

# RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-1212-21

IN THE MATTER OF  
THE EXPUNGEMENT  
OF THE CRIMINAL  
RECORDS OF D.C.

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Submitted May 9, 2022 – Decided May 20, 2022

Before Judges Rose and Enright.

On appeal from the Superior Court of New Jersey, Law Division, Bergen County, Docket No. XP-21-0642.

Mark Musella, Bergen County Prosecutor, attorney for appellant (Ian C. Kennedy, Assistant Prosecutor, of counsel and on the brief).

Respondent has not filed a brief.

PER CURIAM

The State appeals from a November 19, 2021 Law Division order, denying its motion to revoke an expungement order that pertained to the criminal records of D.C. See N.J.S.A. 2C:52-26 (permitting an expungement order to be vacated within five years for certain reasons, including a "statutory disqualification").

The Office of the Public Defender, on behalf of D.C., filed correspondence with this court, declining to participate in the appeal but agreeing that a remand is necessary to vacate D.C.'s expungement based on a statutory disqualification. We agree with the parties. Accordingly, we reverse.

The facts and procedural history are not complicated. On September 9, 2016, D.C. was sentenced to a five-year special Drug Court probationary term, N.J.S.A. 2C:35-14.<sup>1</sup> The following year, on December 9, 2017, D.C. was arrested in Hanover Township and charged with various drug-related offenses.<sup>2</sup> On April 23, 2018, D.C. pled guilty to the disorderly persons offense of loitering for the purpose of obtaining or distributing drugs, N.J.S.A. 2C:33-2.1(b). She completed her Drug Court sentence on February 13, 2021.

D.C.'s ensuing expungement petition was unopposed by the State and granted by the court on November 2, 2021. Shortly thereafter, the State moved to vacate the expungement order, claiming its failure to object to D.C.'s petition was an "oversight." Immediately following argument on November 19, 2021, the court issued a terse oral decision from the bench, denying the State's motion.

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<sup>1</sup> Effective January 1, 2022, Drug Court was renamed Recovery Court.

<sup>2</sup> The complaint-summons is not included in the record on appeal. We glean the charges from the trial court's expungement order.

The court correctly recognized the governing statute permits expungement of a drug court participant's criminal and juvenile record upon successful completion of special probation, unless the participant was "convicted of any crime, or adjudged a disorderly person or petty disorderly person during the term of special probation." N.J.S.A. 2C:35-14(m)(1). Nonetheless, the court found D.C.'s "hiccup" was "to be expected during somebody's recovery, especially a year or two into their recovery." The court declined to grant the State's motion, concluding a conviction and an inability to expunge her record would amount to "reverse double jeopardy under the specific circumstances of this case." The court cited no authority for its decision.

We consider de novo the trial court's interpretation of the expungement statute. In re Kollman, 210 N.J. 557, 577-78 (2012). Expungement is not a right guaranteed by constitutional or common law; it is purely the product of legislation, and we are limited to the terms of the statute. In re G.P.B., 436 N.J. Super. 48, 50 (App. Div. 2014), aff'd sub nom In re J.S., 223 N.J. 54 (2015).

Pertinent to this appeal, N.J.S.A. 2C:35-14(m)(1) provides:

The Superior Court may order the expungement of all records and information relating to all prior arrests, detentions, convictions, and proceedings for any offense enumerated in Title 2C of the New Jersey Statutes upon successful discharge from a term of special probation as provided in this section, regardless

of whether the person was sentenced to special probation under this section, section 2 of [N.J.S.A. 2C:35-14.2], or N.J.S.[A.] 2C:45-1, if the person satisfactorily completed a substance abuse treatment program as ordered by the court and was not convicted of any crime, or adjudged a disorderly person or petty disorderly person, during the term of special probation.

[(Emphasis added).]

The terms of the statute are unambiguous and, as such, should be construed literally. See State v. P.L., 369 N.J. Super. 291, 293 (App. Div. 2004); see also State v. Thomas, 166 N.J. 560, 567 (2001). When engaging in statutory construction, our "overriding goal is to give effect to the Legislature's intent." State v. D.A., 191 N.J. 158, 164 (2007). The best indicator of that intent is "the plain [statutory] language chosen by the Legislature." State v. Perry, 439 N.J. Super. 514, 523 (App. Div. 2015); see also State v. Gandhi, 201 N.J. 161, 176 (2010). We may not "rewrite a statute or add language that the Legislature omitted." State v. Munafo, 222 N.J. 480, 488 (2015).

While we appreciate the trial court's concern for the well-being of D.C., the governing law is clear. Because it is undisputed D.C. was "adjudged a disorderly person" while serving a "term of special probation," we reverse the order denying the State's motion to vacate the expungement under the plain meaning of N.J.S.A. 2C:35-14(m)(1).

Reversed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.

A handwritten signature in black ink, appearing to be 'JMA', written over the printed text.

CLERK OF THE APPELLATE DIVISION