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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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APR 19 2017

SC Court of Appeals

Elise Caro-Medina,Respondent,

v.

Fourteenth Judicial Circuit Solicitor's Office,Appellant.

BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES..... ii

STATEMENT OF ISSUE ON APPEAL..... 1

STATEMENT OF THE CASE..... 2

ARGUMENT..... 4

**THE CIRCUIT COURT ERRED, BECAUSE SECTION 17-22-940(F)
OF THE UNIFORM EXPUNGEMENT OF CRIMINAL RECORDS
ACT PLAINLY DECLARES THAT A CONVICTION FOR A
TRAFFIC-RELATED OFFENSE THAT INCLUDES THE
POSSIBILITY OF INCARCERATION WILL BAR THE
EXPUNGEMENT OF A SUBSEQUENT CONVICTION UNDER
SECTION 22-5-910.**

CONCLUSION..... 7

TABLE OF AUTHORITIES

South Carolina Cases

Hodges v. Rainey, 341 S.C. 79, 86, 533 S.E.2d 578, 582 (2000)..... 6

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)..... 5

Joiner ex rel. Rivvas v. Rivas, 342 S.C. 102, 109, 535 S.E.2d 372, 375 (2000)... 5

South Carolina Statutes

S.C. Code Ann. § 15-53-10 *et sequentes*..... 2

S.C. Code Ann. §17-22-940..... 2

S.C. Code Ann. § 17-22-940(F)..... i, 4, 5, 6

S.C. Code Ann. § 22-5-910..... i, 1, 2, 4, 5, 6

S.C. Code Ann. §56-5-2930(A)(1)..... 6

Other Authority

Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Text* (2012)..... 5

Black's Law Dictionary 602 (7th ed. 1999)..... 6

1 James Kent, *Commentaries on American Law* 433 (1826)..... 5

Op.S.C. Att'y.Gen.,2004 WL 235412 (Jan 21, 2004)..... 5

STATEMENT OF ISSUE ON APPEAL

1. Did the Circuit Court err when it concluded that the Respondent's DUI first offense conviction does not bar the expungement of her subsequent assault and battery third degree conviction under 22-5-910?

STATEMENT OF THE CASE

The Respondent was convicted of driving under the influence first offense on December 4, 2008 (DUI first offense conviction). On January 20, 2012, the Respondent was convicted of assault and battery third degree (AB conviction). On May 12, 2015, Respondent applied to the Fourteenth Circuit Solicitor for the Expungement of the AB conviction pursuant to Section 17-22-940, which establishes solicitors as the administrators of the expungement process for all criminal records. (R. p. 3, Final Order p. 2, ¶9). The Solicitor rejected the Respondent's expungement request on May 19, 2015. (R. p. 3, Final Order p. 2, ¶10). The Respondent filed an action for Declaratory Judgment on July 14, 2015 pursuant to Section 15-53-10 *et sequentes*. (Summons). The purpose of that action was to determine whether the Respondent's January 20, 2012 AB conviction was eligible for expungement under Section 22-5-910, despite her December 4, 2008 DUI first offense conviction. (R. p. 2, Final Order p. 1, ¶3).

The Circuit Court held a hearing concerning the Respondent's action for declaratory judgment on March 29, 2016. (R. p. 1, Final Order p. 1, Preamble). Judge Mullen issued her Order dated April 6, 2016. (R. p. 5, Final Order p. 4). The Circuit Court determined that, under Section 22-5-910, the Respondent's DUI first offense conviction did not preclude the expungement of her AB conviction. (R. p. 4, Final Order p. 3, ¶a). The Circuit Court summarized its rationale for the Order as follows:

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.

(R. p. 4-5, Final Order pp. 3-4, ¶a).

The Circuit Court granted the expungement over the objection of the Solicitor; he argued 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.” (R. p. 3, Final Order p. 2, ¶10). The State filed its Notice of Appeal on June 13, 2016.

ARGUMENT

THE CIRCUIT COURT ERRED, BECAUSE SECTION 17-22-940(F) OF THE UNIFORM EXPUNGEMENT OF CRIMINAL RECORDS ACT PLAINLY DECLARES THAT A CONVICTION FOR A TRAFFIC-RELATED OFFENSE THAT INCLUDES THE POSSIBILITY OF INCARCERATION WILL BAR THE EXPUNGEMENT OF A SUBSEQUENT CONVICTION UNDER SECTION 22-5-910.

The Circuit Court determined that, under Section 22-5-910, the Respondent's DUI first offense conviction does not preclude the expungement of her AB conviction. (R. p. 4, Final Order p. 3, ¶a). Although the Circuit Court gave several reasons in support of its interpretation of Section 22-5-910, this argument discusses only the reasons relevant to this appeal. The Circuit Court decided the Solicitor's interpretation would lead to absurd results; specifically, the Circuit Court found it absurd that a person, because of a prior conviction for a minor traffic offense, would be unable to receive an expungement for a subsequent and otherwise eligible conviction. (R. p. 4, Final Order p. 3, ¶18). In addition to its concern for an absurd result, the Circuit Court concluded that, "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." (R. p. 4, Final Order p. 3, ¶19).

While Section 22-5-910 does prohibit the expungement of the Respondent's DUI first offense conviction, there is no language within Section 22-5-910 that makes her DUI irrelevant for determining whether her AB conviction is eligible for expungement. Under the Circuit Court's interpretation of Section 22-5-910, a person could have multiple DUI convictions, yet still receive an expungement for a subsequent assault and battery. When Section 22-5-910 is considered in conjunction with Section 17-22-940(F) of the South Carolina Uniform

Expungement of Criminal Records Act, the Circuit Court's reasoning and interpretation become unsustainable.¹

Section 17-22-940(F) of the Uniform Expungement of Criminal Records Act (the Act) and Section 22-5-910 relate to the same subject matter: 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 Furthermore, 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

Section 17-22-940(F) contains the following instruction: "If 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."⁴ The Circuit Court's conclusion regarding a conviction for a minor traffic offense barring expungement of a subsequent and otherwise expungable conviction is unfounded. Moreover, the

¹ A 2004 Opinion written by the Office of the Attorney General concluded that, a preceding DUI would preclude the expungement of a subsequent assault and battery, because the DUI was the "first offense conviction" rather than the assault and battery. See *Op.S.C. Att'y.Gen.*, 2004 WL 235412, 2 (Jan 21, 2004). However, the Office of the Attorney General wrote its Opinion before the passage of the Uniform Expungement of Criminal Records Act, which became law in 2009. That Opinion has been—at least in the context of the Respondent's specific situation—superseded by the statute.

² Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts*, p. 252 (2012) (citing 1 James Kent, *Commentaries on American Law* 433 (1826)).

³ *Joiner ex rel. Rivvas v. Rivvas*, 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)).

⁴ S.C. Code Ann. §17-22-940(F).

implication of Section 17-22-940(F) is clear: the conviction for any traffic-related offense that includes the possibility of incarceration will be considered as a bar to expungement.⁵

A DUI first offense is punishable by a fine of four hundred dollars or imprisonment for not less than forty-eight hours; the period of incarceration cannot exceed thirty days.⁶ Section 17-22-940(F) of the Act plainly declares that a conviction for a traffic-related offense that includes the possibility of incarceration will bar the expungement of a subsequent conviction under Section 22-5-910. Thus, the Circuit Court erred when it concluded that the Respondent's preceding DUI first offense conviction does not bar the expungement of her subsequent AB conviction.

⁵ "The canon of construction *expressio unius est exclusio alterius* or *inclusio unius est exclusio alterius* holds that to express or include one thing implies the exclusion of another, or of the alternative." *Hodges v. Rainey*, 341 S.C. 79, 86, 533 S.E.2d 578, 582 (2000) (citing *Black's Law Dictionary* 602 (7th ed. 1999) (internal quotations omitted).

⁶ S.C. Code Ann. §56-5-2930(A)(1).

CONCLUSION

For the foregoing reasons, the order of the trial court should be reversed.

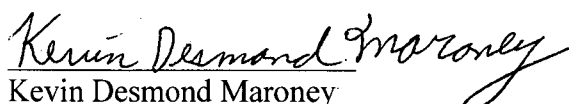
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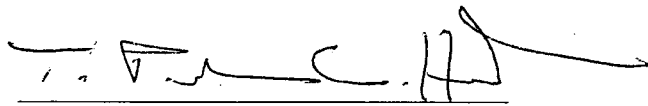
Fourteenth Judicial Circuit Solicitor's OfficeAppellant

CERTIFICATE OF SERVICE

I hereby certify that on April 19, 2017 I served copies of the following upon the other parties by depositing copies in the U.S. Mail, postage prepaid, addressed as follows to their attorneys:

- 1. Record on Appeal
- 2. Reply Brief of Appellant
- 3. Brief of Appellant

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RULE 211(b) CERTIFICATION

I hereby certify that the Brief of Appellant and Reply Brief of Appellant comply with Rule 211(b), SCACR and the August 13, 2007, Supreme Court Order regarding personal identifiers.



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