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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM JASPER COUNTY

Honorable Carmen T. Mullen, Circuit Court Judge

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.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)
COUNTY OF JASPER)
Elise Caro-Medina)
) Plaintiff,)
Vs.)
) Fourteenth Judicial Circuit Solicitor's)
) Office)
) Defendant.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
Civil Action No. 2015-CP-27-296

ORDER

A hearing on the Plaintiff's, Elise Caro-Medina's ("Plaintiff"), motion for declaratory judgment was held on March 29, 2016, the Honorable Carmen T. Mullen presiding. The Plaintiff was represented by Helen Dovell, Esq., Associate Attorney, of the Law Office of Mark J. Devine, LLC. The Defendant was represented by Brian Hollen, Esq., Assistant Solicitor, Fourteenth Judicial Circuit Solicitor's Office. In making a judicial interpretation in favor of the Plaintiff's eligibility to be granted an expungement of a conviction under S.C. Code § 22-5-910, and after having considered the pleadings filed and arguments made by the Plaintiff and Defendant, I make the following findings of fact and conclusions of law.

PARTIES

1. The Plaintiff, Elise Caro, is a resident of Bluffton, South Carolina who petitioned for an expungement of a conviction from her criminal record and was subsequently denied her request by the South Carolina Fourteenth Judicial Circuit Solicitor.
2. The Defendant, the Fourteenth Judicial Circuit Solicitor's Office, is the chief prosecuting agency for Allendale, Beaufort, Colleton, Hampton and Jasper counties, and was created by and exists under the authority of the South Carolina State Government.

JURISDICTION AND VENUE

3. This is an action for a declaratory judgment pursuant to S.C. Code Ann. § 15-53-10 *et. seq.* for the purpose of determining a question of actual controversy regarding the Plaintiff's eligibility to be granted an expungement under S.C. Code Ann. § 22-5-910.
4. The Plaintiff has standing to bring this action because she has a substantial interest in the subject matter of this litigation. The solicitor's rejection of her application denied the Plaintiff of a benefit under the laws of the State of South Carolina. In South Carolina, a person may have a conviction expunged, "Following a first offense conviction for a crime carrying a penalty of not more than thirty days imprisonment or a fine of one thousand dollars, or both." S.C. Code Ann. § 22-5-910.
5. This Court has subject matter jurisdiction under S.C. Code § 15-53-20 to make declaratory judgments "to declare rights, status and other legal relations whether or not

further relief is or could be claimed" and personal jurisdiction over the parties due to the fact that the Plaintiff and Defendant both reside in the State of South Carolina.

6. Venue is proper in this Court the underlying conviction forming the subject matter of the dispute occurred within Jasper County. See SC Code § 15-7-30 (B).

FACTS

7. On December 04, 2008, the Plaintiff was convicted of driving under the influence first offense.
8. On January 20, 2012, the Plaintiff was convicted of assault and battery third degree in the Jasper County Magistrate's Court.
9. On May 12, 2015, the Plaintiff applied to the Fourteenth Judicial Circuit Solicitor's Office for an expungement of her January 20, 2012 conviction for assault and battery third degree pursuant to SC Code § 17-22-940.
10. On May 19, 2015, the Defendant sent the Plaintiff a letter rejecting the Plaintiff's application for expungement, by citing SC Code § 22-5-910 and claiming that the Plaintiff's 2008 conviction for driving under the influence operated as the "first offense" under the statute, and therefore the Plaintiff was not eligible to have her assault and battery conviction expunged.
11. The SLED state criminal records check, included with the Defendant's rejection letter, only revealed the two convictions mentioned previously and no conviction appears on the Plaintiff's criminal record after the 2012 conviction for assault and battery.
12. The Plaintiff has not previously obtained an expungement of a criminal conviction.
13. Under SC Code § 22-5-910, "Following a first offense conviction for a crime carrying a penalty of not more than thirty days imprisonment or a fine of one thousand dollars, or both, the defendant after three years from the date of the conviction, including a conviction in magistrates or general sessions court, may apply... to the circuit court for an order expunging the records of the arrest and conviction and any associated bench warrant."
14. SC Code § 22-5-910 does not apply to "an offense involving the operation of a motor vehicle," to "a violation of Title 50 or the regulations promulgated pursuant to Title 50 for which points are assessed," or to "an offense contained in Chapter 25, Title 16, except first offense criminal domestic violence as contained in Section 16-25-20, which may be expunged five years from the date of the conviction." SC Code § 2-5-910 (A)(1)-(3).
15. The South Carolina Code provides that "[n]o person may have his records expunged under this section more than once." SC Code § 22-5-910.

LAW

16. 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.
17. The Fourteenth Circuit Solicitor's interpretation of the statute renders the inclusion of the language "[n]o person may have his records expunged under this section more than once" redundant and unnecessary. Under this interpretation of the statute, it is obvious that a person may only have a record expunged once because only a person's first overall conviction in magistrate or general sessions court would be eligible for expungement. It was not part of the legislative intent to purposefully include redundant limiting language in the statute. "A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous." *In re Decker*, 322 S.C. 215, 219 (1995).
18. 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. This includes situations where a person's first conviction is for a minor traffic violation. This person would be precluded from ever being able to receive an expungement under the statute. "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. Sweet*, 386 S.C. 339, 351(2010) (citing *Unicom Ins. Co. v. Schmidt*, 339 S.C. 362, 368 (2000)).
19. Offenses involving motor vehicles do not apply to SC Code § 22-5-910, and therefore, should not be considered when determining whether another charge is eligible for expungement.
20. Recent amendments to the expungement statutes at 17-1-40, 22-5-910, and 22-5-920 indicate the clear intent of the South Carolina legislature is to expand the expungement statutes to allow more people to avail themselves of expungement and destruction of arrest records. See S.C. Gen. Assembly, 120th Session, Act No. 75 (June 24, 2013) and S.C. Gen. Assembly, 121st Session, Act No.132 (February 23, 2016).
21. The Fourteenth Circuit Solicitor's interpretation of S.C. Code Ann. § 22-5-910 is erroneous because the legislature has delineated specific first offense crimes that are eligible for expungement, such as a first offense misdemeanor check fraud and a first offense failure to stop when signaled by an officer. See S.C. Code § 17-22-910. When the legislature's statutory scheme for the expungement of criminal records is viewed as a whole, it is clear that the legislature is primarily concerned with the types of crimes that may be expunged and not the temporal order in which they occur.

THEREFORE, this Court issue its judgment as follows:

- a. The Plaintiff's December 04, 2008 DUI conviction does not preclude the expungement of her January 20, 2012 assault and battery third degree conviction. The only limiting

language in S.C. Code Ann. §22-5-910 pertaining to Plaintiff's expungement application is that the conviction must have arisen from a first offense of a crime, three years must have passed from the date of the conviction without a subsequent conviction, and that only one conviction may be expunged. The Plaintiff has, therefore, met all of the statutory requirements necessary to have her Assault and Battery third degree conviction expunged.

- b. The Fourteenth Judicial Circuit Solicitor's Office shall process the Plaintiff's application for an order of destruction of arrest records of her January 20, 2012 assault and battery third degree conviction in the Jasper County Magistrate Court in accordance with the findings contained herein.
- c. The expungement process will result in no further monetary costs to the Plaintiff.

IT IS SO ORDERED.

4/6, 2016
Charleston SC


The Honorable Carman T. Mullen
Presiding Judge

CERTIFICATION

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The record contains no matter which is irrelevant to the appeal.

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