

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,

PENNSYLVANIA

COMMONWEALTH : **No. MD-148-2012**
 : **MD-149-2012**
 v. :
 :
 CMG, : **Petition for Expungement**
 Defendant :

OPINION AND ORDER

Before the Court is a Petition for Expungement filed by CMG on May 16, 2012. The Petitioner has requested the Court to expunge his prior summary traffic convictions.

On or about August 21, 2000, the Petitioner was charged with one count of Operating Vehicle without Required Financial Responsibility, 75 Pa. C.S. § 1786(F).

On or about February 5, 2001, the Petitioner was charged with one count each of Driving Without a License, 75 Pa. C.S. § 1501(A); Operating a Vehicle Without Required Financial Responsibility, 75 Pa. C.S. § 1786(F); Driving While Operating Privileges Suspended or Revoked, 75 Pa. C.S. § 1543(A); and Vehicle Registration Suspended, 75 Pa. C.S. § 1371(A).

Both violations occurred in Clinton Township, Lycoming County, Pennsylvania. The Petitioner was cited by Pennsylvania State Trooper Robert G. Nelson and Montgomery Police Department Officer Jeffrey Houseknecht respectively.

The Petitioner plead guilty to the violations and was subsequently fined

on both cases a total of \$825.00 plus Court costs. All fines and costs have been satisfied.

The Commonwealth stipulated to the expungement of all non-recidivist charges. As a result, this Opinion will only address the expungement of the one count of Driving While Operating Privileges Suspended or Revoked. 75 Pa. C.S. § 1543(A). This is a recidivist offense where the fines and penalties increase with subsequent violations.

Expungement of summary traffic offenses is governed by 18 Pa. C.S. § 9122(b)(3)(i), which states that criminal history record information may be expunged when the individual seeking expungement of a summary offense “has been free of arrest or prosecution for five years following the conviction for that offense.” The parties have stipulated that the Petitioner has been free from arrest and prosecution for five years following the conviction of his summary traffic offenses.

Nonetheless, the statute does not mandate expungement. Nor does it provide the Court with direction as to how to exercise its discretion. Accordingly, the Court will utilize the balancing test which has been applied by the Courts in connection with non-summary dispositions.

The Courts have recognized the serious harm that an individual may suffer as a result of the Commonwealth’s retention of a criminal record. *See Commonwealth v. Malone*, 366 A.2d 584, 587-88 (Pa. Super. Ct. 1976). Due to the potential hardship, there may be circumstances in which substantive due process

guarantees an individual the right to have his or her arrest record expunged.

Commonwealth v. Wexler, 431 A.2d 877, 879 (Pa. 1981)(citing Malone, 366 A.2d at 587-88). When determining whether justice requires expungement, the Court “must balance the individual’s right to be free from harm attendant to maintenance of the arrest record against the Commonwealth’s interest in preserving such records.” Wexler, 431 A.2d at 879.

Several factors should be considered when determining the strength of the petitioner’s interest against the strength of the Commonwealth’s interest. Id. (citing Commonwealth v. Iacino, 411 A.2d 754 (Pa. Super. Ct. 1979)).

These factors include the strength of the Commonwealth’s case against the petitioner, the reasons the Commonwealth gives for wishing to retain the records, the petitioner’s age, criminal record, and employment history, the length of time that has elapsed between the arrest and the petition to expunge, and the specific adverse consequences the petitioner may endure should expunction be denied.”

Id.

The Commonwealth bears the burden of justifying why the arrest record should not be expunged. Wexler, 431 A.2d at 881.

The Commonwealth argues that the Petitioner’s record should be retained because it contains a recidivist offense. If the Petitioner commits a similar offense in the future, the sanction increases. If the Petitioner’s record is expunged, his previous offense cannot be used against him to increase the penalty.

The Petitioner is currently thirty-eight years of age.

Aside from the aforementioned traffic offenses, the Petitioner’s arrest record is clean.

Recently, the Petitioner obtained certification as a paralegal through the Pennsylvania College of Technology. He has obtained employment as a paralegal at a law firm. The Petitioner plans to continue his education in order to receive a Bachelor's degree.

Since the violations in 2001, the Petitioner has not been arrested, charged or convicted of any crimes or vehicle code violations.

The Petitioner has faced and may continue to face adverse consequences due to his record. When applying for different positions as a paralegal, the Petitioner needed to admit to having a criminal record. Some of the applications required the submission of summary conviction informations. As a result, the Petitioner feels that he is unable to compete against those applicants without summary offenses. Although the Petitioner could not provide any specific jobs that he was unable to obtain as a result of his arrest record, he plans to continue searching for a government position. The Petitioner submits that in a competitive job market, having summary offenses on his record may be the determining factor between being turned down for a position over a person without a record. The potential harm is exacerbated by the limited job market and poor economy.

In light of all of the Wexler factors, the Court concludes that the Petitioner's right to be free from harm attendant to the maintenance of a traffic summary record outweighs the Commonwealth's interest in preserving said record. The Commonwealth's interest is minimal at best. The Court would be reluctant to

expunge Petitioner's arrest record if the recidivist offense was the result of a DUI or if the Petitioner had a significant history of traffic offenses. Because the Petitioner has not committed any offenses since 2001 and his record is clean aside from the aforementioned offenses, the Court does not have reason to believe that the Petitioner will likely re-offend.

ORDER

AND NOW, this ____ day of July, 2012, the Court GRANTS Defendant's Petition for Expungement of summary charges. See the attached Orders.

By the Court,

Judge Marc F. Lovecchio