

SUPREME COURT OF NEW JERSEY

In re Kollman, 210 N.J. 557

46 A.3d 124 (2012) · Decided July 9, 2012

SUMMARY

The New Jersey Supreme Court interprets amended statutory provisions governing expungement of certain criminal records after five years. The Court holds that applicants bear the burden of proving, by a preponderance of the evidence, that expungement is in the public interest and explains the factors courts may consider, including the nature of the offense and the applicant’s character and conduct since conviction. The Court reverses the denial of Ronald Kollman’s expungement petition and remands for further proceedings.

CASE DETAILS

COURT	Supreme Court of New Jersey
WRITING FOR THE COURT	Chief Justice Stuart Rabner; Justice LaVecchia; Justice Albin; Justice Hoens; Justice Patterson; Judge Wefing, temporarily assigned
JURISDICTION	New Jersey
DECIDED	July 9, 2012
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Petition for certification from the Appellate Division's affirmance of the denial of a petition to expunge a criminal conviction.
STANDARD OF REVIEW	The balancing of statutory factors in an expungement decision is reviewed for abuse of discretion; statutory interpretation and other legal questions are reviewed de novo.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Ronald C. Kollman, Jr. v. State of New Jersey

TOPICS

- post-conviction relief
- statutory interpretation
- legislative intent
- criminal procedure
- remedies

PRACTICE AREAS

- criminal law
- post-conviction relief
- statutory interpretation
- criminal records and expungement
- remedies

QUESTIONS PRESENTED

1. Which party bears the burden of proving that expungement is in the public interest under N.J.S.A. 2C:52-2(a)(2) and (c)(3)?
2. What factors may courts consider when determining whether expungement of an eligible conviction is in the public interest?
3. May a court deny expungement categorically based on the type of drug or offense, or on generalized concerns about public access to criminal records?
4. Did the trial court properly deny Kollman's expungement petition?

HOLDINGS

1. An applicant seeking expungement under N.J.S.A. 2C:52-2(a)(2) or (c)(3) bears the burden of proving by a preponderance of the evidence that expungement is in the public interest.
2. Courts must conduct a fact-specific balancing of the nature of the offense and the applicant's character and conduct since conviction, considering established or undisputed facts relevant to those factors.
3. Courts may not reject an otherwise eligible expungement application based on categorical or generic grounds, including a judge's view that a particular drug or all drug offenses are categorically too serious for expungement.
4. A court may rely on a material fact that remains disputed only after making appropriate findings, following a hearing if necessary; unproven allegations may not be used as substantive factors in the public-interest analysis.
5. The trial court improperly denied Kollman's petition by relying substantially on categorical concerns and by giving insufficient weight to the substantial evidence of his rehabilitation and law-abiding conduct.

KEY QUOTATIONS

“Because the expungement law does not provide otherwise, the Code’s default provision applies, and applicants must therefore demonstrate that expungement is in the public interest, by a preponderance of the evidence.” (572-573)

“By contrast, the statute does not allow judges to reject expungement applications based on categorical or generic grounds.” (575)

“As to all of the above areas, courts may only consider established or undisputed facts, not unproven allegations.” (576)

“Generic concerns aside, our balancing of the factors that remain in the record at this time suggests that expungement would be in the public interest.” (580)

FACTUAL BACKGROUND

Kollman pleaded guilty in 2001 to third-degree distribution of ecstasy arising from one undercover sale, while other related charges were dismissed as part of the plea agreement. He completed probation in September 2002 and thereafter obtained a college degree, maintained full-time employment, participated in community service,

and had no further criminal or motor-vehicle violations. In 2010, after more than five years had elapsed, he sought expungement, but the trial court denied relief based primarily on the seriousness of the drug offense and the asserted public need for access to the conviction.

PROCEDURAL HISTORY

Kollman pleaded guilty to one count of third-degree distribution of a controlled dangerous substance and completed a forty-five-day county-jail sentence and probation. He petitioned to expunge the conviction under the five-year public-interest provisions of New Jersey's expungement statute. The trial court denied relief, and the Appellate Division affirmed, placing the burden of proof on the State. The Supreme Court of New Jersey granted certification, reversed, and remanded for reconsideration under the standards announced in the opinion.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court must reconsider the expungement petition under the Court's fact-specific balancing standards, make findings concerning the relevant established or undisputed facts, and evaluate Kollman's character and conduct as of the date of the new ruling. The court may conduct a hearing if necessary and must consider any intervening offense or additional evidence of rehabilitation.

CASES CITED

- Allen v. V. & A. Bros., Inc., 208 N.J. 114, 127, 26 A.3d 430 (2011)
- DiProspero v. Penn, 183 N.J. 477, 493, 874 A.2d 1039 (2005)
- In re Young, 202 N.J. 50, 63, 995 A.2d 826 (2010)
- Burnett v. County of Bergen, 198 N.J. 408, 421, 968 A.2d 1151 (2009)
- In re T.P.D., 314 N.J. Super. 643, 648, 715 A.2d 1048 (Law Div. 1997), aff'd o.b., 314 N.J. Super. 535, 715 A.2d 994 (App. Div. 1998)
- In re P.A.F., 176 N.J. 218, 221, 822 A.2d 572 (2003)
- In re D.H., 204 N.J. 7, 17-18, 6 A.3d 421 (2010)
- State v. XYZ Corp., 119 N.J. 416, 421-424, 575 A.2d 423 (1990)
- In re LoBasso, 423 N.J. Super. 475, 488-496, 33 A.3d 540 (App. Div. 2012)
- Coyle v. Board of Chosen Freeholders, 170 N.J. 260, 267, 787 A.2d 881 (2002)
- In re G.R., 395 N.J. Super. 428, 431, 929 A.2d 602 (App. Div.), certif. denied, 193 N.J. 275, 937 A.2d 977 (2007)
- In re J.N.G., 244 N.J. Super. 605, 610, 583 A.2d 364 (App. Div. 1990)
- In re H.M.H., 404 N.J. Super. 174, 175, 179-180, 960 A.2d 821 (Ch. Div. 2008)
- State v. Merendino, 293 N.J. Super. 444, 450-451, 681 A.2d 117 (App. Div. 1996)
- State v. Brooks, 175 N.J. 215, 229, 814 A.2d 1051 (2002)

- State v. Green, 62 N.J. 547, 571, 303 A.2d 312 (1973)
- In re Opinion No. 26 of the Committee on the Unauthorized Practice of Law, 139 N.J. 323, 327, 654 A.2d 1344 (1995)
- Parish v. Parish, 412 N.J. Super. 39, 73, 988 A.2d 1180 (App. Div. 2010)
- Manalapan Realty, L.P. v. Township Committee of Manalapan, 140 N.J. 366, 378, 658 A.2d 1230 (1995)
- State v. Gandhi, 201 N.J. 161, 176, 989 A.2d 256 (2010)

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