

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. 81-10,141

VS :

CW :

OPINION and ORDER

Before the Court is Petitioner's Petition for Expungement of her Criminal Arrest and Acquittal Record. On January 23, 1981, Petitioner was arrested and charged with one count of theft by unlawful taking, three counts of forgery, and three counts of receiving stolen property. It was alleged that Petitioner took payroll checks made payable to three different individuals from her place of employment, that she forged the endorsements, and that she cashed and received the proceeds of the checks. On October 15, 1981, Petitioner was acquitted of the theft and forgery offenses. Petitioner was found guilty of two charges of receiving stolen property.¹ Petitioner was sentenced to 3 to 23 months of incarceration. The sentence was suspended, conditioned upon the completion of a two year period of probation, the payment of the costs of prosecution, the payment of restitution to the victim in the amount of \$650.00, the payment of a fine in the amount of \$2,500.00, and the performance of 96 hours of community service. Petitioner appealed her conviction on October 19, 1981. The Superior Court affirmed the Conviction by Opinion dated December 30, 1981. Petitioner successfully completed the period of probation and all other terms of her sentence.

Petitioner now requests that the counts in which she was acquitted, specifically the count of theft, the three counts of forgery; along with the count of receiving stolen property that was dismissed by the District Justice at the preliminary hearing, be

expunged. Petitioner cites Commonwealth v. D.M., 695 A.2d 770 (1997), in support of her position that the charges should be expunged. In D.M., supra, the Pennsylvania Supreme Court held that in cases of acquittal, a petitioner is automatically entitled to the expungement of her arrest record. The court reasoned:

A defendant enters a trial cloaked in the presumption of innocence and when the fact-finder reaches a verdict of acquittal, there is no justification to search for reasons to undermine the verdict. Such a defendant has achieved the strongest vindication possible under our criminal tradition, laws, and procedures.

D.M., 695 A.2d at 773

This Court finds, in accordance with the holding in D.M., that the charges resulting in acquittal at the trial and dismissal by the District Justice at the preliminary hearing should be expunged at this time.^{2 3}

¹The Court notes that the third count of receiving stolen property was dismissed by the District Justice at the preliminary hearing.

² The Court notes that the Commonwealth argued that expungement was not proper since Petitioner was convicted of some of the charges, but acquitted of other charges, relying on Commonwealth v. Dobson, 684 A.2d 1073 (Pa. Super 1998). The decision in D.M., supra, which followed the decision in Dobson, invalidated the portion of the Dobson ruling that pertained to the distinction between cases where some of the charges resulted in conviction and others in acquittal. The Court therefore found the Commonwealth's reliance on Dobson for this proposition is misplaced.

³ The Commonwealth also relied on the decision in Commonwealth v. Wolfe, 749 A.2d 507 (Pa. Super 2000) in support of their position. The Commonwealth's Memo to the Court states that "While in Wolfe the court held expungement should be granted it distinguished Dobson and reiterated that expungement must be denied when a defendant has been convicted of some charges but acquitted of other lesser related charges arising from the same incident." The Court found the Commonwealth's reliance on this case is similarly misplaced. First, the Wolfe matter dealt with charges that had been withdrawn, they had not resulted in an acquittal. The Wolfe court noted that "the distinction it is important because withdrawn charges imply a lack of merit or the consolidation of charges whereas an acquittal implicates a *prima facie* case wherein the jury or fact finder, for unknown reasons, mitigated or diminished the charges by acquittal, without necessarily finding the acts were not committed, did not merit prosecution, or that the defendant was innocent." Wolfe, at 509. Further, in D.M., the Supreme Court reiterated the authority of Commonwealth v. Wexler 494 Pa. 325, 431 A.2d 877 (1981), and the balancing test as the means of deciding petitions to expunge the records of cases which are terminated without convictions for reasons such as nolle prosequi or ARD. The Wolfe court, after considering the factors set forth in the Wexler balancing test, found that the trial court had correctly concluded that, although given ample opportunity, the Commonwealth had "failed to present compelling justification to retain appellee's non-conviction records" Wolfe, supra, at 510. Second, although the Wolfe court noted that the Commonwealth had relied on the Dobson opinion in support of their position, this court could not find any part of the Wolfe opinion where the court "reiterated that expungement must be denied when a defendant has been convicted of some charges but acquitted of other lesser or related charges or related charges arising from the same incident." For these reasons this Court rejected the Commonwealth's argument.

ORDER

AND NOW, this _____ day of July, 2001, it is ORDERED and DIRECTED that the Petitioner's Petition for Expungement is GRANTED.

The following information is provided pursuant to Pennsylvania Rule of Criminal Procedure 722:

1. The Defendant is CA, her date of birth is: xx/xx/xx. Her social security No. is xxx/xx/xxx.
2. The OTN is B 832269-4.
3. The District Justice Docket No. is C-21-81 and the Magisterial District Number is 29-1-01
4. The Court of Common Pleas of Lycoming County Docket No. is 81-10,141.
5. Specific convictions to be expunged: None.
6. Specific criminal information to be expunged:
 - Count A (or 1): Theft by Unlawful Taking, 18 Pa. C.S.A. §3921(a)
 - Count B (or 2): Forgery, 18 Pa. C.S.A. §4101
 - Count C (or 3): Forgery, 18 Pa. C.S.A. §4101
 - Count D (or 4): Forgery, 18 Pa. C.S.A. §4101
 - Count E (or 5): Receiving Stolen Property, 18 Pa. C.S.A. §3925
7. The Defendant was arrested on or about December 17, 1980 by the Williamsport Police department.
8. On October 15, 1981 the Defendant was convicted of two counts of receiving stolen property, 18 Pa. C.S.A. §3925
9. On February 2, 1982 the Defendant was sentenced to 3 to 21 months in Lycoming County Prison, said sentence being suspended. Defendant also was placed on probation under the supervision of the Lycoming County Adult Probation Office for a period of two years.
10. The Defendant has completed all terms of her probation.

11. Reason for expungement: On October 15, 1981 Defendant was acquitted on the five remaining counts above-listed at paragraph 6.

12. A certified copy of this Order shall be served upon the Pennsylvania State Police and the Williamsport Police Department.

FURTHER, it is hereby ORDERED AND DIRECTED that the appropriate keeper of criminal records for the Pennsylvania State Police and Williamsport Police Department shall expunge and destroy any and all records of arrest and other records pertaining to the above referenced Defendant; and to request so far as possible, the return of such records that said police department has made available to federal and state agencies, destroying such records on receipt thereof.

FURTHER, the appropriate keeper of the criminal records of the Pennsylvania State Police and Williamsport Police Department shall file with the Prothonotary within thirty (30) days an Affidavit that all such records have been expunged and destroyed, together with this Court's Expungement Order, and the keeper shall retain no copies thereof.

FURTHER, upon receipt of this Affidavit, the Prothonotary is ordered and directed to seal the same together with the original and all copies of this Expungement Order and keep the same in a separate locked file cabinet. The Prothonotary shall not permit any person or agency to examine such sealed documents, except that any Assistant District Attorney or Adult Probation Officer may examine such documents for the sole purpose of determining the subsequent eligibility of applicants for the Accelerated Rehabilitative Disposition Program.

FURTHER, the Prothonotary shall expunge and destroy all of the documents in the Court file, including docket entries at the above-captioned number but may keep the Court file jacket in an appropriate place.

This Order shall not affect any records pertaining to the February 2, 1982 conviction on two counts of receiving stolen property.

By The Court,

Nancy L. Butts, Judge

cc: David Chuprinski, Esquire,
Ken Osokow, Esquire
Pennsylvania State Police
Williamsport Police Department
Prothonotary