

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

**COMMONWEALTH OF PENNSYLVANIA**

**v.**

**JEREMY BANEY,  
Defendant**

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**CR: 124-1996**

**CRIMINAL DIVISION**

**OPINION AND ORDER**

The Defendant filed a Petition for Expungement on August 19, 2013. A hearing on the Petition was held September 27, 2013.

***Background***

On November 11, 1995, the Commonwealth filed an Information against the Defendant charging Corrupting Minors<sup>1</sup> and Selling or Furnishing Liquor to Minors.<sup>2</sup> On February 26, 1996, the Defendant pled guilty before the Honorable William S. Kieser to one count of Selling or Furnishing Liquor to Minors in exchange for the remaining charges to be withdrawn. The Defendant's written guilty plea colloquy states the terms of the plea agreement as "(1) no incarceration; (2) fine & suspension up to the Court; (3) withdraw remaining counts – Corruption of Minors." On the same day the Defendant was sentenced to twelve (12) months under the Intermediate Punishment Program (IP). On March 13, 1997, the Honorable Clinton W. Smith found that the Defendant violated the terms of IP and sentenced him to three (3) months to one (1) year incarceration with a subsequent year of probation.

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<sup>1</sup> 18 Pa.C.S. § 6301(a).

<sup>2</sup> 18 Pa.C.S. § 6310.

On November 16, 2005, the Defendant filed a Motion to Expunge Criminal Record. On May 11, 2006, following a hearing on the motion, Judge Kieser denied the Motion. Judge Kieser's Order stated that the Motion was denied due to "the provisions of Title 18 Section 9122 and also the fact that the Defendant is currently under a sentence for the selling of marijuana." The Defendant has filed an additional two Petitions for Expungement with this Court; however, they were dismissed because they failed to include the Defendant's Pennsylvania State Police criminal record.

On August 19, 2013, the Defendant filed a Motion to Expunge Misdemeanors for the Corrupting Minors charge withdrawn pursuant to the plea agreement and also the Furnishing Alcohol charge that the Defendant pled guilty to. The Defendant submitted a brief to this Court arguing that Lutz does not apply retrospectively to his case and that he is in fact innocent of the charges.

### *Petition for Expungement*

The Commonwealth contends that the Defendant is not entitled to an expungement for either the charge he pled guilty to and the charge withdrawn pursuant to the plea agreement. The disposition of a case determines the reasons for and how a charge can be expunged. First, "[i]n cases terminated by reason of a trial and acquittal, a Defendant is automatically entitled to the expungement of his arrest record." Commonwealth v. Lutz, 788 A.2d 993 (Pa. Super. 2001). Second, when the charges were *nolle prossed* the Court must balance the competing interests of the parties. "The decision to grant or deny a request for expungement of an arrest record lies in the sound discretion of the trial judge, who must balance the competing interests of the Defendant and the Commonwealth." Commonwealth v. Waughtel, 999 A.2d 623 (Pa. Super.

2010). The interests that the court should consider include: the strength of the Commonwealth's case against the Defendant, the reasons the Commonwealth gives for wishing to retain the records, the Defendant'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 Defendant may endure should expunction be denied. Commonwealth v. Wexler, 431 A.2d 877, 879 (Pa. 1981).

When a Defendant pled guilty or the Commonwealth agreed to withdraw charges as part of a plea agreement, a Defendant is not normally entitled to an expungement of the dropped charges under the Wexler factors. Lutz, 788 A.2d at 993.

In such a scenario, the Commonwealth dismisses charges in connection with a plea arrangement and, accordingly, there is no implicit or express admission that it lacks evidence to convict a defendant of the crimes. The action of dropping the charges is viewed as a contractual arrangement negotiated as part of the plea bargain. This situation is contrasted with that involved in the *nol pros* setting, where the Commonwealth concedes that there is insufficient evidence to support the dismissed charges. Thus, if expungement were permitted as to charges withdrawn pursuant to a plea bargain rather than due to a lack of evidence, there would not be an accurate record of the agreement reached by the defendant and the Commonwealth. Furthermore, "In the absence of an agreement as to expungement, Appellant stands to receive more than he bargained for in the plea agreement if the dismissed charges are later expunged."

Commonwealth v. V.G., 9 A.3d 222, 226 (Pa. Super 2010) (citations omitted); see also Commonwealth v. Joiner, 68 A.3d 341 (Pa. Super. 2013).

Finally, a separate standard is used when the Defendant was convicted. When an individual has been convicted of the offense charged then the expungement of the criminal history records may be granted only under very limited circumstances that are set forth by 18 Pa.C.S. § 9122. Commonwealth v. Moto, 23 A.3d 989, 993 (Pa. 2011). Under 18 Pa.C.S. § 9122(b), criminal history record information may be expunged when:

- (1) An individual who is the subject of the information reaches 70 years of age and has been free of arrest or prosecution for ten years following final release from confinement or supervision.
- (2) An individual who is the subject of the information has been dead for three years.
- (3)(i) An individual who is the subject of the information petitions the court for the expungement of a summary offense and has been free of arrest or prosecution for five years following the conviction for that offense.

With the law in mind, the Court must now determine the disposition of the case and whether or not Wexler factors can be applied or whether the charges fall within the limited exceptions of 18 Pa.C.S. § 9122.

With regard to the Defendants request to expunge his Selling or Furnishing Liquor conviction, the Court finds that the Defendant is not entitled to an expungement. The Defendant pled guilty to the charge and therefore it is treated as a conviction. The Defendant does not fall within any of the limited exceptions outlined in 18 Pa.C.S. § 9122(b). Defendant's only recourse at this point would be to request a pardon from the Board of Pardons.

Further, the Court finds that the Defendant is not entitled to an expungement for the withdrawn Corruption of Minors charge. The Court is not persuaded by the Defendant's argument that Lutz or any of the cases following a similar holding should not apply to his case. Based upon the information provided to the Court, the Defendant pled guilty to Selling or Furnishing Liquor in exchange for the withdrawal of the more serious Corruption charge. The Court finds that since the Defendant pled guilty pursuant to a plea agreement the Court may not consider the Wexler factors and the Defendant is not entitled to an expungement. Further, at the time of the guilty plea there was no implicit agreement on expungement with the Defendant and the Commonwealth.

**ORDER**

AND NOW, this \_\_\_\_\_ day of October, 2013, based upon the foregoing Opinion, Defendant's Petition for Expungement is hereby DENIED. The Defendant pled guilty to Selling or Furnishing Liquor to Minors in exchange for the Corruption of Minors charge to be withdrawn pursuant to a plea agreement with the Commonwealth, and as a result is not entitled to expungement on either charge.

By the Court,

Nancy L. Butts, President Judge

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