can a person have multiple convictions, and then choose which one of them he or she wants to expunge? The circuit court said "yes" to that question. Notwithstanding, "[t]he determination of the proper interpretation of a statute is a question of law, which the appellate court reviews de novo, and the appellate court is free to decide the question with no particular deference to the lower court."[1] This Court should not give the circuit court's findings any particular deference for the following reasons.

I. Omission Of Section 17-22-940(F)

The circuit court omitted Section 17-22-940(F), which expressly references Section 22-5-910. Both statutes concern the expungement of criminal records. "Several acts *in pari materia*, and relating to the same subject, are to be taken together, and compared in the construction of them, because they are considered as having one object in view, and as acting upon one system."[2] When courts construe statutes dealing with the same subject matter, the courts must endeavor to construe them harmoniously. "It is well settled that statutes dealing with the same subject matter are *in pari materia* and must be construed together, if possible, to produce a single, harmonious result."[3]

In 2009, the Legislature passed the Uniform Expungement of Criminal Records Act, as

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1 Charles E. Carpenter, et al., 16 *S.C. Jur. Appeal and Error* §122 (December 2016 Update) (citing *Glassmeyer v. City of Columbia*, 414 S.C. 213, 777 S.E.2d 835 (Ct.App.2015)).
2 Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts (2012), p. 252 (quoting 1 James Kent, *Commentaries on American Law* 433 (1826)).
3 *Joiner ex rel. Rivvas v. Rivas*, 342 S.C. 102, 109, 535 S.E.2d 372, 375 (2000) (citing *Home Health Servs., Inc. v. South Carolina Dept. of Health and Environmental Control*, 298 S.C. 258, 379 S.E.2d 734 (Ct.App.1989)).

well as an amendment to Section 22-5-910, which left intact the "first offense conviction."[4] The Legislature enacted both statutes at the same time and in the same legislative Act; clearly, the Legislature intended cooperative application of the statutes. Nonetheless, the circuit court did not read them together or harmoniously; it read Section 22-5-910 in isolation. Because the circuit court's approach to statutory interpretation was flawed, its ultimate determination is questionable and, in this case, incorrect.

II. First Offense Conviction Means First Overall Conviction

The circuit court concluded that, "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." (Final Order, p. 3 ¶16 (internal quotations omitted)). The circuit court supported its conclusion primarily with two determinations. First, the circuit court determined "first offense conviction" did not mean a person's first overall conviction because that would render superfluous the language "[n]o person may have his records expunged under this act more than once." (Final Order, p. 3 ¶17 (quoting *S.C. Code Ann.* §22-5-910(C)). Ms. Caro-Medina echoes this reasoning in her brief: "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." (Respondent's Initial Brief, p. 6). Second, the circuit court also determined "first offense conviction" could not mean first overall conviction because the result would be absurd. Ms. Caro-Medina restates the reasoning of the circuit court by arguing that, if Ms. Caro-Medina had received her assault and battery conviction in 2008 rather than in 2012, she could receive an expungement simply because the assault and battery

4 2009 Act No. 36, §§2 and 5.

came first in time. (Respondent's Initial Brief, p. 5). That result, she argues, is absurd, and means "first offense conviction" cannot mean first overall conviction. Both of those determinations, however, are unpersuasive.

The temporal order of occurrence is not the reason Ms. Caro-Medina cannot obtain an expungement; preventing a person from picking one of multiple convictions is the reason. Under a plain reading of the statute, "first offense conviction" does mean a first offense of a particular crime, but it also means first overall conviction. The Legislature wished to give a person who had made one mistake the opportunity to have a clean record. As discussed in Section (IV), if an expungement were not limited to the first overall conviction, a man could go on a crime spree, committing multiple different crimes over a period of years, and still expunge the qualifying conviction that he wants expunged. The Legislature does not indicate Section 22-5-910 should work in that manner. Moreover, Ms. Caro-Medina's DUI is not only her first overall conviction, but it is also a traffic-related offense punishable by possible incarceration. Convictions for such offenses clearly bar expungements under a harmonious reading of Sections 17-22-940(F) and 22-5-910. This treatment is an extension of and consistent with the Legislature's policy regarding offenses involving the operation of a motor vehicle, which, with the notable exception of the failure to stop when signaled by a law enforcement officer, cannot be expunged in South Carolina.[5]

So yes, if Ms. Caro-Medina had received her assault and battery conviction in 2008, followed by three years without a subsequent conviction, she would be able to get an expungement. This result, however, is not "absurd;" rather, it is exactly what the Legislature

5 *See* 2015WL 731709 (S.C.A.G.).

intended to avoid conviction shopping by those seeking expungements.

Regarding the suplusage determination, the circuit court and Ms. Caro-Medina seem to have misconceived the effect of an expungement, as well as the way most people view that effect. An expungement removes any public record of a person's criminal conviction; if a person receives an expungement of the only conviction on his record, then his criminal record is unblemished. Because of the absence of any crime on his public record, if that same individual subsequently receives another conviction for a crime that would otherwise qualify for expungement under Section 22-5-910, he could reasonably think the second conviction is his "first offense conviction." Without the restrictive language of Section 22-5-910(C), he could reasonably think it possible to request the expungement of what is the only conviction on his public record. Consequently, to lessen the likelihood of misunderstanding, and to ensure that a person only expunges one conviction under Section 22-5-910, the Legislature wrote, "[n]o person may have his records expunged under this section more than once." Therefore, the language is not surplusage.

III. <u>The Cited Amendments Do Not Concern The Issue In This Case</u>

The circuit court determined that, because the Legislature recently amended Section 22-5-910 to allow more people to avail themselves of expungement, "first offense conviction" could not mean that only the first conviction on a person's criminal record is expungable. (Respondent's Initial Brief, p. 5 (citing Final Order, p. 3)). The circuit court cited a 2016 amendment, Act No. 132, which was made retroactive to allow for the expungement of offenses charged, discharged, dismissed, or nolle prossed prior to the effective date of the legislative act, as well as convictions and findings of not guilty prior to the effective date of the legislative act.

The circuit court also cited a 2013 amendment, Act No. 75, which raised the penalty in Section 22-5-910(A) from five hundred dollars to one thousand dollars, and made clear that an expungable conviction could be a conviction in Magistrate's court or General Sessions court. Though these amendments certainly do make expungements available to more people by expanding the definition of "first offense conviction" in Section 22-5-910(A), they do not concern the question in this case, which is whether a person can have multiple convictions, charges, etc. and pick the one he or she wants expunged. Citing these amendments, therefore, can only demonstrate the Legislative intent to make expungements under Section 22-5-910 more available, generally; they cannot help determine whether Ms. Caro-Medina may obtain an expungement for the assault and battery third degree conviction that she received after her conviction for DUI, which is what the lower court sought to establish in its Order.

IV. <u>The Circuit Court's Order Will Lead To Absurd Results</u>

"[C]ourts will reject a statutory interpretation that 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."[6] The circuit court determined that Ms. Caro-Medina could obtain an expungement for her assault and battery conviction because it was a "first offense conviction," carrying a penalty of not more than thirty days imprisonment or a fine of one thousand dollars or both, and she had gone three years without a subsequent conviction. Additionally, she had not previously obtained an expungement under 22-5-910. If those requirements are met, according to the circuit court, the expungement should be granted. Ms. Caro-Medina obtained a conviction for

6 *State v. Taylor*, 411 S.C. 294, 301, 768 S.E.2d 71, 75 (2014) (citing *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342-3, 713 S.E.2d 278, 383 (2011)).

a DUI in 2008 and for an assault and battery in 2012. Each was a first offense conviction; she had not been previously convicted of either a DUI or an assault and battery charge. As will be demonstrated below, the circuit court's Order will lead to absurd results.

The circuit court's Order would allow Ms. Caro-Medina to obtain an expungement for what is her second conviction. The reasoning supporting the Order, however, is not limited to the exact circumstances of Ms. Caro-Medina; hypothetically, following that reasoning, Ms. Caro-Medina could have multiple "first offense convictions" and still receive the privilege of an expungement for the conviction of her choosing. In fact, she could have multiple "first offense convictions" alongside multiple second and third offense convictions, yet still receive the privilege of an expungement for the "first offense conviction" of her choosing. All that would need to be true for either scenario to occur is the requisite spacing of three years without a conviction between each of the multiple convictions. For example, if "first offense conviction" does not mean a person's first overall conviction, a person could accumulate convictions for ten separate offenses, including a conviction for assault and battery in the third degree. Then, after serving the previous three years in jail for one of the offenses, the person could still obtain an expungement for the assault and battery in the third degree conviction. A further absurdity occurs when one incident results in multiple convictions. For example, a man is convicted of two crimes that occurred during one incident. The two crimes are murder and assault and battery in the third degree. If a court sentenced a man to serve thirty years for murder, with the assault and battery third degree served concurrently during those thirty years, he still could seek an expungement for the assault and battery in the third degree after three years of his thirty-year

sentence. Given the privileged nature of an expungement,[7] the potential results of the circuit court's loose interpretation are not only bizarre but also absurd; the Legislature could not have intended them.

Conclusion

Under Section 22-5-910, a person can obtain a "first offense conviction" and, after three years without a subsequent conviction—other than a conviction for a traffic-related offense punishable only by a fine or loss of points—receive an expungement for that conviction. Notwithstanding, to prevent a person from picking one of multiple convictions, the first overall conviction is the only one that qualifies for expungement under Section 22-5-910.

Although the expungement policy may be considered strict, the expungement of criminal records is a privilege rather than a right[8]; the Legislature need not make expungements easy to obtain. All the same, though the policy of the Legislature is clear, that is no reason for Ms. Caro-Medina or others to like it or accept it. The proper path for altering the policy, however, lies in lobbying members of the Legislature rather than pursuing judicial remediation.

For the forgoing reasons, this Court should reverse the Order of the circuit court.

Respectfully submitted

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7 *Gay v. Arial*, 381 S.C. 341, n. 2, 673 S.E.2d 418, n. 2 (2009).
8 n. 7 *Supra*.

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CERTIFICATE OF SERVICE

I hereby certify that on March 10, 2017 I served a copy of the Reply Brief of Appellant upon the other parties by depositing copies in the U.S. Mail, postage prepaid, addressed as follows to their attorneys:

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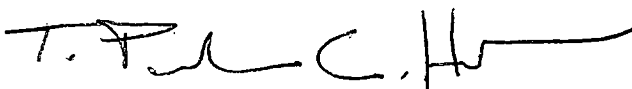

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RE: Appellant's Reply Brief, *Elise Caro-Medina v. Fourteenth Judicial Circuit Solicitor's Office,* Appellate Case Number: 2016-001256

Dear Ms. Kitchings:

Enclosed for filing is the Appellant's Reply Brief in *Elise Caro-Medina v. Fourteenth Judicial Circuit Solicitor's Office,* Appellate Case Number: 2016-001256

Also enclosed is a Certificate of Service.

Thank you.

Sincerely yours,

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