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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4210-18T3

IN THE MATTER OF THE
EXPUNGEMENT OF C.P.M.

APPROVED FOR PUBLICATION

December 6, 2019

APPELLATE DIVISION

Argued October 22, 2019 – Decided December 6, 2019

Before Judges Hoffman, Currier and Firko.

On appeal from the Superior Court of New Jersey, Law Division, Atlantic County, Docket No. XP-18-0686.

Nicole Lynn Campellone, Assistant Prosecutor, argued the cause for appellant State of New Jersey (Damon G. Tyner, Atlantic County Prosecutor, attorney; Nicole Lynn Campellone, of counsel and on the briefs).

Robert W. Ruggieri argued the cause for respondent C.P.M. (Katherine O'Brien Law, attorneys; Robert W. Ruggieri, of counsel and on the brief; Katherine North O'Brien, on the brief).

The opinion of the court was delivered by

CURRIER, J.A.D.

In this matter, we address whether it was error to grant C.P.M.'s[1] petition for expungement under the "crime spree" doctrine set forth in the 2018 amendment to N.J.S.A. 2C:52-2(a). Because we conclude that C.P.M.'s convictions were not "closely related in circumstances," and, therefore, are not eligible for expungement, we reverse.

In October 2018, C.P.M. filed a petition seeking to expunge three offenses from his criminal record: (l) a March 27, 2000 possession of controlled dangerous substance (CDS) charge, in violation of N.J.S.A. 2C:35-10(a)(4), which resulted in dismissal by conditional discharge; (2) an April 10, 2005 conviction for third-degree possession of CDS, in violation of N.J.S.A. 2C:35-10(a)(1); and (3) two June 22, 2005 convictions for fourth-degree burglary, in violation of N.J.S.A. 2C:18-2, and fourth-degree criminal mischief, in violation of N.J.S.A. 2C:17-3(a)(1).[2]

At the time of C.P.M.'s sentencing in 2006, N.J.S.A. 2C:52-2(a) only permitted an individual to expunge one crime. The statute provided:

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[1] We use initials and pseudonyms for the privacy of the individuals involved in this matter. R. 1:38-3(c)(7).

[2] The dismissed March 2000 CDS possession charge is eligible for expungement under N.J.S.A. 2C:52-6 (permitting expungements for arrests not resulting in a conviction). The State does not appeal the expungement of this offense.

> In all cases, except as herein provided, wherein a person has been convicted of a crime under the laws of this State and who has not been convicted of any prior or subsequent crime, whether within this State or any other jurisdiction, and has not been adjudged a disorderly person or petty disorderly person on more than two occasions may, after the expiration of a period of 10 years from the date of his conviction, . . . present a duly verified petition . . . to the Superior Court in the county in which the conviction was entered praying that such conviction and all records and information pertaining thereto be expunged.
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> [N.J.S.A. 2C:52-2(a) (2006) (emphasis added).]

Despite the requirement that a court could only grant an expungement to an applicant who had not been "convicted of any prior or subsequent crime," petitions were periodically granted under a "single spree" or "crime spree" doctrine. This doctrine, first enunciated in In re Fontana, 146 N.J. Super. 264, 267 (App. Div. 1976), was later rejected in In re Ross, 400 N.J. Super. 117, 122 (App. Div. 2008).

In 2015, the Supreme Court definitively rejected the crime spree doctrine, holding that the Legislature clearly intended to "permit expungement of a single conviction arising from multiple offenses only if those offenses occurred as part of a single, uninterrupted criminal event." In re Expungement Petition of J.S., 223 N.J. 54, 73 (2015). The Court noted that, throughout its various iterations, N.J.S.A. 2C:52-2 consistently "limit[ed] expungement to

offenders who have committed no more than an isolated infraction in an otherwise law-abiding life." Id. at 66.

The Court continued, stating:

> [t]he statute's import is clear: no matter how many offenses are resolved by one conviction, expungement is available only for a single "crime" and is unavailable if another "crime" took place before or after the offense to be expunged.
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> . . . .
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> In short, notwithstanding its substantial expansion of opportunities for expungement in other respects in its 1979 and 2010 amendments, the Legislature evidently sought a stricter limit on the expungement of multiple offenses when it amended N.J.S.A. 2C:52-2 to add the term "prior or subsequent crime." . . . The Legislature limited expungement to a single "crime." . . . A single crime does not necessarily result in a single offense, given that multiple charges may arise from one crime. Rather, it involves a single, uninterrupted criminal event or incident. The Legislature clearly intended to bar expungement when the offender has committed a second crime at an earlier or later time, whether or not those crimes are resolved in the same judgment of conviction.
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> [Id. at 73-77 (citations omitted).]

On October 1, 2018, N.J.S.A. 2C:52-2(a) was amended to allow individuals to expunge more than one indictable offense under certain circumstances. The statute provides:

> In all cases, except as herein provided, a person may present an expungement application to the Superior Court pursuant to this section if:
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> . . . .
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> the person has been convicted of multiple crimes or a combination of one or more crimes and one or more disorderly persons or petty disorderly persons offenses under the laws of this State, which crimes or combination of crimes and offenses were interdependent or closely related in circumstances and were committed as part of a sequence of events that took place within a comparatively short period of time, regardless of the date of conviction or sentencing for each individual crime or offense, and the person does not otherwise have any prior or subsequent conviction for another crime or offense in addition to those convictions included in the expungement application, whether any such conviction was within this State or any other jurisdiction. . . .
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> [(Emphasis added).]

The Legislature explained that the purpose of the 2018 amendment to N.J.S.A. 2C:52(a) was to "revise procedures for expunging criminal and other records and information, including the shortening of certain waiting periods before a person may seek an expungement and increasing the number of convictions which may be expunged." S. Judiciary Comm. Statement to S. 3307 1 (L. 2017, c. 244). The Legislature clarified that the addition of the

"interdependent or closely related in circumstances" and "within a comparatively short period of time" language was intended to allow expungement of "a so-called 'crime spree.'" Ibid. (emphasis added).

C.P.M.'s petition, filed within days after the enactment of the newly-amended statute, seeks to expunge his 2005 convictions under the revived crime spree exception. To conduct our analysis of C.P.M.'s eligibility for expungement, we provide some details as to the circumstances surrounding C.P.M.'s arrest and charges. We derive the facts from the certifications presented by C.P.M. in support of his petition.

C.P.M. began dating Stephanie in 2004. He claimed she introduced him to the "party scene" which involved the routine use of drugs and alcohol.

On April 9, 2005, C.P.M. was out all night drinking and using drugs with a friend. On the morning of April 10, C.P.M. was pulled over for speeding, and arrested for driving while intoxicated.[3] During a search at the police station, police found cocaine in his pocket. C.P.M. was charged with third-degree possession of CDS, N.J.S.A. 2C:35-10(a)(1).[4]

Stephanie ended the relationship with C.P.M. in June 2005. She advised C.P.M. she was cancelling the lease on their home and moving to Philadelphia

[3] C.P.M. had a blood alcohol level of 0.18.

[4] This indictment was pending when C.P.M. was arrested on June 22, 2005.

to live with family. Although C.P.M. gave Stephanie his key, he left a window open so he could get back into the house.

On the night of June 22, 2005, C.P.M. drank alcohol and used cocaine, and then returned to the house he formerly shared with Stephanie, intending to sleep on the couch. After climbing through the open window, C.P.M. heard Stephanie with another man in a locked bedroom. He grabbed a baseball bat and broke down the door of the room. C.P.M. described his actions as fueled by a "drug-induced rage." C.P.M. was not tested for drugs following his arrest.

C.P.M. was arrested and charged with: second-degree and third-degree burglary, in violation of N.J.S.A. 2C:18-2 (counts one and two); third-degree criminal mischief, in violation of N.J.S.A. 2C:17-3(a)(1) (count three); third-degree attempted aggravated assault, in violation of N.J.S.A. 2C:12-1(b)(2) and (7) (counts four and five); fourth-degree unlawful possession of a weapon, in violation of N.J.S.A. 2C:39-5(d) (count six); and third-degree possession of a weapon for an unlawful purpose, in violation of N.J.S.A. 2C:39-4(d) (count seven).

In December 2005, C.P.M. pleaded guilty to the April 10, 2005 third-degree possession of CDS and to the amended June 22, 2005 charges of fourth-

degree burglary and criminal mischief.[5] He was sentenced in March 2006 to one day of incarceration and three years of probation on the drug possession charge. The court imposed a concurrent sentence of three years of probation on the burglary and criminal mischief charges.

During the hearing on his petition, C.P.M. contended he was eligible for expungement under the crime spree exception in the newly amended statute. He argued that because he was under the influence of drugs during the several-month period in which the offenses occurred, his April and June 2005 convictions were sufficiently related. The State countered there was no evidence that C.P.M. was under the influence of any illegal substances when he broke into his former home. Therefore, the crimes were not interdependent or closely related in circumstances nor were they committed as part of a sequence of events in a comparatively short period of time.

After considering the arguments, the judge requested defense counsel expound on his theory that the crimes were drug-related and therefore, interdependent as connected to a drug dependency. The judge asked counsel

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[5] We derive this information from the judgment of conviction and the parties' briefs. We note that during oral argument in the trial court on the petition application, defense counsel said defendant pled guilty to fourth-degree criminal trespass, not burglary. We were not provided a transcript of the plea hearing. The other charges were dismissed.

to provide some "independent corroboration" that C.P.M.'s "drug dependency, if any, fueled his additional criminal activity."

In response, C.P.M. submitted a second certification in support of his expungement petition. He stated that, "[o]n the night of June 22, 2005," he was "in the tight grip of an addiction to drugs and alcohol" and that his "drug and alcohol use at the time of these offenses was a daily, constant activity." C.P.M. reiterated he was drinking alcohol on the night of June 22, and stated that "[o]n any given day, [he] would have tested positive for one or more substances," "and the substances [he] . . . used that day undoubtedly fueled [his] actions."

C.P.M. also stated that although "the April-June 2005 [timeframe] certainly represented the highest, most intense point of [his] addiction, it was certainly a problem that lingered on in [his] life for several years following [his] sentencing in 2006." C.P.M. advised he had been free of drugs and alcohol since 2010.

C.P.M. included several exhibits with his second certification. One document provided was the Uniform Defendant Intake Report completed prior to his sentencing hearing. In that interview on March 2, 2006, C.P.M. reported to the probation officer that: (1) he had experimented with most drugs and used them on a "casual basis[,] mostly weekends with friends"; (2) he was not

a "habitual" drug user; and (3) when he made the decision to stop using drugs, he did not have any difficulties or experience any withdrawal symptoms.

C.P.M. stated he had stopped using illegal substances after these offenses. He further told the officer he was under the influence of alcohol in April 2005 when he was stopped while driving but the cocaine found in his pocket had been purchased for a friend.

On May 20, 2019, the judge issued a letter opinion, granting the expungement petition under the crime spree exception in N.J.S.A. 2C:52-2(a). The judge reasoned that because the term "crime spree" was not defined by the legislature, statutory interpretation was necessary. Relying on C.P.M.'s certifications, the judge concluded that C.P.M.'s drug use during the time period of the offenses was the "nexus" permitting a determination that the two incidents were closely related in circumstances. He found C.P.M. was "heavily abusing drugs during the commission of th[ese] crimes" and that these "substances clearly affected his judgment during the relevant time period." The judge further recognized C.P.M. had changed his behavior, noting his remorseful attitude towards his offenses, his good grades in college, and advancement in his career. Because of C.P.M.'s drug addiction during the offenses and his subsequent rehabilitation, the judge found the amended statute

was applicable and C.P.M.'s offenses were eligible for expungement. A May 22, 2019 order granted the petition.

The sole issue presented on appeal is whether the 2018 crime spree amendment to N.J.S.A. 2C:52-2(a) permits the expungement of C.P.M.'s 2005 convictions. Our review of the trial court's statutory interpretation is de novo. McGovern v. Rutgers, 211 N.J. 94, 108 (2012) (citing Real v. Radir Wheels, Inc., 198 N.J. 511, 524 (2009)).

The State contends C.P.M. is not eligible for expungement under N.J.S.A. 2C:52-2(a) because the crimes "were not interdependent or closely related in circumstances and were not committed within a comparatively short period of time. . . ." Ibid.

"When interpreting a statute, our main objective is to further the Legislature's intent." In re Pontoriero, 439 N.J. Super. 24, 35 (App. Div. 2015) (quoting TAC Assocs. v. N.J. Dep't of Envtl. Prot., 202 N.J. 533, 540 (2010)). "We first look 'to the plain language of the statute in question.'" Id. at 35-36 (quoting TAC Assocs., 202 N.J. at 541). "We give those 'words their ordinary meaning and significance.'" Id. at 36 (quoting James v. N.J. Mfrs. Ins. Co., 216 N.J. 552, 566 (2014)). "However, those words should not be construed in a way that would produce an absurd result." J.S., 223 N.J. at 72 (citing State v. Lewis, 185 N.J. 363, 369 (2005)).

"Where a statute is clear and unambiguous on its face and admits of only one interpretation, a court must infer the Legislature's intent from the statute's plain meaning." N.J. Div. of Youth & Family Servs. v. I.S., 214 N.J. 8, 29 (2013) (quoting O'Connell v. State, 171 N.J. 484, 488 (2002)). Furthermore, "[i]n interpreting a statute, we strive to give effect to every word rather than to ascribe a meaning that would render part of the statute superfluous." Id. at 36 (citing Med. Soc'y of N.J. v. N.J. Dep't of Law & Pub. Safety, 120 N.J. 18, 26 (1990)).

Moreover, "in order to give proper effect to the Legislature's intent, a provision must be read sensibly within the entire legislative scheme of which it is part." Ibid. (citing Headen v. Jersey City Bd. of Educ., 212 N.J. 437, 451 (2012)). "When the plain meaning is unclear or ambiguous, we next consider extrinsic evidence of the Legislature's intent, including legislative history and statutory context." Pontoriero, 439 N.J. Super. at 36 (citing TAC Assocs., 202 N.J. at 541).

> Regardless of whether the language is plain or whether ambiguities cause us to seek guidance from sources other than the words the Legislature has chosen, our "primary task . . . is to effectuate the legislative intent in light of the language used and the objects sought to be achieved."
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> [Bosland v. Warnock Dodge, Inc., 197 N.J. 543, 554 (2009) (alteration in original) (quoting State v. Hoffman, 149 N.J. 564, 578 (1997)).]

We turn then to the statute. The 2018 amendment to N.J.S.A. 2C:52-2(a) permits the expungement of multiple crimes or offenses that "were interdependent or closely related in circumstances and were committed as part of a sequence of events that took place within a comparatively short period. . . ."

C.P.M. argues that the two crimes in question are related and should qualify as a crime spree because he had a toxic relationship with Stephanie, and he was "severely depend[e]nt on and addicted to alcohol and drugs" when he committed both crimes. He relies on a broad dictionary definition of "circumstances" and asserts the phrase "closely related in circumstances" requires a court to conduct a case-by-case analysis of all the facts surrounding the offenses. This analysis should include the motivations behind why a defendant committed the crimes, here, his relationship with Stephanie, and his drug addiction.

The State maintains that C.P.M.'s crimes do not qualify as a crime spree because they do not share common elements or fact patterns. The State disputes that the statute directs a determination as to why the crimes were committed. If this court were to adopt C.P.M.'s reading of the statute, the State contends it "would lead to an extremely absurd result" by permitting "any individual [to] be eligible to have more than the statutor[il]y allowed number

of crimes and[] offenses expunged so long as they can provide any type of similar nexus between the crimes."

We are satisfied the plain language of N.J.S.A. 2C:52-2(a) bars the expungement of C.P.M.'s convictions as the offenses were not interdependent or closely related in circumstances.

C.P.M.'s first offense occurred in April 2005, following which he pleaded guilty to CDS possession. Two and a half months later, in June 2005, he was charged with multiple counts of burglary, aggravated assault, criminal mischief, and weapons offenses; he later pled guilty to burglary and criminal mischief. He was not charged with a drug-related offense.

The offenses at issue – drug possession, burglary, and criminal mischief – do not share common elements. See N.J.S.A. 2C:17-3(a)(1); N.J.S.A. 2C:18-2; N.J.S.A. 2C:35-10(a)(1). The crimes also are not similar in nature.

In April 2005, C.P.M. was arrested for driving while intoxicated and cocaine was found in his pocket. He told a probation officer in March 2006 that he was under the influence of alcohol while driving that day but the cocaine was purchased for a friend. In June 2005, C.P.M. broke into his ex-girlfriend's home and broke down her bedroom door with a baseball bat when he found her there with another man. These offenses were not committed as

part of some larger criminal scheme; each offense was a distinct crime perpetrated under entirely different and unrelated circumstances.

In interpreting the newly amended statute, the judge accepted C.P.M.'s argument that his offenses were "closely related in circumstances" because he was addicted to drugs during this several-month period. Although the amendment to N.J.S.A. 2C:52-2 sought to expand expungement eligibility, it did not increase its reach as broadly as C.P.M. contends. The amendment increased the number of convictions that could be expunged but did not allow for the expungement of all offenses with any arguable nexus among the crimes.

Under C.P.M.'s interpretation of the statute, an applicant could assert a drug dependency in a certification in support of his or her petition and request an expungement of years of crimes and offenses during the time he or she alleged to be drug-dependent. For instance, here, C.P.M. conceded he continued to use illegal substances for four more years, while on probation, and after his sentences on the 2005 offenses, until 2010.[6] Under his reading of the statute, he would be eligible for an expungement of any offenses committed during those years as well.

[6] C.P.M. admitted he pled guilty to two driving while intoxicated charges when he lived in Illinois in 2008 and 2009.

The certifications submitted here demonstrate the uncertainty a trial judge would face, and uneven applications that would result, under C.P.M.'s interpretation that only a vague nexus among the offenses would suffice for expungement.

C.P.M.'s statements regarding his drug use made during his probation interview in March 2006 are markedly different from his statements in his 2019 certifications presented to support his expungement petition. After his guilty plea, C.P.M. reported to the probation officer that he had experimented with drugs on a casual basis, was not a habitual drug user, and did not experience any withdrawal symptoms once he decided to stop using drugs. He did not say he was drug-dependent, just that he was "under the influence" at the time of his offenses.

In 2018, when he sought expungement, C.P.M. claimed his addiction was at its worst when he committed the April and June 2005 offenses. Although he admits to drinking alcohol on both occasions, he does not state he was under the influence of any illegal substances in April. To the contrary, C.P.M. told the probation officer that the cocaine in his pocket was purchased for a friend. C.P.M. also does not state he was drug-dependent at the time of these offenses in either his statements to the probation officer or in his certifications.

If we were to read the statute as C.P.M. urges, it would lead to absurd results, which were never intended by the Legislature. It would require a judge to consider a petitioner's motivations behind his or her commission of an offense, and invite the submission of certifications that could consist of self-serving statements designed to show that the crimes and offenses were "interdependent and closely related in circumstances." The court could then grant expungement based on statements that only establish a loose and vague nexus between the crimes and offenses for which expungement is sought.

We are satisfied the plain language of the statute precludes the interpretation asserted by C.P.M. The offenses C.P.M. seeks to expunge are not related in their nature; they were not interdependent or closely related in circumstances. A defendant's self-serving declaration of his or her motivation behind crimes fifteen years after their occurrence is not a cognizable consideration within the meaning of the statute. We are satisfied the Legislature did not intend the result compelled by the trial court – that any person addicted to drugs could be eligible for an expungement of any crime the person alleged was committed while he or she was under the influence of an illegal substance.

In light of our conclusion that the 2005 convictions were not interdependent or closely related in circumstances, we need not address the

second prong of the statute – whether the offenses were committed within a "comparatively short period of time."

Reversed.