

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

K.B.,

Petitioner,

v.

DELAWARE COUNTY OFFICE OF
JUDICIAL SUPPORT, and MARY J.
WALK, in her official capacity as
Director of the Delaware County Office
of Judicial Support,

Respondents.

Civil Action No. 446 MD 2023

Original Jurisdiction

**MEMORANDUM OF LAW IN SUPPORT OF PETITIONER'S
APPLICATION FOR SUMMARY RELIEF IN THE FORM OF
JUDGMENT ON THE PLEADINGS**

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STATEMENT OF JURISDICTION

This Court has original jurisdiction in any action brought against the Commonwealth government and its officers, including Respondents the Office of Judicial Support, which has the powers and duties of the clerk of courts of Delaware County, and the director thereof. *See* 42 Pa.C.S. § 761(a)(1); *Richardson v. Peters*, 19 A.3d 1047, 1048 (Pa. 2011) (holding that the clerk of courts is a Commonwealth officer and thus the Commonwealth Court has original jurisdiction in lawsuits against it).

STANDARD OF REVIEW

Entry of judgment on the pleadings is appropriate “after the pleadings are closed, but within such time as not to unreasonably delay the trial.” Pa. R. Civ. P. 1034(a). The Court should enter judgment on the pleadings where, as here, there are no disputed issues of fact, and the moving party is entitled to judgment as a matter of law. *Buehl v. Beard*, 54 A.3d 412, 416 (Pa. Cmwlth. Ct. 2012). The record before the Court in motions for judgment on the pleadings is limited to the pleadings and attached exhibits. *Com. v. Riverview Leasing, Inc.*, 648 A.2d 580, 582 (Pa. Cmwlth. Ct. 1994). Therefore, judgment on the pleadings is appropriate “where, based upon the pleadings alone and any documents properly attached to them, there exist no material issues of fact.” *Id.* (citing *Bensalem Township School District v. Com.*, 518 Pa. 581, 544 A.2d 1318 (1988)). Here, Respondents have admitted in their pleadings

to the key facts that show K.B. is entitled to judgment as a matter of law, and there are no materially disputed facts.

STATEMENT OF THE QUESTIONS INVOLVED

1. Does Respondents' policy, under which they will not process and serve expungement orders signed by a judge if there are unpaid court costs, violate Pennsylvania law because the enforcement of such a policy exceeds the ministerial powers of the clerk of courts?
2. Did Respondents aggrieve Petitioner K.B. within the meaning of the Criminal History Record Information Act ("CHRIA"), 18 Pa.C.S. § 9101, et seq., by failing to process and serve his expungement order for more than six months, until after this lawsuit was filed?
3. Did Respondents violate K.B.'s fundamental right to reputation by preventing him from receiving the reputational benefits of an expungement for more than six months, until after this lawsuit was filed?
4. Did Respondents willfully refuse to process and serve K.B.'s expungement order for more than six months, until after this lawsuit was filed?

Suggested answer to all: Yes.

STATEMENT OF THE CASE

In January 2023, K.B. received a full and unconditional pardon from Governor Wolf for a 2019 conviction of possessing marijuana, and he subsequently

filed an expungement petition on March 3, 2023. In granting that petition and effectuating the pardon, the Honorable Anthony D. Scanlon of the Delaware County Court of Common Pleas signed an order (the “Expungement Order”) on March 13, 2023, that required Respondents, the Delaware County Office of Judicial Support (“OJS”) and Mary J. Walk (“Walk”), the Director of that office, to expunge K.B.’s criminal records. Exhibit 1, Petition ¶ 1; Exhibit 2, Answer ¶ 1.¹ The Expungement Order, which incorporated the expungement petition, acknowledged that a “balance of \$897.75 was owed prior to the Governor’s granting of a pardon in this matter.” Petition Ex. A at 3. But the Order was unconditional: “[a]ll criminal justice agencies upon which this order is served *shall expunge* all criminal history record information from defendant’s arrest record pertaining to the charges [explained] below.” Petition Ex. A at 2 (emphasis added).

Although the Expungement Order required that it be processed in April 2023, Respondents did not do so until after the filing of the Petition for Review in this matter more than six months after the Expungement Order was signed. Petition ¶ 65; Answer ¶ 65. This was not a mere administrative error or oversight. Instead, Respondents’ pleadings in this case confirm that they refused to process the

¹For the Court’s convenience, Petitioner has attached to the Application true and correct copies of the pleadings and the attachments thereto that were previously filed by Petitioner and Respondents. The Petitioner’s pleading and attachments are Exhibit 1, and Respondents’ Answer and New Matter, along with attachments, are Exhibit 2. All of the citations to the Petition, Answer, New Matter, or the documents attached as exhibits to those pleadings, retain the designations as they were when the pleadings were filed.

Expungement Order pursuant to an illegal policy, which remains in effect, whereby Respondents will not process expungement orders that are signed by judges when Respondents believe there are outstanding court costs in the case. Answer ¶ 48; New Matter ¶ 117. Under this policy, Respondents have decided that they must indicate in the Common Pleas Case Management System (“CPCMS”) computer system that unpaid court costs were paid or waived by a court order before they process an expungement. Answer ¶ 48. Otherwise, they will not process the expungement.

Pursuant to the policy, Respondents instead sent a letter to K.B.’s counsel dated April 24, 2023, stating: “Please be advised that the above Expungement Order for case CR-5856-2019 has been processed. Unfortunately, there is a balance owed on [sic] case for \$897.75 therefore we are unable to complete it until Court Financial receives full payment.”² See Petition Ex. D.

Following the filing of the Petition for Review in this matter, Delaware County Court of Common Pleas President Judge Cartisano directed Ms. Walk to process K.B.’s expungement. New Matter ¶ 119. Despite OJS’s policy, Respondents complied with Judge Cartisano’s request and successfully expunged K.B.’s case. Answer ¶ 55. Yet Respondents dismiss the act of processing K.B.’s expungement as a deviation from standing policy rather than acknowledging the implication of Judge

²This is a typographical error. The correct case number is CR-856-2019, which is accurately identified in the subject line of the letter.

Cartisano’s directive (and incorporating the same into said policy)—namely, that outstanding court costs are not a bar to expungements. *New Matter* ¶ 120.

This was not the first time President Judge Cartisano instructed Respondents to process an expungement order even after Respondents, pursuant to the policy, did not process the expungement because of unpaid costs. *Petition* ¶ 47; *Answer* ¶ 47. The prior year, a Delaware County Court of Common Pleas judge signed an expungement order for a different individual in CP-23-CR-0000922-2016. *Petition* ¶ 42; *Answer* ¶ 42. There, too, Respondents sent a letter explaining that OJS would not complete processing the expungement until the unpaid balance of court costs was paid. *See* *Petition Ex. F*. In response, counsel at the ACLU of Pennsylvania and Legal Aid of Southeastern Pennsylvania (“LASP”) sent a letter to Respondent Walk and President Judge Cartisano on November 15, 2022, which explained the statutory and constitutional problems with the OJS policy. *See* *Petition Ex. G*. After receiving that letter, President Judge Cartisano wrote to Respondent Walk:

Please process the expungement order in the matter of *Commonwealth v. [redacted]*, CP-23-CR-922-2016, which was signed by Judge Brennan on July 22, 2022 regardless of any outstanding costs in the matter. It is a court order and as such, must be timely processed and followed. Thank you.

See Ex. H. As in K.B.’s case, only then did Respondents comply and in fact complete processing that expungement. Petition ¶ 47; Answer ¶ 47.

In response to the Petition for Review filed on October 5, 2023, Respondents filed an Answer and New Matter on December 18, 2023. That Answer admitted the facts set forth above and in more detail in the Application for Summary Relief in the Form of Judgment on the Pleadings. Those admissions, coupled with the documents attached to the parties’ pleadings, are sufficient to establish Respondents’ liability in this matter.

SUMMARY OF ARGUMENT

This case is about whether an office of the clerk of courts can refuse to comply with a court order and instead impose its own view of when expungement is acceptable. The facts are not in dispute. K.B. received an unconditional pardon for a conviction of marijuana possession. The effect of that pardon is that it “blots out the very existence of his guilt, so that, in the eye of the law, he is thereafter as innocent as if he had never committed the offense.” *Com. v. C.S.*, 534 A.2d 1053, 1054 (Pa. 1987). A Delaware County Court of Common Pleas judge then issued an unconditional expungement order, as the court was required to because a “pardon

without expungement is not a pardon.” *Id.* That Expungement Order expressly required that Respondents both expunge K.B.’s records and serve the Expungement Order on other agencies, including the Pennsylvania State Police.

If Respondents complied with the terms of the Expungement Order and the judge’s instructions, K.B.’s case would have been expunged in April 2023. Instead, Respondents chose to disregard that Expungement Order and defy the court. They did so pursuant to a pre-existing OJS policy under which they will not process or serve expungement orders if they believe that there is an unpaid balance of court costs—even when, as here, the actual court order imposes no such requirement.

This policy, and Respondents’ choice to follow their internal administrative policy instead of the Expungement Order, is unlawful for three main reasons. First, as the entity with the powers of the clerk of courts, Respondents’ powers are “purely ministerial,” meaning that as “an officer of the court of common pleas, [Respondent Walk] had the duty to comply with the Order.” *In re Administrative Order*, 936 A.2d 1, 9 (Pa. 2007). Second, the Criminal History Records Information Act (“CHRIA”) places unequivocal duties on Respondents to process the Expungement Order and destroy K.B.’s records *and* to serve the Expungement Order on other agencies so that they, too, may comply and destroy their records. 18 Pa.C.S. §§ 9113(a) (duty to report dispositions, including pardons and expungements, to State police); 9122(a) (duty to expunge records when so ordered). Finally, because “[e]xpungement is a

mechanism utilized to protect an individual's reputation from the stigma that accompanies an arrest record," the effective denial of an expungement by Respondent's policy directly prevented K.B. from enjoying his fundamental right to restore his reputation. *Com. v. Giulian*, 141 A.3d 1262, 1270 (Pa. 2016).

Those violations of CHRIA entitle K.B. to damages and attorneys' fees because the consequences of Respondents' actions prevented K.B. from obtaining a firearms license and harmed his fundamental constitutional right to reputation. Moreover, K.B. is entitled to punitive damages because Respondents' actions were willful: they were already on notice from the President Judge (from the prior action) that they had to comply with court orders to expunge, even when there were unpaid costs, and they chose yet again to defy the court order and follow their own unlawful policy instead.

The consequences of Respondents' policy for indigent individuals like K.B. are that they are effectively barred from receiving the benefits of an expungement, even after receiving a full pardon from the Governor. Respondents have created a system where people who cannot afford to pay are saddled with the "perpetual stigma" associated with a criminal conviction. *Guilan*, 141 A.3d at 1270. The policy that enables this practice is both wrong and illegal. Therefore, this Court should declare it as such and enter judgment in favor of K.B.

ARGUMENT

I. K.B. Is Entitled to Judgment on the Pleadings for Count I Because Respondents Failed in Their Ministerial Duties to Serve and Process the Expungement Order.

Respondents have a ministerial duty to comply with court orders and maintain accurate records—including the duty to expunge cases when ordered to do so by a judge. The OJS, and Walk as the Director of that office, have the roles and responsibilities of both the prothonotary and clerk of court. As prescribed by state constitutional and statutory law, the OJS has a number of powers and administrative duties that are critical to ensure that the Delaware County Court of Common Pleas continues to operate. None of these powers or duties, however, permit Respondents to disregard court orders, interpret the law, or unilaterally place additional requirements on litigants when processing court orders.

The Pennsylvania Constitution sets forth that “the offices of prothonotary and clerk of courts shall ... perform the duties of the office and [] maintain and be responsible for the records, books and dockets” Pa. Const. Sched. Art. V, § 15.³ Accordingly, in criminal matters, “[a]ll applications for relief or other documents ... relating to ... criminal matters” must be filed with OJS. 42 Pa.C.S. § 2756(a)(1).

³ Article V of the Pennsylvania Constitution creates the Judicial branch of the Commonwealth’s infrastructure. Within Article V is a ‘Schedule to Judiciary Article’ that “shall have the same force and effect as [the provisions] contained in the numbered sections of the article.” Pa. Const. Sched. Art. V, Preamble.

This includes court orders. In addition to having the “power and duty” to enter all “criminal judgments”—the orders handed down by a judge in a criminal matter—OJS must also “perform such other duties as may now or hereafter be vested in or imposed upon the office by law.” 42 Pa.C.S. § 2757(3), (5). Critical here are the OJS’s responsibilities with respect to maintaining the integrity and accuracy of the court’s docket, which includes expunging that docket and the associated records when ordered to do so by a judge.

OJS in fact has two specific duties vested in and imposed upon it by law with respect to expungement orders. First, the Rules of Criminal Procedure set forth that “[t]he clerk of courts *shall* serve a certified copy of the Order to each criminal justice agency identified in the court’s Order.” Pa.R.Crim.P. 790(c)(2) (emphasis added). Thus, once an expungement order is signed by a judge, OJS is bound by law to serve it on every criminal justice agency identified in the order. Second, OJS is a “criminal justice agency” charged with maintaining criminal history record information, and such records “in a specific criminal proceeding *shall* be expunged” by OJS when ordered by a court. 18 Pa.C.S. §§ 9102; 9122(a) (emphasis added). Complying with the duty to expunge means removing the case information “so that there is no trace or indication that such information existed.” 18 Pa.C.S. § 9102.

It is “well settled” that the role played by OJS and other clerk’s offices, while “vitally important” to the functioning of the courts, is “purely ministerial.” *In re*

Administrative Order, 936 A.2d 1, 9 (Pa. 2007).⁴ Because OJS is a purely ministerial office, “any authority exercised by the [Respondents] must derive from either statute or rule of court.” *Id.* (citing *Gotwalt v. Dellinger*, 577 A.2d 623, 625 (Pa. Super. Ct. 1990)). Moreover, OJS has not been afforded, by law or otherwise, the discretion to interpret statutes; that authority is solely entrusted to the judiciary. *Id.*; see *Sollenberger v. Lee*, 925 A.2d 883, 884 (Pa. Commw. Ct. 2007) (The clerk of courts is “not an administrative officer who has discretion to interpret or implement rules and statutes . . . [t]herefore, if documents tendered for filing are proper on their face and in conformity to rules of court, a prothonotary does not have discretion to refuse to enter them.”).

Nothing within the OJS’s purview of responsibility could be more fundamental, or undisputedly ministerial, than to comply with a court order. In the same way that a clerk’s office may not “evaluate the merits of a litigant’s pleadings or decline to accept a timely notice of appeal,” it also cannot choose to disregard a court order, place its own conditions on a court order, or impose its own interpretation of how and when to follow that order. *Com. v. Williams*, 106 A.3d 583, 588 (Pa. 2014). Rather, the OJS is “obligated to accept and process” court filings, including orders, “in accordance with the Rules.” *Id.* This is true even if there

⁴ The Pennsylvania Supreme Court has held that “the well-accepted limitations that the courts of this Commonwealth have recognized in the prothonotary’s role are equally applicable to the clerk of courts.” *In re Administrative Order*, 936 A.2d at 9.

is a properly adopted local rule that sets standards above and beyond what the Supreme Court’s Rules require. *See Mariano v. Rhodes*, 270 A.3d 521, 527 (Pa. Super. Ct. 2022) (prothonotary is prohibited from rejecting filings for failure to follow local rules of civil procedure or judicial administration). When a court order instructs OJS to take an action, or when a Rule or statute requires such action, OJS must act accordingly without providing its own interpretation of what is appropriate.

The Supreme Court’s ruling in *In re Administrative Order* is instructive. There, the clerk of courts disagreed with a court order requiring him to seal public access to the electronic case records for individuals who successfully completed Accelerated Rehabilitative Disposition (“ARD”). 936 A.2d at 3-4. The clerk filed exceptions and litigated the matter, believing that complying with the court order would cause him to violate CHRIA. *Id.* at 4. The Court concluded that the clerk “had no authority by virtue of his office to interpret the Order’s compliance with CHRIA.” *Id.* at 9. Instead, as “an officer of the court of common pleas, he had the duty to comply with the Order.” *Id.* It ultimately was irrelevant whether the challenged court order was lawful—the Supreme Court’s ruling was that the clerk of courts *must* comply.

Here, Respondents’ conduct is of a degree worse than that at issue in *In re Administrative Order*. Respondents, after receiving the Expungement Order, disregarded both of its legal duties by neither serving the Expungement Order on

other criminal justice agencies nor processing the order and expunging K.B.'s records. Instead, Respondents chose to abide by an OJS policy of its own creation that disallows the processing of expungement requests in instances where the underlying case contains unpaid court costs. Answer ¶ 40; Answer Ex. A. Respondents did not contact the judge who issued the Expungement Order in K.B.'s case to express a concern with the Expungement Order, or even to say that they would not process it until all costs were paid. They unilaterally imposed their own additional requirement on K.B. and then took no further action on the Expungement Order for more than six months, until responding to this lawsuit finally forced their compliance. All of this intransigence was due solely to a policy that Respondents alone adopted, enforced, and continue to enforce without any authorization or endorsement from the court. That policy is illegal because Respondents had no authority to adopt it in the first place, and because Respondents violate their legal obligation to perform their ministerial duties to comply with court orders to expunge cases each time they enforce the policy.

Neither Pa.R.Crim.P. 790⁵ nor the expungement statute itself, 18 Pa.C.S. § 9122(a), condition expungement on payment or a *separate* court order waiving the

⁵ This rule only requires that the petition and the Expungement Order *ident.fy* “if the sentence includes a fine, costs, or restitution, whether the amount due has been paid” at the time the expungement order is signed. *See* Pa.R.Crim.P. 790(A)(2)(h) and (C)(2)(h). Mere identification of whether such fines, costs, and restitution were imposed and paid is not the same as placing a condition on the order of expungement.

unpaid costs; in fact, the statute does not mention fines, costs, or restitution at all. This is in contrast to another provision in CHRIA, which addresses Clean Slate record sealing of otherwise public case information. When first enacted in 2018, the General Assembly required payment of “each court-ordered financial obligation of the sentence” in order for an individual to be eligible to petition the court for limited access to their criminal history information. 18 Pa.C.S. § 9122.1(a)(2) (2018). That is, the General Assembly expressly called for the satisfaction of outstanding fines, costs, or restitution before a person could be eligible to file a petition for Clean Slate limited access. Then, in 2020, it revised this to instead only require “payment of all court-ordered restitution.” 18 Pa.C.S. § 9122.2(a)(1). That the legislature has not taken similar steps for expungements further demonstrates that those same requirements simply do not apply to expungements.

In any event, Respondents were, as a matter of law, incorrect that K.B. owed any court costs when they received the Expungement Order. K.B. had already received a pardon and a court order for expungement, which “*blots out the very existence of his guilt, so that, in the eye of the law, he is thereafter as innocent as if he had never committed the offense.*” *C.S.*, 534 A.2d at 1054 (emphasis in original). Court costs, while set by statute, are a mere “incident to judgment.” *Com. v. Nicely*, 638 A.2d 213, 217 (Pa. 1994). Accordingly, by nullifying the judgment—which in a criminal case, is the conviction—the pardon and expungement have the legal effect

of eliminating any obligation to pay costs that follow from that conviction, as it is unlawful to require that a defendant pay costs unless that defendant is convicted. *See, e.g., Colorado v. Nelson*, 137 S.Ct. 1249 (2017) (constitutional violation to require payment of fines, costs, or restitution by a person whose conviction has been overturned); *Com. v. Bollinger*, 418 A.2d 320, 328 n.14 (Pa. Super. Ct. 1979) (en banc) (defendant is “not liable for the costs of prosecution on any of the charges on which he was not convicted”). At that point, there simply is no longer any conviction for which the person has to pay costs. In trying to collect costs from K.B. even after the pardon and Expungement Order, Respondents were trying to collect a debt that was “blot[ted] out” by issuance of a pardon and therefore did not exist.

Without a discernable flaw with the Expungement Order (there is none), the Respondents could not reasonably have a basis to reject the filing and therefore should have processed the order outright. Instead, Respondents withheld Petitioner’s right to his expungement due to an internal policy that falls well outside the bounds of Respondents’ legal authority. That violated Respondents’ ministerial duties under the Pennsylvania Constitution, statutes, and Supreme Court Rules, and it was illegal. K.B. is entitled to judgment on this Count.

II. K.B. Is Entitled to Judgment on the Pleadings for Counts II and III Because of Respondents’ Lengthy Failure to Comply with the Expungement Order.

K.B. is entitled to Judgment on the Pleadings for Counts II and III because Respondents’ undisputed failure to comply with the Expungement Order for more than six months prevented K.B. from obtaining a firearm license and caused him to suffer ongoing reputational harm. As for Count II, Respondents’ failure to comply with the Expungement Order violated the Criminal History Record Information Act (“CHRIA”), leaving K.B. aggrieved in two ways. First, the delay prevented K.B. from obtaining a license to exercise his right to carry a firearm. And second, the delay caused K.B. to suffer ongoing reputational harm in violation of Article I, Section 1 of the Pennsylvania Constitution.

The fact that K.B. suffered such reputational harm entitles him to relief under *both* CHRIA *and* the Pennsylvania Constitution itself. In other words, K.B. is entitled to Judgment on the Pleadings for Count II—including for both real and punitive damages and attorney’s fees—because Respondents violated CHRIA, leaving K.B. aggrieved in that he was prevented from obtaining a firearm license and was also made to suffer ongoing reputational harm. And K.B. is likewise entitled to Judgment on the Pleadings for Count III because Respondents’ failure to comply with the Expungement Order caused him to suffer ongoing reputational harm in violation of Article I, Section 1 of the Pennsylvania Constitution.

A. CHRIA imposed a duty on Respondents to expunge K.B.’s criminal case records in compliance with the Expungement Order, and Respondents’ failure to comply with that order aggrieved K.B.

The purpose of CHRIA is “to provide for an orderly collection and dissemination of criminal history information in the Commonwealth.”⁶ As such, the statute imposes a “duty” on “every criminal justice agency”—which includes Respondents—to “maintain complete and accurate criminal history record information.” 18 Pa.C.S. § 9111. It also imposes a duty to expunge and destroy those records when ordered to do so by a court. The records “in a specific criminal proceeding *shall* be expunged” by Respondents when so ordered by a court. 18 Pa.C.S. § 9122(a) (emphasis added). Expunging criminal history record information requires removing that information “so that there is no trace or indication that such information existed.” *Id.* at 9102.

In this case, the Governor’s grant of a pardon to K.B. had the legal effect of “blot[ting] out the very existence of his guilt, so that, in the eye of the law, he is thereafter as innocent as if he had never committed the offense.” *C.S.*, 534 A.2d at 1054; *see also Pennsylvania State Police v. Sama*, 209 A.3d 1155, 1160 (Pa. Commw. Ct. 2019) (effect of a pardon that a “conviction was no longer considered a ‘conviction’”). Accordingly, when “a court order require[d] that such

⁶ <https://www.attorneygeneral.gov/wp-content/uploads/2018/01/chria.pdf>

nonconviction data be expunged” following the pardon, CHRIA obligated Respondents to comply with that court order. 18 Pa.C.S. § 9122(a)(2).⁷ Yet Respondents failed to do so until after this lawsuit was filed more than six months later.

CHRIA also obligated Respondents to inform the Pennsylvania State Police (“PSP”) that K.B. had received a pardon and expungement within 90 days of receiving the Expungement Order. Indeed, CHRIA requires that “[a]ll criminal justice agencies,” including courts, “collect and submit reports of dispositions occurring within their respective agencies for criminal history record information, within 90 days of the date of such disposition to the central repository.” 18 Pa.C.S. § 9113. The definition of “disposition” includes, “but is not limited to,” when an individual is “pardoned,” and also extends to the expungement following a pardon. *Id.* at § 9102. The “central repository” is a database of “criminal history record information by the Pennsylvania State Police.” *Id.* Combined, these provisions require that Respondents update PSP whenever a case is pardoned and expunged so that PSP can maintain accurate information in its central repository.

⁷ Since the filing of this lawsuit, the legislature has amended 18 Pa.C.S. § 9122(a) by adding subsection (2.1), which provides for the automatic expungement of a case when “a person has been granted an unconditional pardon for an offense in accordance with law.” The distinction between the practice when K.B. obtained an expungement and the new practice is that no petition or court order is required under the new practice. Instead, criminal justice agencies like OJS must act even in the absence of a court order.

Agencies that are the subject of an expungement order have no discretion to refuse to comply with that order. *See, e.g., Com. v. M.M.M.*, 779 A.2d 1158, 1166 (Pa. Super. Ct. 2001). When a criminal justice agency fails to “maintain complete and accurate criminal history record information” by failing to comply with an expungement order to destroy those records, the agency violates CHRIA’s instruction that those records “shall be expunged” pursuant to a court order. 18 Pa.C.S. § 9122(a). Any person aggrieved by such a violation of CHRIA has “the substantive right to bring an action for damages.” *Id.* at § 9183(b)(1). Damages include both “actual and real damages of not less than \$100 for each violation” and “[e]xemplary and punitive damages of not less than \$1,000 nor more than \$10,000,” which “shall be imposed for any violation of [CHRIA] . . . found to be willful.” *Id.* at § 9183(b)(2). In addition, an aggrieved person “shall be entitled . . . to reasonable costs of litigation and attorney’s fees.” *Id.*

K.B. is entitled to judgment on the pleadings that Respondents violated CHRIA and aggrieved K.B. because they concede failure to comply with the Expungement Order in accordance with those legal requirements. Respondents admit that, as a criminal justice agency, they have a duty to maintain complete and accurate criminal history record information. Petition ¶¶ 9-10; Answer ¶¶ 9-10. And Respondents admit that they failed to comply with or process and serve the Expungement Order. Petition ¶ 65; Answer ¶ 65. Likewise, Respondents admit that

their failure to process and serve the Expungement Order meant that K.B.’s criminal history record information was not expunged for more than six months—such information still “existed” when K.B. filed his Petition for Review. Because “maintaining complete and accurate criminal history record information” requires expunging criminal history record information “when a court order requires that such non-conviction data be expunged,” Respondents violated CHRIA by failing to process the Expungement Order. 18 Pa.C.S. § 9122(a) and (a)(2).

This violation of CHRIA indisputably aggrieved K.B. While “CHRIA does not define the term ‘aggrieved,’” *Hunt v. Pennsylvania State Police of Com.*, 983 A.2d 627, 639 (2009), this Court has subsequently held that “maintain[ing] incorrect criminal history record information . . . which wrongfully resulted in the denial of his constitutional right to purchase a firearm for a period of several months and required him to ultimately obtain counsel” renders a person “aggrieved” under CHRIA. *Haron v. Pennsylvania State Police*, 171 A.3d 344, 354 (Pa. Commw. Ct. 2017), *aff’d*, 188 A.3d 1121 (2018). As is explained below, K.B. has been aggrieved in the same manner. In addition, the Court’s conclusion in *Haron* that “the maintenance of incorrect criminal records resulting in an unwarranted denial of a constitutional right” renders a person aggrieved also applies here, where K.B.’s fundamental right to reputation has been directly harmed and infringed by

Respondents' actions. *See id.*⁸ For these reasons, K.B. is aggrieved under CHRIA and entitled to relief.

B. K.B. is aggrieved because he was unable to obtain a license to carry a firearm as a result of Respondents' failure to process and serve the Expungement Order.

Respondents' violation of CHRIA further aggrieved K.B. by making him unable to obtain a license to carry a firearm for more than six months, therefore wrongly denying him his right to carry a firearm outside of his home. The "maintenance of incorrect criminal records resulting in an unwarranted denial of a constitutional right to purchase a firearm constitutes 'aggrievement.'" *Haron*, 171 A.3d at 354. K.B. is aggrieved in the same way here because Respondents maintained incorrect criminal records that resulted in the unwarranted denial of K.B.'s constitutional right to carry a firearm.

As Respondents admit, following K.B.'s conviction for marijuana possession, he surrendered his firearm license, as is required by law. Petition ¶ 16; Answer ¶ 16. *See* 18 Pa.C.S. § 6109(e)(1)(ii) (individual convicted of drug offenses is ineligible

⁸ Our Supreme Court has also explained that "[f]or a party to be aggrieved, it must have a substantial, direct, immediate, and not remote interest in the subject-matter of the litigation." *Com. v. J.H.*, 759 A.2d 1269, 1271 (Pa. 2000). Applying that definition here, K.B. is aggrieved because he has a substantial, direct, immediate, and not remote interest in Respondents' failure to process and serve the Expungement Order. In short, Respondents' failure to process and serve the Expungement Order had direct and immediate "adverse effects" on K.B., including the denial of his constitutional right to purchase a firearm for a period of several months and the infringement on his fundamental right to reputation. *See Wm. Penn Parking Garage, Inc. v. City of Pittsburgh*, 346 A.2d 269, 282 (Pa. 1975) (explaining what it means to have "a substantial, direct, immediate, and not remote interest in the subject-matter of the litigation").

to have a firearm license). Once he received a pardon and expungement, K.B. no longer had a disabling “conviction,” *id.* at § 6102. However, as the Supreme Court has explained, as a practical matter it is the Pennsylvania State Police (“PSP”) that must receive a copy of the expungement so that they can destroy the records in their “central repository” that list who is ineligible to have a firearm license based on prior convictions. *Com. v. J.H.*, 759 A.2d 1269, 1270 (Pa. 2000); *see also Pennsylvania State Police v. Izbicki*, 785 A.2d 166, 169 (Pa. Commw. Ct. 2001) (explaining that the determination of whether a firearms license can be granted “will certainly hinge on PSP’s criminal records check”). The process by which PSP learns of the pardon and subsequent expungement order is through Respondents. By law, the “[t]he clerk of courts *shall* serve a certified copy of the [Expungement] Order to each criminal justice agency identified in the court’s Order.” Pa.R.Crim.P. 790(C)(2) (emphasis added). *See* 18 Pa.C.S. § 9113 (requiring that criminal justice agencies notify the central repository “within 90 days of the date of such disposition”). Accordingly, the Expungement Order explicitly listed the “Pennsylvania State Police, Central Records.” Petition Ex. A, at 4.

Respondents, though, did not complete their part of this process until more than six months after the judge signed the Expungement Order and until this lawsuit was filed. By failing to both expunge the records that they had for K.B. and failing to disseminate the pardon and Expungement Order to PSP within 90 days,

Respondents violated CHRIA and aggrieved K.B. Under this Court’s ruling in *Haron*, K.B. is entitled to relief.

C. K.B. is aggrieved because he has suffered ongoing reputational harm as a result of Respondents’ failure to process and serve the Expungement Order.

Respondents’ admitted failure to comply with the Expungement Order also caused K.B. to suffer reputational harm in violation of his fundamental right to reputation under Article I, Section 1 of the Pennsylvania Constitution, entitling him to relief under *both* CHRIA *and* the Pennsylvania Constitution itself. Article I, Section I provides:

“All men are born equally free and independent, and have certain inherent and inalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and *reputation*, and of pursuing their own happiness.”

P.A. CONST. art. I, § 1 (emphasis added). As our Supreme Court has explained, “the Pennsylvania Constitution places reputational interests on the highest plane, that is, on the same level as those pertaining to life, liberty, and property.” *See, e.g., In re Fortieth Statewide Investigating Grand Jury*, 190 A.3d 560, 573 (Pa. 2018). Our Supreme Court has recognized that being a criminal with a conviction imposes as “perpetual stigma” on one’s reputation, interfering with the enjoyment of this fundamental right. *Giulian*, 141 A.3d at 1270. The way that such a stigma is removed

is through expungement: “[e]xpungement is a mechanism utilized to protect an individual’s reputation from the stigma that accompanies an arrest record.” *Id.*

In an ordinary case, the job of the court addressing an expungement petition is to determine if this “is the kind of person who would benefit from the elimination of the perpetual stigma” of the conviction—a core reputational interest. *Id.* But when addressing a petition for expungement following a pardon, the reputational interest is so strong that the court is *required* to grant an expungement. It is for that reason that the Court has held that “[a] pardon without expungement is not a pardon.” *C.S.*, 534 A.2d at 1054. The upshot being: a court’s failure to grant an expungement—particularly following a pardon—causes per se reputational harm by leaving one’s reputation marred with the “perpetual stigma” that comes from being “a criminal with a conviction.”

Accordingly, Respondents’ undisputed—and unlawful—delay in complying with the Expungement Order in this case caused K.B. to suffer reputational harm. Consistent with our Supreme Court’s opinion in *Giulian*, the Expungement Order itself explained that K.B. suffered such reputational harm: “[a]s a result of these arrests and subsequent photographing and fingerprinting, [K.B.] has been caused to suffer embarrassment and irreparable harm and loss of job opportunities.” *See* Petition Ex. at 6. All that stood between K.B. and restoring his reputation by successfully putting his offense behind him was Respondents dutifully complying

with the Expungement Order. Their failure to do so “aggrieved” K.B., entitling him to relief under CHRIA, and also violated his fundamental right to reputation, entitling him to relief under the Pennsylvania Constitution. Therefore, K.B. is entitled to relief for *both* Counts II and III.

D. KB is entitled to punitive damages because Respondents willfully violated CHRIA.

This was not the first time Respondents violated CHRIA by applying their unlawful policy and had to be expressly instructed by the court to process expungement orders. Petition ¶ 47, 49; Answer ¶ 47, 49. The year before K.B.’s Expungement Order was signed, a different judge also signed an expungement order for a defendant who Respondents believed still owed court costs. Petition ¶ 42; Answer ¶ 42. As in this case, Respondents refused to process the expungement and instead sent a letter to the defendant, demanding payment of those costs. Petition Ex. F. After counsel at the ACLU of Pennsylvania and LASP sent a letter to Respondent Walk and President Judge Cartisano explaining Respondents’ legal violations, Judge Cartisano instructed Respondents to comply with that expungement order “regardless of any outstanding costs in the matter,” explaining, “[i]t is a court order and as such, must be timely processed and followed.” Petition Exs. G-H. After that, Respondents were inarguably on notice that their policy was unlawful and that they must comply with court orders to expunge.

Because Respondents had already been warned by counsel and instructed by President Judge Cartisano to comply with expungement orders, their CHRIA violations that disregarded the Expungement Order in this case were willful, and K.B. is entitled to punitive damages.⁹ CHRIA allows for the award of punitive damages for “any violation” “found to be willful.” 18 Pa.C.S. § 9183(b); *see also Haron*, 171 A.3d at 353 (explaining that punitive damages are available against state actors under CHRIA).

While CHRIA does not define what constitutes a willful violation, a federal district court interpreting the statute has identified the standard as when an agency takes an action with “reckless disregard or indifference” for what otherwise may be required. *See Taha v. Bucks Cnty. Pennsylvania*, 367 F. Supp. 3d 320, 331 (E.D. Pa. 2019) (explaining that the Supreme Court of Pennsylvania would likely define willfulness as its used in CHRIA as “reckless disregard or indifference”). This is consistent with the Pennsylvania Supreme Court’s view that a willful action in the context of contempt is one that is an “intentional, designed act and one without justifiable excuse.” *Com. ex rel. Wright v. Hendrick*, 312 A.2d 402, 404 (Pa. 1973). When, as here, a person or entity is aware of a court order and chooses not to follow it, the choice is willful. The Superior Court recently affirmed the conviction of a

⁹ The Court may, on this undisputed record, order that punitive damages are appropriate as a matter of law under CHRIA and leave the specific amount for later determination should the Court conclude that it must accept factual submissions to determine the appropriate amount.

clerk of courts for contempt when it found that she engaged in willful misconduct with her refusal to appear before a judge in open court after being instructed to do so. *See In re Davis*, 302 A.3d 166, 172-73 (Pa. Super. Ct. 2023). *See also Com. v. Washington*, 368 A.2d 263, 265 (Pa. 1977) (explaining that a party’s failure to comply with a court order is made with “intentional or willful disregard” when a party had previously “received notification” of that order).

Respondents’ failure to process and serve the Expungement Order was made with an intentional, conscious disregard for the Order: they knew they were required to process and serve the Expungement Order but chose not to based on an internal policy. Respondents expressly admit that they did not process or serve the Expungement Order despite having previously received this instruction from President Judge Cartisano. Answer ¶ 88. Instead, they waited until this lawsuit was filed and until President Judge Cartisano instructed them for a *second* time to comply with a court order to expunge. New Matter ¶ 119. That Respondents disregarded their obligation under CHRIA until being directed again to comply shows that their failure to process and serve the Expungement Order was voluntary and intentional, and therefore, willful. This Court should award punitive damages.

CONCLUSION

Petitioner K.B. therefore respectfully requests that this Court grant his Motion for Judgment on the Pleadings and find Respondents OJS and Walk liable on Counts 1, 2, and 3 of Petitioner's Complaint.

Dated: April 2, 2024

/s/ John S. Yi

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Appendix A

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

K.B.,

Petitioner,

v.

DELAWARE COUNTY OFFICE OF
JUDICIAL SUPPORT, and MARY J.
WALK, in her official capacity as
Director of the Delaware County Office
of Judicial Support,

Respondents.

Civil Action No. 446 MD 2023

Original Jurisdiction

**PETITIONER'S APPLICATION FOR SUMMARY RELIEF
IN THE FORM OF JUDGMENT ON THE PLEADINGS**

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Petitioner K.B. (“Petitioner”), by and through his undersigned counsel, respectfully moves this Court for an order granting summary relief in the form of judgment on the pleadings on each of his claims. In this Application, Petitioner requests declaratory relief and a judgment against Respondents as to liability for monetary damages and attorneys’ fees, in amounts to be determined after further proceedings at a later date. In support of this Application, together with the accompanying memorandum of law, the pleadings, and the exhibits attached thereto, which are incorporated by reference, Petitioner avers:

I. Basis for Judgment on the Pleadings

1. K.B. received a pardon from Governor Wolf and an order expunging his case (the “Expungement Order”) from the Delaware County Court of Common Pleas for a 2019 conviction for marijuana possession. *See* Exhibit 1, Petition ¶ 1; Exhibit 2, Answer ¶ 1.¹

2. Our Supreme Court has held that an expungement must always follow a pardon, as a “pardon without expungement is not a pardon.” *Com. v. C.S.*, 534 A.2d 1053, 1054 (Pa. 1987).

¹For the Court’s convenience, Petitioner has attached to this Application true and correct copies of the pleadings and the attachments thereto that were previously filed by Petitioner and Respondents. The Petitioner’s pleading and attachments are Exhibit 1, and Respondents’ Answer and New Matter, along with attachments, are Exhibit 2. All of the citations to the Petition, Answer, New Matter, or the documents attached as exhibits to those pleadings, retain the designations as they were when the pleadings were filed.

3. However, that Expungement Order was not processed by Respondents, Delaware County Office of Judicial Support (“OJS”) and Mary J. Walk, in her official capacity as Director of OJS, (“Director Walk”, and together with OJS, “Respondents”), until after the filing of the Petition for Review in this matter months after the Expungement Order was signed. Petition ¶¶ 65; Answer ¶¶ 65. Respondents’ pleadings in this case confirm that they initially refused to process Petitioner’s Expungement Order pursuant to an illegal policy, which remains in effect, whereby Respondents will not process expungement petitions for individuals whom Respondents believe have outstanding court costs. Answer ¶¶ 48; New Matter ¶¶ 117.

4. Respondent OJS is a combined clerk of courts and prothonotary office created by the Delaware County Home Rule Charter, which sets forth that it “shall have all the powers and duties granted by Commonwealth law, by laws applicable to Counties of the Second Class A for Clerks of Courts and Prothonotaries, by this Chapter or by ordinance of Council.” Delaware County Home Rule Charter, Section 425. As the office with the duties and responsibilities of the clerk of courts for Delaware County, OJS is responsible for maintaining and processing all case files, parties’ filings, and court orders in all criminal cases. Petition ¶¶ 9-10; Answer ¶¶ 9-10.

5. Respondent Walk, named in her official capacity, is the Director of OJS, and she serves as both the Prothonotary and Clerk of Courts for Delaware County. Petition ¶ 11; Answer ¶ 11.

6. On April 8, 2019, K.B. was convicted by the Delaware County Court of Common Pleas in case CP-23-CR-0000856-2019 of possession of marijuana in violation of 35 P.S. § 780-113(a)(31). Petition ¶ 12; Answer ¶ 12.

7. K.B. was sentenced to 30 days of probation by Judge Scanlon. The court imposed no fine, but as a result of the conviction, he was assessed \$1,032.75 in court costs, which payments later reduced to \$897.75. Petition ¶ 13; Answer ¶ 13.

8. K.B. owed only court costs, not fines or restitution. Petition ¶ 27; Answer ¶ 27.

9. As a result of the conviction, K.B. was required to surrender his firearms license, which he did. Petition ¶ 16; Answer ¶ 16.

10. KB received a pardon from Governor Wolf for his marijuana conviction. Petition ¶ 1; Answer ¶ 1. This was pursuant to the Pennsylvania Marijuana Pardon Project, a large-scale pardon effort to provide pardons to individuals like K.B., who had been convicted of minor marijuana possession charges. Petition ¶ 18; Answer ¶ 18.

11. On March 3, 2023, K.B. filed a Petition for Expungement Pursuant to Pennsylvania Rule of Criminal Procedure 790 in the Court of Common Pleas for

Delaware County (the “Expungement Petition”), to expunge CP-23-CR-0000856-2019, and MJ-32237-CR-0000033-2019 (the corresponding magisterial district court number for the same case). Petition Ex. A at 5.²³

12. The Expungement Petition sets forth that K.B.’s “sentence includes fines, costs and/or restitution in the amount of \$1,032.75 and \$135.00 has been paid off/adjusted. The balance of \$897.75 was owed prior to the Governor’s granting of a pardon in this matter.” Petition Ex. A at 6.

13. On March 13, 2023, the Honorable Anthony D. Scanlon of the Delaware County Court of Common Pleas signed the Expungement Order granting K.B.’s expungement. Petition ¶ 28; Answer ¶ 28.

14. The Expungement Order states that “[a]ll criminal justice agencies upon which this order is served *shall expunge* all criminal history record information from defendant’s arrest record pertaining to the charges [explained] below.” Petition Ex. A at 2 (emphasis added). The Expungement Order goes on to state that the “information required by Pa.R.Crim.P. 790 appears on the attached page(s) which are hereby incorporated into this Order by reference.” *Id.*

² For each exhibit attached to the Petition for Review, Respondents do not question that these are true and accurate copies. Instead, Respondents responded that each of the documents speaks for itself and only purports to deny any specific interpretation. *See, e.g.*, Answer ¶ 31 (“Denied. The Expungement Order is a document that speaks for itself, and any interpretation thereof is denied.”).

³ For clarity, the Expungement Petition is incorporated within the Expungement Order. The Expungement Petition itself starts on page 5 of Petition Ex. A.

15. Included among the list of “criminal justice agencies upon which certified copies of this order shall be served” is “[t]he Clerk of Courts of Delaware County, Criminal Division.” Petition Ex. A at 4. “The Clerk of Courts of Delaware County, Criminal Division” is Respondent OJS, run by Respondent Walk. Petition ¶ 36; Answer ¶ 36.

16. The Expungement Order incorporated by reference the information about the court costs in K.B.’s case that had been set forth in the Expungement Petition. Petition Ex. A at 2-3. *See also* Pa.R.Crim.P. 790(A)(2)(h) and (C)(1)(h) (requiring that both an expungement petition and order state “the disposition and, if the sentence includes a fine, costs, or restitution, whether the amount due has been paid”).

17. The Expungement Order was served on Respondents on March 13, 2023, the day Judge Scanlon signed it, and OJS date-stamped it that day. Petition ¶ 37; Answer ¶ 37.

18. Judge Scanlon stayed implementation of the Expungement Order for 30 days after he signed it. Petition Ex. A at 2.

19. The Commonwealth did not appeal this Expungement Order. Petition ¶ 29; Answer ¶ 29.

20. Respondents did not process the Expungement Order in due course or serve it on the other criminal justice agencies stated in the Expungement Order, necessitating the filing of the Petition for Review in this matter. Answer ¶ 54.

21. Instead of processing the Expungement Order, Respondents sent a letter to K.B.'s counsel dated April 24, 2023, stating: "Please be advised that the above Expungement Order for case CR-5856-2019⁴ has been processed. Unfortunately, there is a balance owed on [sic] case for \$897.75 therefore we are unable to complete it until Court Financial receives full payment." *See* Petition Ex. D.

22. It was only after the filing of this lawsuit on October 5, 2023, that Respondents completed processing the Expungement Order. Answer ¶ 54. Once the Expungement Order was processed, Respondents destroyed all criminal history record information related to the charges in cases CP-23-CR-0000856-2019 and MJ-32237-CR-000003-2019. Answer ¶ 55.

23. OJS still has an expungement policy and procedure that has been in place since before Ms. Walk became the Director in 2020. Pursuant to this OJS policy and procedure, Respondents must indicate in the Common Pleas Case Management System ("CPCMS") computer system that unpaid court costs were waived by a court order before they process an expungement. Answer ¶ 48.

⁴ This is a typographical error. The correct case number is CR-856-2019, which is accurately identified in the subject line of the letter.

24. If Respondents believe that a case has unpaid court costs, they will not process the expungement. Answer ¶ 48; New Matter ¶ 117.

25. Pursuant to this OJS policy, Respondents claim they did not process the Expungement Order because the Expungement Order did not state that any unpaid court costs were waived. New Matter ¶ 117.

26. However, K.B., as a matter of law, owed no court costs when Respondents received the Expungement Order. K.B. had already received a pardon and a court order for expungement, which “blot[] out the very existence of his guilt, so that, in the eye of the law, he is thereafter as innocent as if he had never committed the offense.” *C.S.*, 534 A.2d at 1054. Because court costs are a mere “incident to judgment,” the pardon and expungement that eliminated the judgment—that is, the conviction—had the legal effect of eliminating the obligation to pay any remaining costs. *Com. v. Nicely*, 638 A.2d 213, 217 (Pa. 1994).

27. Respondents claim that they could not indicate in CPCMS that the Expungement Order waived costs as the OJS policy required, and they therefore could not process the Expungement Order without violating the OJS policy. New Matter ¶ 117.

28. Nevertheless, Respondents were able to process the Expungement Order in reaction to this lawsuit. Answer ¶ 53.⁵

29. Following the filing of the Petition for Review in this matter, Delaware County Court of Common Pleas President Judge Cartisano directed Ms. Walk to process K.B.'s expungement. New Matter ¶ 119.

30. In complying with Judge Cartisano's instructions to process the Expungement Order, OJS deviated from its policy. New Matter ¶ 120.

31. This was not the first time that President Judge Cartisano instructed Respondents to process a court order expunging a case even after Respondents, pursuant to the policy, did not process the expungement because of unpaid costs. Petition ¶ 47; Answer ¶ 47.

32. The prior year, a Delaware County Court of Common Pleas judge signed an expungement order for a different individual in CP-23-CR-0000922-2016. Petition ¶ 42; Answer ¶ 42. There, too, Respondents sent a letter explaining that OJS would not complete processing the expungement until the unpaid balance of court costs was paid. *See* Petition Ex. F.

⁵ Respondents separately have a policy that they will not accept expungement petitions if there are unpaid fines and costs: "All cases have to have a zero balance, all costs and fines have to be paid in full before you can file the expungement." Answer ¶ 40; Answer Ex. A. Despite this policy about accepting such petitions, Respondents apparently deviated from that policy when they accepted the filed Expungement Petition, which they date-stamped on March 10, 2023. Petition Ex. A at 5.

33. In response, counsel at the ACLU of Pennsylvania and Legal Aid of Southeastern Pennsylvania (“LASP”) sent a letter to Respondent Walk and President Judge Cartisano on November 15, 2022, which explained the statutory and constitutional problems with the OJS policy that result in expungement orders not being fully processed for individuals who have unpaid court costs. *See* Petition Ex. G.

34. On December 5, 2022, President Judge Cartisano wrote to Respondent Walk:

Please process the expungement order in the matter of *Commonwealth v. [redacted]*, CP-23-CR-922-2016, which was signed by Judge Brennan on July 22, 2022 regardless of any outstanding costs in the matter. It is a court order and as such, must be timely processed and followed. Thank you.

See Ex. H.

35. Following receipt of that letter, Respondents did in fact complete processing that expungement and fully expunged the criminal history record information, as was required by the expungement order in that case. OJS processed it within one day of receiving Judge Cartisano’s letter. Petition ¶ 47; Answer ¶ 47.

36. Since that expungement had been resolved without the need for litigation, when K.B.’s counsel was notified that Respondents would not process the Expungement Order, they spoke with Respondents’ counsel. K.B.’s counsel asked that Respondents comply not only with this Expungement Order, but also to ensure

that they comply with any similar orders that may be issued under similar circumstances. Petition ¶ 51; Answer ¶ 51.

37. Respondents' counsel responded that he expected this Expungement Order would be processed, and he stated he would discuss this policy with OJS. Petition ¶ 52; Answer ¶ 52.

38. Nevertheless, the Expungement Order was only processed after the Petition for Review in this matter was filed and after a directive from Delaware County Court of Common Pleas President Judge Cartisano. Petition ¶ 53; Answer ¶ 53; New Matter ¶¶ 119-120.

II. This Court Should Enter Judgment on the Pleadings in Favor of Petitioner.

39. Respondents have admitted the material facts set forth above, which are not in dispute. As a result, Petitioner K.B. is entitled to Judgment on the Pleadings because he has a clear right to relief under the applicable provisions of Pennsylvania law. Petitioner K.B. specifically requests that this Court provide declaratory relief and a judgment that Respondents are liable for monetary damages and attorneys' fees, in amounts to be determined after further proceedings at a later date.

A. Count I: Failure to Comply with Ministerial Duties

40. Multiple provisions of Pennsylvanian's Constitution, statutes, and Supreme Court rules require Respondents, as the clerk of courts, to process and comply with court orders. The clerk of courts' mandate is to "maintain and be

responsible for the records, books and dockets” of their court. Pa. Const. Art. V., Schedule to the Judiciary Article § 15. Specifically with respect to orders for expungement, “[t]he clerk of courts shall serve a certified copy of the Order to each criminal justice agency identified in the court’s Order.” Pa. R. Crim. P. 790(C)(2). In addition, because OJS is a “criminal justice agency” charged with maintaining criminal history record information in court records, it is obligated by statute that such information “*shall* be expunged” by OJS when ordered by a court. 18 Pa.C.S. §§ 9102; 9122(a) (emphasis added). Pennsylvania law dictates that “expunge” in this context means to “remove information so that there is no trace or indication that such information existed.” 18 Pa.C.S. § 9102.

41. These powers given to a clerk of courts are “purely ministerial” in nature. *See In re Administrative Order*, 936 A.2d 1, 9 (Pa. 2007).⁶ The clerk of courts is “not an administrative officer who has discretion to interpret or implement rules and statutes.” *Sollenberger v. Lee*, 925 A.2d 883, 884 (Pa. Commw. Ct. 2007) (per curiam) (quoting *Thompson v. Cortese*, 398 A.2d 1079, 1081 (Pa. Commw. Ct. 1979)). As the Supreme Court has recognized, a clerk of courts has “no authority by virtue of his office to interpret the Order’s compliance with CHRIA.” *In re Administrative Order*, 938 A.2 at 9.

⁶ The standards governing the prothonotary’s powers are “equally applicable to the clerk of courts.” *In re Administrative Order*, 936 A.2d at 9.

42. Respondents violated these clear legal duties by adopting and enforcing a policy that permits them to disregard court orders for expungements. Under the policy, Respondents have provided their own interpretation that an expungement order should only be followed if there are no unpaid court costs. Yet Respondents have no such authority to add those requirements.

43. Respondents' failure to timely process and serve the Expungement Order—something that ultimately occurred only in response to this lawsuit at the direction of President Judge Cartisano—violated their legal duty and harmed K.B. by needlessly delaying his expungement and requiring that he file this lawsuit to obtain the benefits of the Expungement Order.

B. Count II: Violation of CHRIA

44. CHRIA imposes a “duty” on “every criminal justice agency,” including Respondents, to “maintain complete and accurate criminal history record information” pertaining to criminal cases. 18 Pa.C.S. § 9111. When “a court order requires that such nonconviction data be expunged,” then the “criminal history record information *shall* be expunged.” *Id.* at 9122(a) and (a)(2) (emphasis added). In addition, CHRIA requires that Respondents inform the central repository maintained by the Pennsylvania State Police after a person has received a pardon and expungement “within 90 days of the date of such disposition.” 18 Pa.C.S. §§ 9102; 9113.

45. The Governor’s grant of a pardon to K.B. had the legal effect of “blot[ting] out the very existence of his guilt, so that, in the eye of the law, he is thereafter as innocent as if he had never committed the offense.” *C.S.*, 534 A.2d at 1054; *see also Pennsylvania State Police v. Sama*, 209 A.3d 1155, 1160 (Pa. Commw. Ct. 2019) (effect of a pardon that a “conviction was no longer considered a ‘conviction’”). Accordingly, when “a court order require[d] that such nonconviction data be expunged” following the pardon, CHRIA obligated Respondents to comply with that court order. 18 Pa.C.S. § 9122(a)(2). Yet Respondents failed to do so until after this lawsuit was filed more than six months later.

46. Respondents violated CHRIA when they chose to disregard the Expungement Order and not process and serve that court order on the Pennsylvania State Police. Agencies that are the subject of an expungement order have no discretion to refuse to comply. *See, e.g., Com. v. M.M.M.*, 779 A.2d 1158, 1166 (Pa. Super. Ct. 2001).

47. These twin violations of CHRIA—the refusal of Respondents to expunge their own records and serve the Expungement Order—entitle any person who is aggrieved to receive “actual and real damages of not less than \$100 for each violation” and “[e]xemplary and punitive damages of not less than \$1,000 nor more than \$10,000,” which “shall be imposed for any violation of [CHRIA] . . . found to

be willful,” as well as the costs of litigation and attorney’s fees. 18 Pa.C.S. § 9183(b)(1) and (2).

48. Respondents’ violation of CHRIA aggrieved K.B. Following his conviction, K.B. surrendered his firearm license, as required by law. *See* 18 Pa.C.S. § 6109(e)(1)(ii) (individual convicted of drug offenses is ineligible to have a firearm license). Once he received a pardon and expungement, K.B. no longer had a disabling “conviction,” *id.* at § 6102, but as this Court has explained, his expungement first had to be processed by the Pennsylvania State Police after Respondents provided the Expungement Order to the State Police so the agency could update the “central repository” of individuals who are eligible to have a firearms license. *See Com. v. J.H.*, 759 A.2d 1269, 1270 (Pa. 2000); *see also Pennsylvania State Police v. Izbicki*, 785 A.2d 166, 169 (Pa. Commw. Ct. 2001) (explaining that the determination of whether a firearms license can be granted “will certainly hinge on PSP’s criminal records check”). Without processing and serving the expungement order, the State Police would not (and did not) receive it and K.B.’s firearm rights were not restored, preventing him from receiving a firearms license and aggrieving him as a matter of law. *See Haron v. Pennsylvania State Police*, 171 A.3d 344, 354 (Pa. Commw. Ct. 2017) (the “maintenance of incorrect criminal records resulting in an unwarranted denial of a constitutional right to purchase a firearm constitutes ‘aggrievement’” under CHRIA).

49. In addition, Respondents' actions also aggrieved K.B. by causing him to suffer reputational harm in violation of his fundamental right to reputation under Article I, Section 1 of the Pennsylvania Constitution, as is set forth below in Count III. *See Haron*, 171 A.3d at 354 (denial of a "constitutional right" for several months, which necessitates obtaining counsel and filing a lawsuit constitutes aggrievement under CHRIA).

50. Respondents' refusal to comply with the Expungement Order was willful, entitling K.B. to punitive damages. After their failure to comply with a functionally identical order last year, President Judge Cartisano expressly instructed Respondents to "process" the expungement order "regardless of any outstanding costs in the matter. It is a court order and as such, must be timely processed and followed." Petition Ex. H. Even if Respondents were unaware that they must comply with court orders to expunge cases prior to that incident, they were certainly aware of it after, well before K.B.'s own Expungement Order was signed. A willful action in this context is one that is "an intentional, designed act and one without justifiable excuse." *Com. ex rel. Wright v. Hendrick*, 312 A.2d 402, 404 (Pa. 1973). *See In re Davis*, 302 A.3d 166, 172-73 (Pa. Super. Ct. 2023) (clerk's refusal to appear before a judge in open court after being instructed to do so constituted willful misconduct). Here, Respondents expressly admit that they did not process the Expungement Order

pursuant to an OJS policy, despite having been previously instructed by President Judge Cartisano to follow court orders. Their actions were willful.

C. Count III: Violation of K.B.’s Fundamental Right to Reputation in Article I, Section 1 of the Pennsylvania Constitution

51. Article I, Section 1 of the Pennsylvania Constitution, “Inherent Rights of Mankind,” provides:

All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.

Pa. Const. Art. I, § 1.

52. The right to reputation is a fundamental right under the Pennsylvania Constitution. *See, e.g., In re Fortieth Statewide Investigating Grand Jury*, 190 A.3d 560, 573 (Pa. 2018) (“[T]he Pennsylvania Constitution places reputational interests on the highest plane, that is, on the same level as those pertaining to life, liberty, and property.” (quotation marks omitted)).

53. The Pennsylvania Supreme Court has explained that “[e]xpungement is a mechanism utilized to protect an individual’s reputation from the stigma that accompanies an arrest record.” *Com. v. Giulian*, 141 A.3d 1262, 1270 (Pa. 2016) (citations omitted). Absent an expungement, one’s reputation faces a “perpetual stigma” due to a criminal conviction. *Id.*

54. Without an expungement, K.B. remained a criminal with a conviction, rather than someone who has successfully put this offense behind him. The Expungement Order explained that the reason for expungement was that “[a]s a result of these arrests and subsequent photographing and fingerprinting, [K.B.] has been caused to suffer embarrassment and irreparable harm and loss of job opportunities.” See Petition Ex. A at 6. As is set forth above, that reputational harm continued until after the filing of this Petition for Review, solely because of Respondents’ actions.

D. Count IV: Declaratory Judgment

55. This Court should enter a declaratory judgment in favor of Petitioner K.B. The Declaratory Judgments Act provides this Court with the “power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.” 42 Pa.C.S. § 7532. This authority is in addition to any other available remedies; it is “cumulative and additional, not in place of, other forms of relief.” *Bottomer v. Progressive Cas. Ins. Co.*, 816 A.2d 1172, 1176 (Pa. Super. Ct. 2003). While the decision to issue a declaratory judgment “is a matter lying within the sound discretion of a court of original jurisdiction,” it is appropriate when there is a “clear manifestation that the declaration sought will be of practical help in ending the controversy.” *Gulnac by Gulnac v. S. Butler Cnty. Sch. Dist.*, 587 A.2d 699, 701 (Pa. 1991).

56. For the reasons stated above, Respondents have violated multiple provisions of the Pennsylvania Constitution, statutes, and Supreme Court rules. This Court should specifically declare that:

- a. Respondents' refusal to comply with the Expungement Order and process K.B.'s expungement upon receipt of the Order was unlawful;
- b. Respondents' policy that they will not fully process an expungement order unless all court costs are first paid is unlawful and without the force of law;
- c. Petitioner K.B. was aggrieved by Respondents' failure to comply with the Expungement Order; and
- d. Respondents willfully refused to comply with the Expungement Order.

WHEREFORE, Petitioner K.B. respectfully requests that this Court enter Judgment on the Pleadings in his favor and against Respondents.

Dated: April 2, 2024

/s/ John S. Yi

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EXHIBIT 1

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

K.B.,

Petitioner,

v.

DELAWARE COUNTY OFFICE OF
JUDICIAL SUPPORT, and MARY J.
WALK, in her official capacity as
Director of the Delaware County Office
of Judicial Support,

Respondents.

Civil Action No.

Original Jurisdiction

JURY DEMAND

NOTICE TO PLEAD

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within 30 days (pursuant to Pennsylvania Rule of Appellate Procedure 1516(b)) after this Petition and Notice are served by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed with you and a judgment may be entered against you by the Court without further notice for any claim or relief requested by Petitioner.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

K.B.,

Petitioner,

v.

DELAWARE COUNTY OFFICE OF
JUDICIAL SUPPORT, and MARY J.
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Director of the Delaware County Office
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JURY DEMAND

**PETITION FOR REVIEW
ADDRESSED TO THE COURT'S ORIGINAL JURISDICTION**

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INTRODUCTION

1. In January 2023, K.B. received a full and unconditional pardon from Governor Wolf for his 2019 conviction of possessing marijuana. In effectuating that pardon, the Honorable Anthony D. Scanlon of the Delaware County Court of Common Pleas signed an order that required Respondents, the Delaware County Office of Judicial Support (“OJS”) and Mary J. Walk (“Walk”), the Director of that office, to expunge K.B.’s criminal records in April 2023. Such an order is routine and legally required after a pardon, because a “pardon without expungement is not a pardon.” *Commonwealth v. C.S.*, 534 A.2d 1053, 1054 (Pa. 1987).

2. Respondents, however, have chosen to ignore that court order and ignore the Governor’s pardon. Instead of processing the expungement order, taking the required action to destroy the records of K.B.’s conviction, and notifying other criminal justice agencies of this order, Respondents sent K.B. a letter stating that they refuse to comply with the court order and complete the expungement until K.B. pays an outstanding balance of \$897.75 in court costs from the original criminal case.

3. While Judge Scanlon, as the original sentencing judge, was aware of this unpaid balance when he signed the expungement order, he did not make the expungement order conditional. The court’s order required no payment of the balance set forth in the expungement petition approved by Judge Scanlon. Instead,

it simply ordered that “[a]ll criminal justice agencies upon which this order is served shall expunge all criminal history record information.” Respondents, in disregarding this order, have imposed their own requirements above and beyond what the judge—and what the law—permit.

4. Remarkably, this is not the first time in the past year that Respondents have sent a letter stating that they will not comply with a court order to expunge a case unless court costs were paid. Last November, Respondents refused to process an expungement for another individual with unpaid court costs, and counsel from the American Civil Liberties Union (“ACLU”) of Pennsylvania and Legal Aid of Southeastern Pennsylvania (“LASP”) responded by sending a letter to Respondent Walk, explaining that refusing to comply with that court order was unlawful. Delaware County Court of Common Pleas President Judge Linda Cartisano then informed Respondent Walk in writing that she must “process the expungement order . . . regardless of any outstanding costs in the matter. It is a court order and as such, must be timely processed and followed.” The day after the President Judge’s letter, Respondents processed that expungement.

5. Respondents have now doubled down on their illegal policy of refusing to comply with court orders to expunge cases where there is unpaid court debt. In so doing, they are defying not only the individual judges issuing these orders, but also the explicit command of the President Judge. A clerk of courts has no discretion to

impose such a requirement, and as President Judge Cartisano properly explained, is instead bound by its ministerial duty to comply with and follow court orders. Its failure to do so here continues to inflict ongoing reputational harm to K.B. and is a violation of its duty under the Criminal History Record Information Act (“CHRIA”).

6. K.B., through his counsel, the ACLU of Pennsylvania, LASP, and Faegre Drinker Biddle & Reath LLP, requests that this Court find that Respondents’ actions are illegal and order that Respondents must comply with the court order issued by Judge Scanlon to expunge K.B.’s criminal records. K.B. also requests that this Court award damages, costs, and attorney’s fees, as is required for violations of CHRIA.¹

JURISDICTION AND VENUE

7. The Commonwealth Court has jurisdiction over any action brought against the Commonwealth government and its officers, including Respondents the OJS and the director thereof. *See* 42 Pa.C.S. § 761(a)(1); *Richardson v. Peters*, 19 A.3d 1047, 1048 (Pa. 2011) (holding that the clerk of courts is a Commonwealth officer and thus the Commonwealth Court has original jurisdiction in lawsuits against it).

¹ Petitioner has filed two copies of this Petition for Review and the attached exhibits, at the direction of the Commonwealth Court prothonotary’s office. One copy, filed under seal, is unredacted. The other copy, filed publicly, refers to Petitioner by only his initials, K.B. In light of the pardon K.B. received, as well as his right to have his criminal records expunged, K.B. has a significant reputational interest in not having his full name publicly associated with the conviction that has been pardoned and will be expunged.

PARTIES

8. Petitioner K.B. is a resident of Delaware County, Pennsylvania.

9. Respondent OJS is a combined clerk of courts and prothonotary office created by the Delaware County Home Rule Charter, which sets forth that it “shall have all the powers and duties granted by Commonwealth law, by laws applicable to Counties of the Second Class A for Clerks of Courts and Prothonotaries, by this Chapter or by ordinance of Council.” Delaware County Home Rule Charter, Section 425.

10. As the office with the duties and responsibilities of the clerk of courts for Delaware County, OJS is responsible for maintaining and processing all case files, parties’ filings, and court orders in all criminal cases.

11. Respondent Walk, named in her official capacity, is the Director of OJS, and she serves as both the Prothonotary and Clerk of Courts for Delaware County.

FACTS

12. On April 8, 2019, K.B. was convicted by the Delaware County Court of Common Pleas in case CP-23-CR-0000856-2019 of possession of marijuana in violation of 35 P.S. § 780-113(a)(31). *See* Ex. A at 3; Ex. B at 2.

13. K.B. was sentenced to 30 days of probation by Judge Scanlon. The court imposed no fine, but as a result of the conviction, he was assessed \$1,032.75

in court costs, which payments later reduced to \$897.75. *See Ex. A at 6; Ex B at 5.*

14. As a result of this conviction, K.B. has faced difficulty maintaining employment. He lost his job working for a delivery company, after a background check uncovered the conviction. He has been unable to pursue other jobs that require background checks.

15. The problems caused by having this conviction on his record also interfered with his ability to obtain housing. After this conviction, K.B. and his father applied for Section 8 public housing. However, the housing authority ran a background check and told K.B. that he was ineligible for the housing because of the marijuana conviction.

16. The conviction has also prevented K.B. from being able to lawfully purchase a firearm for personal protection and to obtain a license to carry a firearm. After his conviction, K.B. received a notice from the Commonwealth that required that he turn in his firearm license. He drove to Media and physically surrendered it to the sheriff, as he was instructed.

17. In 2022, Governor Wolf and the Pennsylvania Board of Pardons launched the Pennsylvania Marijuana Pardon Project, a large-scale pardon effort to provide pardons to individuals like K.B., who had been convicted of minor marijuana possession charges. As Governor Wolf explained when launching the program, “Pennsylvanians convicted of simple marijuana charges are automatically

disqualified for so many life opportunities: jobs, education, housing, special moments with family. This is wrong. In Pennsylvania, we believe in second chances.”² Lieutenant Governor John Fetterman emphasized the importance of the effort as ensuring that no one “be turned down for a job, housing or volunteering” because of a marijuana conviction.³

18. K.B. applied for a pardon under this program. On January 12, 2023, Governor Wolf granted K.B. a pardon. *See* Ex. C.

19. The effect of a pardon is that it “completely frees the offender from the control of the state. It not only exempts him from further punishment but relieves him from all the legal disabilities resulting from his conviction. *It blots out the very existence of his guilt, so that, in the eye of the law, he is thereafter as innocent as if he had never committed the offense.*” *C.S.*, 534 A.2d at 1054 (emphasis in original).

20. In addition, the Pennsylvania Supreme Court has explained that individuals who receive a pardon are automatically entitled to an expungement of their criminal records: “There is no way that the state can retain the record of a former criminal who is ‘as innocent as if he had never committed the offense’ . . . A pardon without expungement is not a pardon.” *Id.* (remanding with instructions to

² Marley Parish, *More than 2,500 apply for pardon under Pa. marijuana pardon project*, PENN. CAPITAL-STAR, Sep. 28, 2022, <https://www.penncapital-star.com/blog/more-than-2500-apply-for-pardon-under-pa-marijuana-pardon-project/>.

³ Commonwealth of Pennsylvania, *PA Marijuana Pardon Project*, WWW.PA.GOV, <https://www.pa.gov/guides/mj-pardon/> (last visited Oct. 4, 2023).

expunge).

21. There is a legal right of entitlement to an expungement following a pardon.

22. That right is not conditioned on payment of court costs imposed in connection with a conviction that no longer exists.

23. However, even after a pardon is granted, a court must first issue an order to expunge a person's criminal records before those records are actually expunged and destroyed by criminal justice agencies.

24. On March 3, 2023, K.B. filed a Petition for Expungement Pursuant to Pennsylvania Rule of Criminal Procedure 790 in the Court of Common Pleas for Delaware County (the "Petition"), to expunge CP-23-CR-0000856-2019, and MJ-32237-CR-0000033-2019 (the corresponding magisterial district court number for the same case). *See* Ex. A at 5-6.

25. Among the pieces of information that must be included in an expungement petition, Rule 790(A)(2)(h) requires that the petition note "if the sentence includes a fine, costs, or restitution, whether the amount has been paid." Similarly, if a judge grants an order expunging the case, that order must also state "if the sentence includes a fine, costs, or restitution, whether the amount has been paid." Pa. R. Crim. P. 790(C)(2)(h).

26. K.B's expungement petition noted that his sentence "includes fines,

costs, and/or restitution in the amount of \$1,032.75 and \$135.00 has been paid off/adjusted. The balance of \$897.75 was owed prior to the Governor's granting of a pardon in this matter."

27. K.B. in fact only owed court costs, not fines or restitution. *See* Ex. B at 5.

28. On March 13, 2023, The Honorable Anthony D. Scanlon signed an unconditional order granting K.B.'s Petition (the "Expungement Order"). *See* Ex. A at 2-4.

29. Judge Scanlon stayed implementation of the order for 30 days, pursuant to Rule 790(B), which permits a court to stay an expungement order to give the Commonwealth an opportunity to appeal. The Commonwealth did not appeal.

30. The Expungement Order went into effect on April 12, 2023.

31. The Expungement Order contained the findings and reasoning of Judge Scanlon, explaining that: "As a result of these arrests and subsequent photographing and fingerprinting, Petitioner has been caused to suffer embarrassment and irreparable harm and loss of job opportunities. Expungement is proper under

Commonwealth v. C.S., 534 A.2d 1053 (Pa. 1987) as the charges to be expunged were pardoned by Governor Tom Wolf on January 12, 2023.” Ex. A at 4.

32. The Expungement Order also noted the \$897.75 in unpaid costs, but nothing in the Expungement Order stated that the expungement was conditional upon paying any unpaid costs. *See* Ex. A at 3.

33. The Expungement Order ordered, unequivocally, that: “[a]ll criminal justice agencies upon which this order is served ***shall expunge*** all criminal history record information from defendant’s arrest record pertaining to the charges [explained] below.” *See* Ex. A at 2 (emphasis added).

34. The Expungement Order requires that it be served on the following criminal justice agencies:

The Clerk of Courts of Delaware County, Criminal Division

The Delaware County District Attorney’s Office

The Pennsylvania State Police, Central Records

A.O.P.C. Expungement Unit

Darby Borough Police Dept.

Delaware County Department of Adult Probation and Parole

Magisterial District Court 32-2-37

See Ex. A at 3.

35. Included among the list of “criminal justice agencies upon which

certified copies of this order shall be served” is “The Clerk of Courts of Delaware County, Criminal Division.” *See Ex. A at 4.*

36. “The Clerk of Courts of Delaware County, Criminal Division” is Respondent OJS, run by Respondent Walk.

37. The Expungement Order was served on Respondents. It is date-stamped by OJS on March 13, 2023, the day Judge Scanlon signed it.

38. On April 24, 2023, K.B., through his attorney, received a letter from a colleague of Respondent Walk in OJS, explaining that Respondents would not complete processing the expungement until K.B. paid \$897.75. *See Ex. C.*

39. The letter read: “Please be advised that the above Expungement Order for case CR-5858-2019 has been processed. Unfortunately, there is a balance owed on [sic] case for \$897.75 therefore we are unable to complete it until Court Financial receives full payment.” *See Ex. D.*

40. Respondents have a policy whereby they will not complete the processing of any expungement orders and will not serve those expungement orders on other criminal justice agencies, unless the person who obtained an expungement order first pays all court costs.

41. If such a person does not pay all court costs, the expungement order will not be fully processed and served by Respondents.

42. As set forth above, this was not the first time that Respondents refused to comply with a court order to expunge a case where the defendant had not paid all court costs. On July 22, 2022, a Delaware County Court of Common Pleas judge signed an expungement order for a different individual in CP-23-CR-0000922-2016. While that individual had not received a pardon, he was eligible for a discretionary expungement of a summary offense, which the judge approved. *See Ex. E.*

43. The operative public language used by the judge who issued the expungement order in CP-23-CR-0000922-2016 was identical to that in K.B's Expungement Order. *See Ex. A; Ex. E.*

44. There, too, a colleague of Respondent Walk's in OJS sent a letter to counsel, stating that OJS would not complete processing the expungement until the unpaid balance of court costs was paid. *See Ex. F.*

45. In response, counsel at the ACLU of Pennsylvania and LASP sent a letter to Respondent Walk and President Judge Cartisano on November 15, 2022, which explained the statutory and constitutional problems with the OJS policy that results in expungement orders not being fully processed for individuals who have unpaid court costs. *See Ex. G.*

46. On December 5, 2022, President Judge Cartisano wrote to Respondent Walk:

Please process the expungement order in the matter of *Commonwealth v. [redacted]*, CP-23CR-922-2016, which was signed by Judge Brennan

on July 22, 2022 regardless of any outstanding costs in the matter. It is a court order and as such, must be timely processed and followed. Thank you.

See Ex. H.

47. Following receipt of that letter, Respondents did in fact complete processing that expungement and fully expunged the criminal history record information, as was required by the July 22 order.⁴ *See Ex. I.*

48. As that example shows, Respondents have the technical ability to expunge cases for which there are unpaid court costs.

49. After receiving the letter from President Judge Cartisano, Respondents were aware that they must comply with court orders to expunge, even if the defendant had not paid the full balance of court costs.

50. In light of President Judge Cartisano's letter, when K.B.'s Expungement Order was not followed by Respondents, counsel for K.B. attempted to resolve the matter informally, assuming that Respondents would continue to follow President Judge Cartisano's instruction.

51. On May 25, 2023, K.B., through counsel at the ACLU of Pennsylvania, spoke with Delaware County Solicitor William F. Martin to tell him that OJS was refusing to process the Expungement Order. Counsel requested that Mr. Martin

⁴ The OJS processed the Expungement Order within one (1) day of receiving Judge Cartisano's letter.

advise Respondents to comply not only with this Expungement Order, but also to ensure that they comply with any similar orders that may be issued under similar circumstances.

52. Mr. Martin responded that he expected that this Expungement Order would be processed, and he stated that he would discuss this policy with OJS.

53. As of the date of the filing of this Petition for Review, despite several attempts to follow up with the Solicitor, Respondents have still not completed processing the Expungement Order.

54. Respondents have still not served the Expungement Order on the other criminal justice agencies listed in the Expungement Order.

55. Respondents have still not destroyed all criminal history record information related to the charges in cases CP-23-CR-0000856-2019 and MJ-32237-CR-0000033-2019.

56. As a result, despite the fact that he received a pardon, Pennsylvania's criminal justice agencies still maintain copies of his criminal history record information, as if Judge Scanlon had never issued the Expungement Order.

57. K.B. continues to face reputational harm because the records of his now-pardoned conviction have not been destroyed and continue to appear on background checks.

58. This continues to interfere with K.B.'s employment opportunities. He

recently applied for a job with a security company, but had to stop pursuing that opportunity after learning that they would require an FBI background check, which would show the marijuana conviction.

59. For the same reasons, K.B. is still unable to obtain a firearm license for his personal protection that would allow him to carry the firearm outside his home. He was required to surrender the license to the sheriff after this conviction. The conviction will continue to appear on the Pennsylvania State Police Pennsylvania Instate Check System (“PICS”) that is used to determine eligibility to obtain a firearm license.

60. When an individual who is ineligible to have a firearm license because of a conviction applies for that license at the sheriff’s office, the sheriff uses PICS to determine whether to issue the license.

61. If PICS notes that the person is not eligible, then the sheriff will not issue the license.

62. Even after a pardon, convictions are only removed from PICS after an expungement order is processed and served on the Pennsylvania State Police.

63. The Expungement Order requires on its face that it be served on the Pennsylvania State Police. *See Ex. A at 4.*

64. Respondents have the responsibility for serving the Expungement Order on the Pennsylvania State Police and other criminal justice agencies.

65. These and other reputational harms will continue to aggrieve K.B. until the Expungement Order is fully processed by Respondents and served by Respondents on other criminal justice agencies.

66. Pursuant to 42 Pa. C.S.A. § 5522(a)(1), “any person who is about to commence any civil action or proceeding within this Commonwealth or elsewhere against a government unit for damages on account of an injury to his person” must file a written notice of the alleged injury in the office of the government unit and the office of the Attorney General.

67. On October 4, 2023, Petitioner, through undersigned counsel, caused to be delivered copies of Petitioner’s written notice of injury to the OJS, Office of the Attorney General, and the Delaware County Solicitor, William F. Martin, Esq.

COUNT 1:

**Failure to Comply with Ministerial Duties, in Violation of
Pa. Const. art. V., Schedule to the Judiciary Article § 15,
42 Pa.C.S. §§ 2756-57, 18 Pa.C.S. § 9101, et seq., and Pa. R. Crim. P. 790**

68. K.B. hereby incorporates and adopts each and every allegation set forth in the foregoing paragraphs of the Petition for Review.

69. Respondents have chosen to disregard a court order and have refused to process the Expungement Order.

70. Respondents are legally required to comply with any court order, including the Expungement Order, and lack discretion to refuse to comply based on their own interpretation of the law.

71. The Pennsylvania Constitution establishes that the clerk of courts' mandate is to "maintain and be responsible for the records, books and dockets" of their court. Pa. Const. art. V., Schedule to the Judiciary Article § 15.

72. Accordingly, "applications for relief or other documents relating to," *inter alia*, "[c]riminal matters including all related motions and filings" "shall be filed or transferred to the office of the clerk of courts," 42 Pa.C.S. § 2756, which "shall have the power and duty to . . . [e]nter all criminal judgments and judgments entered by confession" and "[e]xercise such other powers and perform such other duties" as may be provided by law. 42 Pa.C.S. § 2757.

73. Specifically with respect to expungements, "[t]he clerk of courts shall serve a certified copy of the Order to each criminal justice agency identified in the court's Order." Pa. R. Crim. P. 790(C)(2).

74. In addition, CHRIA requires that, when "a court order requires that such nonconviction data be expunged," then the "criminal history record information shall be expunged." *Id.* at 1922(a) and (a)(3). Under CHRIA, to expunge in this context means to "remove information so that there is no trace or indication that such information existed." *Id.* at 9102.

75. These powers given to a clerk of courts are “purely ministerial” in nature. *See In re Administrative Order*, 936 A.2d 1, 9 (Pa. 2007).⁵ The clerk of courts is “not an administrative officer who has discretion to interpret or implement rules and statutes Therefore, if documents tendered for filing are proper on their face and in conformity to rules of court, a prothonotary does not have discretion to refuse to enter them.” *Sollenberger v. Lee*, 925 A.2d 883, 884 (Pa. Commw. Ct. 2007) (per curiam) (quoting *Thompson v. Cortese*, 398 A.2d 1079, 1081 (Pa. Commw. Ct. 1979)).

76. As part of this ministerial duty to maintain records, Respondents have “no authority by virtue of [the] office to interpret the Order’s compliance with CHRIA,” as instead “as an officer of the court of common pleas, [Respondents have] the duty to comply with the Order.” *In re Administrative Order*, 936 A.2d at 9.

77. By implementing a policy that requires payment of court costs prior to fully processing an expungement order, Respondents have inserted an “additional requirement” on the filing, but “this discretion is not [Respondents’] to exercise.” *Warner v. Cortese*, 288 A.2d 550, 552 (Pa. Commw. Ct. 1972).

⁵ The standards governing the prothonotary’s powers are “equally applicable to the clerk of courts.” *In re Administrative Order*, 936 A.2d at 9.

78. Respondents have no legal authority to choose to disregard the Expungement Order. Instead, Respondents have a legal duty to comply with that court order.

79. Accordingly, K.B. is entitled to declaratory and injunctive relief from Respondents' failure to comply with the Expungement Order. Specifically, K.B. requests that this Court issue a declaration that Respondents' refusal to comply with the Expungement Order is unlawful, as well as a permanent injunction to enjoin Respondents from conditioning the processing of the Expungement Order on K.B. first paying all court costs.

COUNT 2:

**Violation of the Criminal History Record Information Act,
18 Pa.C.S. § 9101, et seq.**

80. K.B. hereby incorporates and adopts each and every allegation set forth in the foregoing paragraphs of the Petition for Review.

81. The Criminal History Record Information Act ("CHRIA"), governs the maintenance of criminal history record information by criminal justice agencies, including Respondents. It imposes a "duty" on "every criminal justice agency" to "maintain complete and accurate criminal history record information" pertaining to criminal cases. 18 Pa.C.S. § 1911.

82. When "a court order requires that such nonconviction data be expunged," then the "criminal history record information *shall* be expunged." *Id.* at

1922(a) and (a)(3) (emphasis added). Under CHRIA, to expunge in this context means to “remove information so that there is no trace or indication that such information existed.” *Id.* at 9102.

83. Respondents have failed to comply with their duties under CHRIA because they have not removed information about K.B.’s conviction following a court order to do so.

84. Agencies that are the subject of an expungement order have no discretion to refuse to comply. *See, e.g., Commonwealth v. M.M.M.*, 779 A.2d 1158, 1165 (Pa. Super. Ct. 2001) (citing *Commonwealth v. J.H.*, 759 A.2d 1269, 1271 (Pa. 2000)).

85. Respondents’ failure to do so has aggrieved K.B., as their failure means that he continues to suffer ongoing reputational harm, he continues to suffer diminished employment opportunities, and he has been unable to obtain a license to carry a firearm for personal defense.

86. CHRIA provides that an individual who has been aggrieved by a violation of CHRIA may bring an action for damages and “shall be entitled to actual and real damages of not less than \$100 for each violation and to reasonable costs of litigation and attorney’s fees.” 18 Pa.C.S. § 9183(b)(1)-(2).

87. In addition, “Exemplary and punitive damages of not less than \$1,000 nor more than \$10,000 shall be imposed for any violation of this chapter, or the rules or regulations adopted under this chapter, found to be willful.” *Id.* at § 9183(b)(2).

88. Respondents have willfully refused to comply with the Expungement Order. After their failure to comply with a functionally identical order last year, President Judge Cartisano expressly instructed Respondents to “process” the expungement order “regardless of any outstanding costs in the matter. It is a court order and as such, must be timely processed and followed.” Ex. H. Respondents are now refusing to comply with this instruction, despite having acquiesced last year and knowing that they must follow such orders. As a result, their current noncompliance with the Expungement Order is knowing and intentional.

89. Accordingly, K.B. requests a declaration that Respondents have violated CHRIA, as well as a permanent injunction to enjoin Respondents from conditioning the processing of the Expungement Order on K.B. first paying all court costs. In addition, K.B. asks this that Court find that he has been aggrieved by Respondents’ actions, award real and actual damages in an amount not less than \$100, find that Respondents have acted willfully and award punitive damages in an amount between \$1,000 and \$10,000, and award reasonable costs and attorney’s fees.

COUNT 3:

Violation of K.B.’s Fundamental Right to Reputation in Article I, Section 1 of the Pennsylvania Constitution

90. K.B. hereby incorporates and adopts each and every allegation set forth in the foregoing paragraphs of the Petition for Review.

91. Article I, Section 1 of the Pennsylvania Constitution, “Inherent Rights of Mankind,” provides:

All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.

Pa. Const. Art. I, § 1.

92. The right to reputation is a fundamental right under the Pennsylvania Constitution. *See, e.g., In re Fortieth Statewide Investigating Grand Jury*, 190 A.3d 560, 573 (Pa. 2018) (“[T]he Pennsylvania Constitution places reputational interests on the highest plane, that is, on the same level as those pertaining to life, liberty, and property.” (quotation marks omitted)).

93. The Pennsylvania Supreme Court has explained that “[e]xpungement is a mechanism utilized to protect an individual’s reputation from the stigma that accompanies an arrest record.” *Giulian*, 141 A.3d at 1270. Absent an expungement, one’s reputation faces a “perpetual stigma” due to a criminal conviction. *Id.*

94. This is particularly true for K.B., who received a pardon from Governor

Wolf. The expungement is a necessary part of the pardon process, as a “pardon without expungement is not a pardon.” *Commonwealth v. C.S.*, 534 A.2d 1053, 1054 (Pa. 1987). The pardon may make it such that “in the eye of the law, he is thereafter as innocent as if he had never committed the offense,” but it takes the expungement to make that legal requirement a reality by destroying the records that describe the conviction. *Id.*

95. Without an expungement, K.B.’s conviction continues to appear on background checks. In the eye of the public, he remains a criminal with a conviction, rather than someone who has successfully put this offense behind him.

96. The Expungement Order explained that the reason for expungement was that “[a]s a result of these arrests and subsequent photographing and fingerprinting, [K.B.] has been caused to suffer embarrassment and irreparable harm and loss of job opportunities.” *See Ex. at 4.* As is set forth above, that reputational harm continues today, including in interfering with K.B.’s ability to obtain employment.

97. This ongoing and irreparable reputational harm is a direct result of Respondents’ refusal to process the Expungement Order, expunge the records, and serve the Expungement Order on other criminal justice agencies.

98. OJS has no compelling interest in requiring that K.B. pay all court costs prior to obtaining the benefits of an expungement, nor has OJS afforded him any

constitutionally-required process prior to preventing him from obtaining expungement. To the contrary, the judicial process resulted in a court order requiring expungement.

99. By processing the Expungement Order and allowing the destruction of his criminal record, the Respondents will allow K.B. to resume restoring his Constitutional right to reputation.

100. Accordingly, K.B. is entitled to declaratory and injunctive relief from Respondents' failure to comply with the Expungement Order. Specifically, K.B. requests that this Court issue a declaration that Respondents' refusal to comply with the Expungement Order is unlawful, as well as a permanent injunction to enjoin Respondents from conditioning the processing of the Expungement Order on K.B. first paying all court costs.

COUNT 4:

Declaratory Relief Pursuant to 42 Pa.C.S. § 7531. et seq.

101. K.B. hereby incorporates and adopts each and every allegation set forth in the foregoing paragraphs of the Petition for Review.

102. Petitioner is engaged in an actual controversy regarding the lawfulness of Respondent's refusal to comply with the Expungement Order. Unless addressed, this controversy is, and will continue to be, a source of litigation between the parties.

103. A declaration by this Court would terminate this controversy and remove uncertainty.

104. Petitioner therefore requests a declaration that the Respondent's refusal to comply with the Expungement Order is unlawful and that Respondents' policy that they will not fully process the expungement order unless all court costs are first paid is unlawful and without the force of law.

PRAYER FOR RELIEF

WHEREFORE, K.B. prays for entry of judgment in his favor and against Respondents the Delaware County Office of Judicial Services and Mary Walk, and:

- a. Assume jurisdiction of this suit and declare that Respondents' refusal to comply with the Expungement Order is unlawful;
- b. Declare that Respondents' policy that they will not fully process an expungement order unless all court costs are first paid is unlawful and without the force of law;
- c. Permanently enjoin Respondents from conditioning the processing of the Expungement Order on K.B. first paying all court costs;
- d. Find that Respondents' refusal to comply with the Expungement Order has aggrieved K.B.;
- e. Award actual damages in an amount not less than \$100;

- f. Find that Respondents have willfully violated CHRIA and award punitive damages in an amount of between \$1,000 and \$10,000;
- g. Award costs and reasonable attorneys' fees; and
- h. Provide such other and further relief that this Court finds just and appropriate.

DEMAND FOR TRIAL BY JURY

Petitioner demands a trial by jury for all issues so triable.

Dated: October 5, 2023

/s/ John S. Yi



John S. Yi (PA ID No. 318979)
Brian R. Kisielewski (PA ID No. 307395)
Bridgette C. Lehman (PA ID No. 330003)
Anya L. Gersoff (pro hac vice request
forthcoming)
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Stephen Loney, Jr. (PA ID No. 202535)
Andrew Christy (PA ID No. 322053)
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sloney@aclupa.org
achristy@aclupa.org

Erica N. Briant (PA ID No. 318908)
LEGAL AID OF SOUTHEASTERN
PENNSYLVANIA
625 Swede Street
Norristown, PA 19401
ebriant@lasp.org

VERIFICATION

I, K.B., verify that the facts set forth in the foregoing Petition for Review concerning me are true and correct to the best of my information, knowledge, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Signed:   (Oct 3, 2023 17:28 EDT)

Dated: 10/03/2023

VERIFICATION

I, Andrew Christy, counsel for the Petitioner in this matter, hereby verify that the facts set forth in the foregoing Petition for Review are true and correct to the best of my information, knowledge, and belief. The party does not, individually, have sufficient knowledge or information about all of the facts to verify the petition, so accordingly I verify it pursuant to Pa.R.C.P. 1024(c). I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Signed: Andrew Christy

Dated: 10/4/2023

EXHIBIT A

**REDACTED –
PUBLIC VERSION**

Erica Nicole Briant
Legal Aid Of Southeastern Pa
625 Swede St
Norristown, PA 19401

CPCMS 1261

CP-23-CR-0000856-2019

Judge Scanlon

LEGAL AID OF SOUTHEASTERN PENNSYLVANIA
BY: Erica Briant
Identification No.: 318908
625 Swede Street
Norristown, PA 19401
484-322-6474
ebriant@lasp.org

Attorney for K [REDACTED] B [REDACTED]

COMMONWEALTH OF PENNSYLVANIA : COURT OF COMMON PLEAS
: CRIMINAL TRIAL DIVISION
vs. : DELAWARE COUNTY
: CP-23-CR-0000856-2019
K [REDACTED] B [REDACTED] : MJ-32237-CR-0000033-2019
[REDACTED] : OTN# X2349701
[REDACTED] : DC# N/A
: :
:

ORDER

AND NOW, this 13th day of March, 2023 after consideration of the Petition for Expungement Pursuant to Pa.R.Crim.P. 790 presented by K [REDACTED] B [REDACTED], it is ORDERED that the Petition/Motion is granted.

All criminal justice agencies upon which this order is served shall expunge all criminal history record information from defendant's arrest record pertaining to the charges below. Criminal history record information includes information collected by criminal justice agencies concerning this individual and arising from the initiation of these criminal proceedings including but not limited to all fingerprints, photographs, identifiable descriptions, dates and notations of arrests, indictments, informations or other formal criminal charges, any dispositions arising from the above-captioned proceedings, and all electronic or digital records regarding any of the foregoing.

The Pennsylvania State Police shall request the Federal Bureau of Investigation to return to them all records pertaining to said arrest(s), which shall be destroyed by said agency upon their receipt of same.

The information required under Pa.R.Crim.P. 790 appears on the attached page(s) which is hereby incorporated into this ORDER by reference.

Implementation of this Order shall be deferred thirty (30) days from the date hereof in accordance with Pa. Crim Pro 790 (B)

BY THE COURT:



OFFICE OF
CRIMINAL JUSTICE
PROSECUTOR
J.
2023 MAR 13 AM 10:32
FILED

ANTHONY D. SCANLON

Pursuant to Pa.R.Crim.P. 790, the following information is provided:

1. **Petitioner Name:** K [REDACTED] B [REDACTED]
2. **Alias(es):** [REDACTED]
3. **Petitioner's Address:**
[REDACTED]
4. **Petitioner's Date of Birth:** [REDACTED]
5. **Petitioner's Social Security Number:** [REDACTED]
6. **Name and address of the judge who accepted the guilty plea or heard the case:**
Judge Leonard V. Tenaglia
Court of Common Pleas of Delaware County
201 West Front Street
Media, PA 19063
7. **Name and mailing address of the affiant as shown on the complaint, if available:**
Schuler, Charles Jr., Darby Boro Police Dept, 1020 Ridge Ave, Darby, PA 19023
8. **Docket Number:**
CP-23-CR-0000856-2019
MJ-32237-CR-0000033-2019
9. **Offense Tracking Number (OTN):** X2349701
10. **The date on the complaint, or the date of arrest, and if available, the criminal justice agency that made the arrest:** Arrest Date: 01/28/2019; Arresting Agency: Darby Boro Police Dept

11. **The specific charges, as they appear on the charging document, to be expunged and applicable dispositions:**

Code Section	Statute Description	Grade	Disp Date	Disposition
35 § 780-113	Poss Of Marijuana	M	04/08/2019	Pardoned by Governor
	Any and all additional charges associated with same OTN	unknown	04/08/2019	Pardoned by Governor

12. **If the sentence includes a fine, costs, or restitution, whether the amount due has been paid:**

The Petitioner's sentence included fines, costs and/or restitution in the amount of \$1,032.75 and \$135.00 has been paid off/adjusted. A balance of \$897.75 was owed prior to the Governor's granting of a pardon in this matter.

13. The reason for expungement:

As a result of these arrests and subsequent photographing and fingerprinting, Petitioner has been caused to suffer embarrassment and irreparable harm and loss of job opportunities. Expungement is proper under Commonwealth v. C.S., 534 A.2d 1053 (Pa. 1987) as the charges to be expunged were pardoned by Governor Tom Wolf on January 12, 2023 (see Exhibit A).

14. The criminal justice agencies upon which certified copies of the order shall be served:

1. The Clerk of Courts of Delaware County, Criminal Division
2. The Delaware County District Attorney's Office
3. The Pennsylvania State Police, Central Records
4. A.O.P.C. Expungement Unit
5. Darby Boro Police Dept
6. Delaware County Department of Adult Probation and Parole
7. Magisterial District Court 32-2-37

LEGAL AID OF SOUTHEASTERN PENNSYLVANIA

BY: Erica Briant
Identification No.: 318908
625 Swede Street
Norristown, PA 19401
484-322-6474
ebriant@lasp.org

Attorney for K [REDACTED] B [REDACTED]

FILED
2020 MAR 10 AM 11:07
OFFICE OF THE
PROBATION SUPERVISOR
DELAWARE COUNTY

COMMONWEALTH OF PENNSYLVANIA

vs.

K [REDACTED] B [REDACTED]
[REDACTED]

: COURT OF COMMON PLEAS
: CRIMINAL TRIAL DIVISION
: DELAWARE COUNTY
: CP-23-CR-0000856-2019
: MJ-32237-CR-0000033-2019
: OTN# X2349701
: DC# N/A
: DOB: [REDACTED]
: SSN: [REDACTED]

Petition for Expungement Pursuant to Pa.R.Crim.P. 790

AND NOW, the Petitioner, through counsel Erica Briant, Esquire, avers the following and requests that this petition for Expungement pursuant to Pa.R.Crim.P. 790 be granted for the reasons set forth below.

PETITIONER INFORMATION				
Full Name: K [REDACTED] B [REDACTED]		DOB: [REDACTED]	Social Security Number: [REDACTED]	
Address: [REDACTED]		Alias(es): [REDACTED]		
CASE INFORMATION				
Judge: Judge Leonard V. Tenaglia		Address: Court of Common Pleas of Delaware County 201 West Front Street Media, PA 19063		
Docket Number(s): MJ-32237-CR-0000033-2019 CP-23-CR-0000856-2019		Offense Tracking Number (OTN): X2349701		
Name of Arresting Agency: Darby Boro Police Dept		Date of Arrest: 01/28/2019	Date on Complaint: 01/28/2019	
Name of Affiant: Schuler, Charles Jr.		Address: Darby Boro Police Dept, Delaware County, PA		
The charges to be expunged are:				
Code Section	Statute Description	Grade	Disp Date	Disposition
35 § 780-113	Poss Of Marijuana	M	04/08/2019	Pardoned by Governor

EXHIBIT B

**REDACTED –
PUBLIC VERSION**

COURT OF COMMON PLEAS OF DELAWARE COUNTY

DOCKET

Docket Number: CP-23-CR-0000856-2019

CRIMINAL DOCKET

Court Case



Commonwealth of Pennsylvania

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K [REDACTED] B [REDACTED]

CASE INFORMATION

Judge Assigned: Scanlon, Anthony D. Date Filed: 02/12/2019 Initiation Date: 01/28/2019
OTN: X 234970-1 LOTN: X 234970-1 Originating Docket No: MJ-32237-CR-0000033-2019
Initial Issuing Authority: Leonard V. Tenaglia Final Issuing Authority: Leonard V. Tenaglia
Arresting Agency: Darby Boro Police Dept Arresting Officer: Schuler, Charles Jr.
Complaint/Citation No.: 20190128M1040 Incident Number:
Case Local Number Type(s): Case Local Number(s):

STATUS INFORMATION

<u>Case Status:</u>	<u>Status Date</u>	<u>Processing Status</u>	<u>Arrest Date:</u>
Closed	04/29/2019	Sentenced/Penalty Imposed	01/28/2019
	04/08/2019	Awaiting PSI	
	04/08/2019	Awaiting Sentencing	
	04/08/2019	Awaiting Sentencing	
	03/08/2019	Awaiting Trial Scheduling	
	02/12/2019	Awaiting Formal Arraignment	
	02/12/2019	Awaiting Filing of Information	

Complaint Date: 01/28/2019

CALENDAR EVENTS

<u>Case Calendar</u>	<u>Schedule</u>	<u>Start</u>	<u>Room</u>	<u>Judge Name</u>	<u>Schedule</u>
<u>Event Type</u>	<u>Start Date</u>	<u>Time</u>			<u>Status</u>
Formal Arraignment	03/06/2019	8:00 am			Scheduled
Pre-Trial Conference	04/08/2019	9:00 am	Courtroom 1	Judge Anthony D. Scanlon	Scheduled
Sentencing	04/29/2019	9:00 am		Judge Anthony D. Scanlon	Scheduled

DEFENDANT INFORMATION

Date Of Birth: [REDACTED] City/State/Zip: [REDACTED]

Alias Name

E [REDACTED] K [REDACTED]

CASE PARTICIPANTS

<u>Participant Type</u>	<u>Name</u>
Defendant	E [REDACTED] K [REDACTED]

COURT OF COMMON PLEAS OF DELAWARE COUNTY

DOCKET

Docket Number: CP-23-CR-0000856-2019

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v.

K [REDACTED] B [REDACTED]

BAIL INFORMATION

E [REDACTED] K [REDACTED]

Nebbia Status: None

<u>Bail Action</u>	<u>Date</u>	<u>Bail Type</u>	<u>Percentage</u>	<u>Amount</u>	<u>Bail Posting Status</u>	<u>Posting Date</u>
Set	01/28/2019	Unsecured		\$5,000.00		

CHARGES

<u>Seq.</u>	<u>Orig Seq.</u>	<u>Grade</u>	<u>Statute</u>	<u>Statute Description</u>	<u>Offense Dt.</u>	<u>OTN</u>
2	3	M	35 § 780-113 §§ A31	Poss Of Marijuana	01/28/2019	X 234970-1

DISPOSITION SENTENCING/PENALTIES

Disposition

<u>Case Event</u>	<u>Disposition Date</u>	<u>Final Disposition</u>
<u>Sequence/Description</u>	<u>Offense Disposition</u>	<u>Grade Section</u>
<u>Sentencing Judge</u>	<u>Sentence Date</u>	<u>Credit For Time Served</u>
<u>Sentence/Diversion Program Type</u>	<u>Incarceration/Diversionary Period</u>	<u>Start Date</u>
<u>Sentence Conditions</u>		
Waived for Court (Lower Court)	Defendant Was Present	
Lower Court Disposition	02/06/2019	Not Final
2 / Poss Of Marijuana	Waived for Court (Lower Court)	M 35 § 780-113 §§ A31
Proceed to Court	Defendant Was Not Present	
Information Filed	03/06/2019	Not Final
2 / Poss Of Marijuana	Proceed to Court	M 35 § 780-113 §§ A31
Guilty Plea - Negotiated	Defendant Was Present	
Pre-Trial Conference	04/08/2019	Final Disposition
2 / Poss Of Marijuana	Guilty Plea - Negotiated	M 35 § 780-113 §§ A31
Scanlon, Anthony D.	04/29/2019	
Probation	Max of 30.00 Days	
	30 days	
Pay \$100.00 mandatory cost assessed pursuant to Substance Abuse Education and Demand Reduction Fund.		
Comply with rules and regulations governing Probation and or Parole		
Comply with following directive(s) of Court: Pay lab fee if applicable.		

COURT OF COMMON PLEAS OF DELAWARE COUNTY

DOCKET

Docket Number: CP-23-CR-0000856-2019

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K [REDACTED] B [REDACTED]

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COMMONWEALTH INFORMATION

Name: Anne Kathleen Yoskoski
Assistant District Attorney

Supreme Court No: 324592

Phone Number(s):
610-891-8647 (Phone)

Address:
Delaware Co Da's Office
201 W Front St
Media, PA 19063

ATTORNEY INFORMATION

Name: Steven C. Leach
Public Defender

Supreme Court No: 026777

Rep. Status: Active

Phone Number(s):
610-259-1500 (Phone)

Address:
220 N Jackson St
Media, PA 19063

Representing: E [REDACTED] K [REDACTED]

ENTRIES

<u>Sequence Number</u>	<u>CP Filed Date</u>	<u>Document Date</u>	<u>Filed By</u>
1	01/28/2019		Tenaglia, Leonard V.
Bail Set - E [REDACTED] K [REDACTED]			
1	02/12/2019		Court of Common Pleas - Delaware County
Original Papers Received from Lower Court			
1	02/13/2019		Delaware County Clerk of Courts
Costs Due Clerk of Courts Constable Fee			
2	03/06/2019		Copeland, Katayoun
Information Filed			
3	03/06/2019		Delaware County Court Administration
PTC scheduled for 04/08/19 at 9AM, Judge Scanlon, Crt Rm TBA			
1	04/08/2019		Scanlon, Anthony D.
Guilty Plea - Negotiated			
2	04/08/2019		Martinez, Angela
DL-21D to be Prepared			
3	04/08/2019		E [REDACTED] K [REDACTED]
Guilty Plea Statement Filed			
4	04/08/2019		Scanlon, Anthony D.
Criminal Notice Form Filed/Notice of Sentencing 4/29/19 @2pm, Ctrm 1, Judge Scanlon			

COURT OF COMMON PLEAS OF DELAWARE COUNTY

DOCKET

Docket Number: CP-23-CR-0000856-2019

CRIMINAL DOCKET

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K [REDACTED] B [REDACTED]

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ENTRIES

<u>Sequence Number</u>	<u>CP Filed Date</u>	<u>Document Date</u>	<u>Filed By</u>
1 Entry of Appearance	04/10/2019		Leach, Steven C.
1 Statement of Post-Sentence Rights Filed	04/29/2019		Leach, Steven C.
2 Order - Sentence/Penalty Imposed	04/29/2019		Scanlon, Anthony D.
1 DL-21D was prepared	04/30/2019		Martinez, Angela
3 Entry of Civil Judgment	04/30/2019		Court of Common Pleas - Delaware County
1 DL-21D Sent to PennDOT	05/01/2019		Unknown Filer
1 Costs Due Clerk of Courts - Livescan	06/10/2019		Delaware County Clerk of Courts

COURT OF COMMON PLEAS OF DELAWARE COUNTY

DOCKET

Docket Number: CP-23-CR-0000856-2019

CRIMINAL DOCKET

Court Case



Commonwealth of Pennsylvania

v.

K [REDACTED] B [REDACTED]

Page 5 of 6

CASE FINANCIAL INFORMATION

Last Payment Date: 04/13/2020

Total of Last Payment: -\$95.00

E [REDACTED] K [REDACTED] Defendant	<u>Assessment</u>	<u>Payments</u>	<u>Adjustments</u>	<u>Non Monetary Payments</u>	<u>Total</u>
Costs/Fees					
Constable (Delaware)	\$38.00	\$0.00	\$0.00	\$0.00	\$38.00
Constable Education Training Act	\$5.00	\$0.00	\$0.00	\$0.00	\$5.00
ATJ	\$6.00	(\$6.00)	\$0.00	\$0.00	\$0.00
CJES	\$2.50	(\$2.50)	\$0.00	\$0.00	\$0.00
Clerk of Courts - Misdemeanor (Delaware)	\$241.00	\$0.00	\$0.00	\$0.00	\$241.00
Commonwealth Cost - HB627 (Act 167 of 1992)	\$10.80	\$0.00	\$0.00	\$0.00	\$10.80
County Court Cost (Act 204 of 1976)	\$35.10	\$0.00	\$0.00	\$0.00	\$35.10
Crime Victims Compensation (Act 96 of 1984)	\$35.00	(\$35.00)	\$0.00	\$0.00	\$0.00
Domestic Violence Compensation (Act 44 of 1988)	\$10.00	\$0.00	\$0.00	\$0.00	\$10.00
Firearm Education and Training Fund	\$5.00	\$0.00	\$0.00	\$0.00	\$5.00
JCPS	\$21.25	(\$21.25)	\$0.00	\$0.00	\$0.00
Judicial Computer Project	\$8.00	(\$8.00)	\$0.00	\$0.00	\$0.00
OAG - JCP	\$2.50	(\$2.50)	\$0.00	\$0.00	\$0.00
State Court Costs (Act 204 of 1976)	\$12.60	\$0.00	\$0.00	\$0.00	\$12.60
Substance Abuse Education (Act 198 of 2002)	\$50.00	\$0.00	\$0.00	\$0.00	\$50.00
Substance Abuse Education (Act 198 of 2002)	\$50.00	\$0.00	\$0.00	\$0.00	\$50.00
Victim Witness Service (Act 111 of 1998)	\$25.00	(\$25.00)	\$0.00	\$0.00	\$0.00
Automation OJS Fee (Delaware)	\$5.00	\$0.00	\$0.00	\$0.00	\$5.00
District Attorney (Delaware)	\$40.00	\$0.00	\$0.00	\$0.00	\$40.00
OSP (Delaware/State) (Act 35 of 1991)	\$20.00	(\$17.37)	\$0.00	\$0.00	\$2.63
OSP (Delaware/State) (Act 35 of 1991)	\$20.00	(\$17.38)	\$0.00	\$0.00	\$2.62
Sheriff (Delaware)	\$40.00	\$0.00	\$0.00	\$0.00	\$40.00
Costs of Prosecution - CJEA	\$50.00	\$0.00	\$0.00	\$0.00	\$50.00
Darby Boro PD BCF (Delaware) 01-9999-454008	\$300.00	\$0.00	\$0.00	\$0.00	\$300.00
Costs/Fees Totals:	\$1,032.75	(\$135.00)	\$0.00	\$0.00	\$897.75
Grand Totals:	\$1,032.75	(\$135.00)	\$0.00	\$0.00	\$897.75

COURT OF COMMON PLEAS OF DELAWARE COUNTY

DOCKET

Docket Number: CP-23-CR-0000856-2019

CRIMINAL DOCKET

Court Case



Commonwealth of Pennsylvania

v.

K [REDACTED] B [REDACTED]

Page 6 of 6

** - Indicates assessment is subrogated

EXHIBIT C

**REDACTED –
PUBLIC VERSION**

Commonwealth of Pennsylvania



Governor's Office

TO ALL TO WHOM THESE PRESENTS SHALL COME GREETING:

Whereas, In the Court of Common Pleas in and for the County of Delaware docketed to number CP-23-CR-0000856-2019, OTN: X234970-1, a certain K [REDACTED] B [REDACTED] was convicted of the crime(s) of Title 35 Section 780-113 Subsection A31 (Possession Of Marijuana).

And Whereas, The General Assembly, has failed to act on adult-use recreational cannabis legalization despite support from a majority of Pennsylvanians.

And Whereas, The Board of Pardons, after reviewing, upon due public notice and in open session, has recommended to me, in writing, with the reasons therefor, the pardon of the said K [REDACTED] B [REDACTED] which recommendation and reasons have been filed in the office of the Lieutenant Governor.

Therefore, know ye, That in consideration of the premises and by virtue of the authority vested in me by the Constitution, I have pardoned the said K [REDACTED] B [REDACTED] born on [REDACTED] identified by SSN: [REDACTED] of the crime(s) whereof they were convicted as aforesaid, and they are hereby thereof fully pardoned accordingly.

Given under my hand and the Great Seal of the State, at the City of Harrisburg, this 12th day of January in the year of our Lord 2023.

By the Governor:

Handwritten signature of Tom Wolf in black ink.

Governor of Pennsylvania

Handwritten signature of Leigh M. Chapman in black ink.

Acting Secretary of the Commonwealth



EXHIBIT D

**REDACTED –
PUBLIC VERSION**



**OFFICE OF JUDICIAL SUPPORT
COUNTY OF DELAWARE
GOVERNMENT CENTER BUILDING
201 WEST FRONT STREET
MEDIA, PENNSYLVANIA 19063**

PHONE 610-891-4370

COUNCIL

**DR. MONICA TAYLOR
CHAIR**

**ELAINE PAUL SCHAEFER
VICE CHAIR**

**KEVIN M. MADDEN
CHRISTINE A. REUTHER
RICHARD R. WOMACK**

**MARY J. WALK, ESQUIRE
DIRECTOR
PROTHONOTARY
CLERK OF COURTS**

**VANESSA L. FERGUSON
CHIEF DEPUTY
CLERK OF COURTS**

**THOMAS E. HARKIN
CHIEF DEPUTY
PROTHONOTARY**

**ERIN E. BERGIN
CHIEF DEPUTY
COURT TECHNICIAN**

Legal Aid/ Erica Bryant
625 Swede St.
Norristown, Pa. 19401

April 24, 2023

In Re : K [REDACTED] B [REDACTED] (CR-856-2019)

Please be advised that the above Expungement Order for case **CR-5856-2019** has been processed. Unfortunately, there is a balance owed on case for \$ **897.75** therefore we are unable to complete it until Court Financial receives full payment.

Any question, please feel free to contact me.

Sincerely,

**Anne Fili
Support Service Coordinator
Office of Judicial Support
610-891-4395**

EXHIBIT E

**REDACTED –
PUBLIC VERSION**

Judge Brennan

LEGAL AID OF SOUTHEASTERN PENNSYLVANIA

By: Laurel Anderson

Identification Number: 331275

625 Swede Street

Norristown, PA 19401

484-206-8268

landerson@lasp.org

Attorney for K [REDACTED] K [REDACTED] (aka [REDACTED])

COMMONWEALTH OF PENNSYLVANIA

vs.

K [REDACTED] K [REDACTED] (aka [REDACTED])
[REDACTED]
[REDACTED]

: COURT OF COMMON PLEAS
: CRIMINAL TRIAL DIVISION
: DELAWARE COUNTY
: CP-23-CR-0000922-2016
: MJ-32132-CR-0000237-2015
: OTN# T 711582-4
: DC# N/A
:
:

ORDER

AND NOW, this 20th day of July, 2022 after consideration of the Petition for Expungement Pursuant to Pa.R.Crim.P. 490 presented by K [REDACTED] K [REDACTED] (aka [REDACTED]), it is ORDERED that the Petition/Motion is granted.

All criminal justice agencies upon which this order is served shall expunge all criminal history record information from defendant's arrest record pertaining to the charges below. Criminal history record information includes information collected by criminal justice agencies concerning this individual and arising from the initiation of these criminal proceedings including but not limited to all fingerprints, photographs, identifiable descriptions, dates and notations of arrests, indictments, informations or other formal criminal charges, any dispositions arising from the above-captioned proceedings, and all electronic or digital records regarding any of the foregoing.

The Pennsylvania State Police shall request the Federal Bureau of Investigation to return to them all records pertaining to said arrest(s), which shall be destroyed by said agency upon their receipt of same.

The information required under Pa.R.Crim.P. 490 appears on the attached page(s) which is hereby incorporated into this ORDER by reference.

BY THE COURT:

[Signature]
J.

LEGAL AID OF SOUTHEASTERN PENNSYLVANIA

By: Laurel Anderson

Identification Number: 331275

625 Swede Street

Norristown, PA 19401

484-206-8268

landerson@lasp.org

Attorney for K [REDACTED] K [REDACTED] (aka [REDACTED])

COMMONWEALTH OF PENNSYLVANIA

vs.

K [REDACTED] K [REDACTED] (aka [REDACTED])

: COURT OF COMMON PLEAS
: CRIMINAL TRIAL DIVISION
: DELAWARE COUNTY
: CP-23-CR-0000922-2016
: MJ-32132-CR-0000237-2015
: OTN# T 711582-4
: DC# N/A

ORDER

AND NOW, this ____ day of _____, 20__, after consideration of the Petition for Expungement Pursuant to Pa.R.Crim.P. 490 presented by K [REDACTED] K [REDACTED] (aka [REDACTED]), it is ORDERED that the Petition/Motion is _____.

All criminal justice agencies upon which this order is served shall expunge all criminal history record information from defendant's arrest record pertaining to the charges below. Criminal history record information includes information collected by criminal justice agencies concerning this individual and arising from the initiation of these criminal proceedings including but not limited to all fingerprints, photographs, identifiable descriptions, dates and notations of arrests, indictments, informations or other formal criminal charges, any dispositions arising from the above-captioned proceedings, and all electronic or digital records regarding any of the foregoing.

The Pennsylvania State Police shall request the Federal Bureau of Investigation to return to them all records pertaining to said arrest(s), which shall be destroyed by said agency upon their receipt of same.

The information required under Pa.R.Crim.P. 490 appears on the attached page(s) which is hereby incorporated into this ORDER by reference.

BY THE COURT:

J.

Pursuant to Pa.R.Crim.P. 490, the following information is provided:

1. **Petitioner Name:** K [REDACTED] [REDACTED] K [REDACTED]
2. **Alias(es):** [REDACTED]
3. **Petitioner's Address:**
[REDACTED]
4. **Petitioner's Date of Birth:** [REDACTED]
5. **Petitioner's Social Security Number:** [REDACTED]
6. **Name and address of the judge who accepted the guilty plea or heard the case:**
The Honorable Mary Alice Brennan
Delaware County Court of Common Pleas
201 W Front St,
Media, PA 19063
7. **Name and mailing address of the affiant as shown on the complaint, if available:**
Officer Daniel J. McNeely
Springfield Police Dept.,
50 Powell Rd, Springfield, PA 19064
8. **Docket Numbers:**
CP-23-CR-0000922-2016
MJ-32132-CR-0000237-2015
9. **Offense Tracking Number (OTN):** T 711582-4
10. **The date on the complaint, or the date of arrest, and if available, the criminal justice agency that made the arrest:** Arrest Date 09/27/2015; Arresting Agency: Springfield Police Dept.
11. **The specific charges, as they appear on the charging document, to be expunged and applicable dispositions:**

Code Section	Statute Description	Grade	Disp Date	Disposition
18 § 3922 §§ A1	Theft By Decep-False Impression	M2	06/29/2016	Withdrawn
18 § 3922 §§ A2	Theft By Decept-Prevent Acqu Of Info	M2	06/29/2016	Withdrawn
18 § 5503 §§ A4	Disorder Conduct Hazardous/Physi Off	S	06/29/2016	Guilty Plea - Negotiated
18 § 3925 §§ A	Receiving Stolen Property	M2	06/29/2016	Charge Changed

12. If the sentence includes a fine, costs, or restitution, whether the amount due has been paid:

Undersigned counsel filed a fee waiver petition, but it was denied by the Court. There is an outstanding balance of \$526.50 in this case. Mr. K [REDACTED] cannot afford to pay this amount due to his indigency.

13. The reason for expungement:

As a result of these arrests and subsequent photographing and fingerprinting, Petitioner has been caused to suffer embarrassment and irreparable harm and loss of job opportunities. Expungement is proper under 18 Pa.C.S. 9122 as the charges to be expunged were Dismissed, Withdrawn, or Guilty Plea – Negotiated, and the Guilty Plea was to a summary offense and petitioner has subsequently been free of arrest or conviction for five years.

14. The criminal justice agencies upon which certified copies of the order shall be served:

1. The Clerk of Courts of Delaware County, Criminal Division
2. Magisterial District Court 32-1-32
3. The Delaware County District Attorney's Office
4. The Pennsylvania State Police, Central Records
5. A.O.P.C. Expungement Unit
6. Springfield Police Dept. 50 Powell Rd, Springfield, PA 19064
7. Delaware County Department of Parole and Probation

LEGAL AID OF SOUTHEASTERN PENNSYLVANIA

By: Laurel Anderson

Identification Number: 331275

625 Swede Street

Norristown, PA 19401

484-206-8268

landerson@lasp.org

Attorney for K [REDACTED] K [REDACTED] (aka [REDACTED])

COMMONWEALTH OF PENNSYLVANIA

vs.

K [REDACTED] K [REDACTED] (aka [REDACTED])

[REDACTED]

: COURT OF COMMON PLEAS
: CRIMINAL TRIAL DIVISION
: DELAWARE COUNTY
: CP-23-CR-0000922-2016
: MJ-32132-CR-0000237-2015
: OTN# T 711582-4
: DC# N/A
:
:

RULE

AND NOW, this _____ day of _____, 20__, upon consideration of the within petition for Expungement, a Rule is Granted upon the District Attorney of Delaware County to show cause, if any he may have, why the relief requested should not be granted.

RULE RETURNABLE on the _____ day of _____, 20__, at ____ o'clock, __.m., in Courtroom _____, at the Delaware County Courthouse, Media, Pennsylvania for a hearing.

BY THE COURT:

J.

LEGAL AID OF SOUTHEASTERN PENNSYLVANIA

By: Laurel Anderson

Identification Number: 331275

625 Swede Street

Norristown, PA 19401

484-206-8268

landerson@lasp.org

Attorney for K [REDACTED] K [REDACTED] aka [REDACTED]

COMMONWEALTH OF PENNSYLVANIA

vs.

K [REDACTED] K [REDACTED] aka [REDACTED]
[REDACTED]

: COURT OF COMMON PLEAS
: CRIMINAL TRIAL DIVISION
: DELAWARE COUNTY
: CP-23-CR-0000922-2016
: MJ-32132-CR-0000237-2015
: OTN# T 711582-4
: DC# N/A

JUL 1 2022
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LED

Petition for Expungement Pursuant to Pa.R.Crim.P. 490

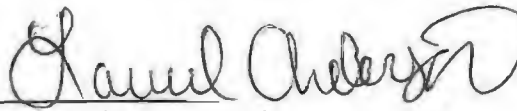
AND NOW, the Petitioner, through counsel Laurel Anderson, Esquire, avers the following and requests that this petition for Expungement pursuant to Pa.R.Crim.P. 490 be granted for the reasons set forth below.

PETITIONER INFORMATION				
Full Name: K [REDACTED] K [REDACTED]		DOB: [REDACTED]	Social Security Number: [REDACTED]	
Address: [REDACTED]		Alias(es): [REDACTED]		
CASE INFORMATION				
Judge: The Honorable Mary Alice Brennan Media, PA 19063		Address: Delaware County Court of Common Pleas 201 W Front St,		
Docket Number(s): CP-23-CR-0000922-2016 MJ-32132-CR-0000237-2015a		Offense Tracking Number (OTN): T 711582-4		
Name of Arresting Agency: Springfield Police Dept		Date of Arrest: 10/07/2015	Date on Complaint: 10/01/2021	
Name of Affiant: Daniel J. McNeely		Address: Springfield Police Dept, 50 Powell Rd, Springfield, PA 19064		
The charges to be expunged are:				
Code Section	Statute Description	Grade	Disp Date	Disposition
18 § 3922 §§ A1	Theft By Decep-False Impression	M2	06/29/2016	Withdrawn
18 § 3922 §§ A2	Theft By Decept-Prevent Acqu Of Info	M2	06/29/2016	Withdrawn
18 § 5503 §§ A4	Disorder Conduct Hazardous/Physi Off	S	06/29/2016	Guilty Plea - Negotiated

18 § 3925 §§ A	Receiving Stolen Property	M2	06/29/2016	Charge Changed
Undersigned counsel filed a fee waiver petition, but it was denied by the Court. There is an outstanding balance of \$526.50 in this case. Mr. K [REDACTED] cannot afford to pay this amount due to his indigency.				
List the reason(s) for the Expungement (please attach additional sheet(s) of paper if necessary): As a result of these arrests and subsequent photographing and fingerprinting, Petitioner has been caused to suffer embarrassment and irreparable harm and loss of job opportunities. Expungement is proper under 18 Pa.C.S. 9122 as the charges to be expunged were Dismissed, Withdrawn, or Guilty Plea – Negotiated, and the Guilty Plea was to a summary offense and petitioner has subsequently been free of arrest or conviction for five years.				
I have attached a copy of my Pennsylvania State Police Criminal History which I have obtained within 60 days before filing this petition.				

The facts set forth in this petition are true and correct to the best of my personal knowledge or information and belief, and are made subject to the penalties of unsworn falsification to authorities under 18 Pa.C.S. § 4904.

Legal Aid of Southeastern PA is a non-profit legal services organization that provides free legal assistance to low-income individuals. I, attorney for the petitioner, certify that petitioner meets the financial eligibility standards for representation by Legal Aid of Southeastern PA and that I am providing free legal service to petitioner.

/s/ 
 Laurel Anderson, Esquire
 Counsel for Petitioner

DATED: 7/5/22

EXHIBIT F

**REDACTED –
PUBLIC VERSION**

Laurel Kate Anderson
Legal Aid Of Se Pennsylvania
625 Swede St
Norristown, PA 19401

CPCMS 1261

CP-23-CR-0000922-2016



**OFFICE OF JUDICIAL SUPPORT
COUNTY OF DELAWARE
GOVERNMENT CENTER BUILDING
201 WEST FRONT STREET
MEDIA, PENNSYLVANIA 19063**

PHONE 610-891-4370

COUNCIL

**BRIAN ZIDEK
CHAIRMAN**

**DR. MONICA TAYLOR
VICE CHAIR**

**KEVIN M. MADDEN
ELAINE PAUL SCHAEFER
CHRISTINE A. REUTHER**

**MARY J. WALK, ESQUIRE
DIRECTOR
PROTHONOTARY
CLERK OF COURTS**

**SUSAN RENDLER-TRUESDALE
FIRST DEPUTY CLERK OF COURTS**

**SHIRLEY SYLVEST
FIRST DEPUTY
PROTHONOTARY**

Laurel Anderson, Esq
625 Swede Street
Norristown, PA 19401

" 22 " August 2022

In Re : K [REDACTED] K [REDACTED] (CR-922-2016)

Please be advised that the above Expungement Order for case **CR-922-2016** has been processed. Unfortunately, there is a balance owed on that case for \$ **526.50** therefore we are unable to complete it until Court Financial receives full payment.

Any question, please feel free to contact me.

Sincerely,

**Natalia Dolan
Support Service Coordinator
Office of Judicial Support
610-891-4395**

COURT OF COMMON PLEAS OF DELAWARE COUNTY

DOCKET

Docket Number: CP-23-CR-0000922-2016

CRIMINAL DOCKET

Court Case



Commonwealth of Pennsylvania

Page 6 of 6

v.

K [REDACTED] K [REDACTED]

CASE FINANCIAL INFORMATION

Last Payment Date: K [REDACTED] K [REDACTED] Defendant	<u>Assessment</u>	<u>Payments</u>	<u>Adjustments</u>	Total of Last Payment: <u>Non Monetary</u> <u>Payments</u>	<u>Total</u>
Costs/Fees					
Springfield Twp PD BCF (Delaware) 01-9999-454008	\$300.00	\$0.00	\$0.00	\$0.00	\$300.00
ATJ	\$4.00	\$0.00	\$0.00	\$0.00	\$4.00
CJES	\$2.25	\$0.00	\$0.00	\$0.00	\$2.25
Commonwealth Cost - HB627 (Act 167 of 1992)	\$8.55	\$0.00	\$0.00	\$0.00	\$8.55
County Court Cost (Act 204 of 1976)	\$31.90	\$0.00	\$0.00	\$0.00	\$31.90
Crime Victims Compensation (Act 96 of 1984)	\$35.00	\$0.00	\$0.00	\$0.00	\$35.00
Domestic Violence Compensation (Act 44 of 1988)	\$10.00	\$0.00	\$0.00	\$0.00	\$10.00
JCPS	\$21.25	\$0.00	\$0.00	\$0.00	\$21.25
Judicial Computer Project	\$8.00	\$0.00	\$0.00	\$0.00	\$8.00
OJS Fee (Delaware)	\$22.00	\$0.00	\$0.00	\$0.00	\$22.00
State Court Costs (Act 204 of 1976)	\$8.55	\$0.00	\$0.00	\$0.00	\$8.55
Victim Witness Service (Act 111 of 1998)	\$25.00	\$0.00	\$0.00	\$0.00	\$25.00
Costs of Prosecution - CJEA	\$50.00	\$0.00	\$0.00	\$0.00	\$50.00
Costs/Fees Totals:	\$526.50	\$0.00	\$0.00	\$0.00	\$526.50
Grand Totals:	\$526.50	\$0.00	\$0.00	\$0.00	\$526.50

** - Indicates assessment is subrogated

EXHIBIT G

**REDACTED –
PUBLIC VERSION**

November 15, 2022

Hon. Linda Cartisano
President Judge
Delaware County Court of Common Pleas
201 W. Front St.
Media, PA 19063



Mary Walk, Esq.
Director
Office of Judicial Support
Government Center Room 127
201 W. Front St.
Media, PA 19063

Eastern Region Office
PO Box 60173
Philadelphia, PA 19102
215-592-1513 T
215-592-1343 F

Central Region Office
PO Box 11761
Harrisburg, PA 17108
717-238-2258 T
717-236-6895 F

Western Region Office
PO Box 23058
Pittsburgh, PA 15222
412-681-7736 T
412-681-8707 F

Dear President Judge Cartisano and Director Walk:

We write in the hope that we can work together to amicably resolve a problem whereby the Office of Judicial Support (“OJS”) is not permitting our indigent client, and apparently other indigent individuals, to receive court-ordered expungements based on an unwritten procedure concerning unpaid court costs. According to Director Walk, OJS is following a court-wide policy and practice whereby OJS will not process an expungement order without either payment or an explicit waiver of costs by the judge. We were able to work with court administration and OJS several years ago to ensure that indigent defendants would be able to file *in forma pauperis* petitions to waive the filing fee for expungement petitions. We believe this issue can also be resolved through a simple internal policy change to ensure that OJS processes all expungement orders and that indigent defendants are not barred from receiving expungements.

In conjunction with Legal Aid of Southeastern Pennsylvania, we represent K [REDACTED] K [REDACTED], for whom Judge Brennan signed an expungement order on July 22, 2022, notwithstanding the outstanding costs that he cannot afford to pay.¹ The expungement order is unqualified and does not condition his expungement upon payment of any costs. However, OJS has not complied with Judge Brennan’s order to process the expungement, apparently pursuant to the unwritten policy and practice regarding unpaid court costs.

¹ The relevant dockets are CP-23-CR-0000922-2016 and MJ-32132-CR-0000237-2015.

On August 22, 2022, OJS's Support Service Coordinator, Natalia Dolan, sent a letter to counsel for Mr. K [REDACTED] stating that the expungement order had been "processed" but that the office was "unable to complete it until Court Financial Services receives full payment." When counsel spoke with Ms. Dolan, she reiterated OJS's policy that full payment was first required, something that Ms. Walk subsequently confirmed.

Such a refusal to comply with a court order is unlawful, and the result is that OJS's implementation of this policy and practice effectively prevents indigent defendants from receiving expungements in violation of judges' orders. Judge Brennan's order in Mr. K [REDACTED]'s case is clear and leaves no room for interpretation, reading in relevant part:

All criminal justice agencies upon which this order is served shall expunge all criminal history record information from the defendant's arrest record pertaining to the charges below.

Pursuant to Pa.R.Crim.P. 490, Judge Brennan's order incorporated certain information from the expungement petition, including information about the unpaid costs:

12. If the sentence includes a fine, costs, or restitution, whether the amount due has been paid: Undersigned counsel filed a fee waiver petition, but it was denied by the Court. There is an outstanding balance of \$526.50 in this case. Mr. K [REDACTED] cannot afford to pay this amount due to his indigency.

Accordingly, Judge Brennan was well aware of the unpaid balance and was also aware that she had previously denied a separate request to waive costs (a request that was erroneously filed based on Pa.R.Crim.P. 706, which does not apply to the summary convictions at issue and was properly denied for that reason). Nevertheless, Judge Brennan ordered every criminal justice agency—including OJS—to expunge information related to the case *without* conditioning such expungement on the payment of costs.

Regardless of whether there is a court-wide policy and practice regarding unpaid court debt, OJS has no legal authority to refuse to comply with Judge Brennan's order or otherwise impose its own interpretation of the law, as its powers are "clearly ministerial in nature." *In re Administrative Order*, 936 A.2d 1, 9 (Pa. 2007). Accordingly, it lacks "discretion to interpret rules and statutes." *Id.* As long as court filings are "proper on their face and in conformity to the rules of court, a prothonotary does not have discretion to refuse to enter them." *Brown v. Levy*, 25 A.3d 418 (Pa. Commw. Ct. 2011) *rev'd on other grounds* 73 A.3d 514 (Pa. 2013). *See In re Administrative Order*, 936 A.2d at 9 (limitations on prothonotary's powers also apply to clerk of courts). To allow OJS staff to choose whether to process an order based on their own views would insert an "additional requirement," but "this discretion is not [OJS's] to exercise." *Warner v. Cortese*, 288 A.2d 550, 552 (Pa. Commw. Ct. 1972).

There is a problem both with how Mr. K [REDACTED]'s expungement order has been processed *and* with the wider policy and practice that requires either payment or explicit waiver of debt prior to OJS processing an expungement. No statute or court rule requires payment of costs as a precondition for an expungement, and Judge Brennan's order is unquestionably correct. The applicable statute, 18 Pa.C.S. § 9122(b), does not even mention fines or costs, let alone say that

they must be paid prior to granting expungement.² And the Rules of Criminal Procedure require that the court note “whether the amount due has been paid” when the court grants an expungement, yet the Rules do not prohibit a court from granting expungement if a defendant has not paid. It would be nonsensical for the Rules to allow a judge to note in the order *granting the expungement* that there is an unpaid balance if, in fact, the judge were *prohibited* from granting that expungement because of the unpaid balance. *See* Pa.R.Crim.P. 490. The policy and practice Ms. Walk referenced is adding an additional requirement on top of what the legislature and the Supreme Court have deemed appropriate.³

Although Ms. Walk suggested that we could return to Judge Brennan to seek clarification regarding the waiver of costs, we do not think that such an approach is either necessary or appropriate; the existing order speaks for itself, and it is the *policy* that is the problem, not anything with the judge’s order. If we are unable to resolve this matter, then we will be compelled to seek relief for Mr. K [REDACTED] via a petition for a writ of mandamus in Commonwealth Court, to ensure compliance with Judge Brennan’s order.

We continue to believe that this is a straightforward matter that can be amicably resolved through a policy change that brings the practice into line with the legal requirements of Section 9122 and the Rules. We would welcome the opportunity to work with both the Court and OJS to resolve this issue so that the policy changes and Mr. K [REDACTED] (and other indigent defendants) can receive the benefit of orders granting expungement. Please feel free to reach Mr. Christy at 267-225-0447 or achristy@aclupa.org to discuss this matter further.

Sincerely,



Stephen Loney
Senior Supervising Attorney
ACLU of Pennsylvania

Andrew Christy
Criminal Justice and Poverty Attorney
ACLU of Pennsylvania

Laurel Anderson
Staff Attorney
Legal Aid of Southeastern Pennsylvania

Cc: Gerald C. Montella, Esq. Director, Court Administration
William F. Martin, Esq., Delaware County Solicitor

² By comparison, the Clean Slate statute—which is in the same subsection of Title 18—expressly required payment of fines and costs before that relief could be granted, a requirement that the legislature subsequently removed.

³ Ms. Walk also suggested a technical barrier in CPCMS, as CPCMS will not permit clerks to expunge cases with outstanding court debt. After speaking with Clerk of Courts staff in Bucks County, the proper procedure in CPCMS under these circumstances is to click to remove the unpaid costs and then click to process the expungement.

EXHIBIT H

**REDACTED –
PUBLIC VERSION**

COURT OF COMMON PLEAS



LINDA A. CARTISANO
PRESIDENT JUDGE

SENIOR JUDGES
ANN A. OSBORNE
GREGORY M. MALLON
JAMES P. BRADLEY

JUDGES

GEORGE A. PAGANO
KEVIN F. KELLY
KATHRYNANN W. DURHAM
BARRY C. DOZOR
MARY ALICE BRENNAN
SPIROS E. ANGELOS
G. MICHAEL GREEN
JOHN P. CAPUZZI, SR.
RICHARD M. CAPPELLI
WILLIAM C. MACKRIDES
ANTHONY D. SCANLON
MARGARET J. AMOROSO
DOMINIC F. PILEGGI
JOHN J. WHELAN
NUSRAT J. LOVE
RICHARD H. LOWE
STEPHANINE H. KLEIN
KELLY D. ECKEL
DEBORAH A. KRULL
ATINUKE B. MOSS

DELAWARE COUNTY
THIRTY-SECOND JUDICIAL DISTRICT
COURTHOUSE
MEDIA, DELAWARE COUNTY, PENNSYLVANIA
19063

610-891-4511
Fax 610-891-5490

December 5, 2022

Mary Walk, Esquire
Director
Office of Judicial Support
Government Center Room 127
201 W. front St.
Media, PA 19063

RE: Expungement Petitions

Dear Ms. Walk:

Please process the expungement order in the matter of *Commonwealth v. K* [REDACTED]
K [REDACTED] CP-23CR-922-2016, which was signed by Judge Brennan on July 22, 2022 regardless
of any outstanding costs in the matter. It is a court order and as such, must be timely processed
and followed. Thank you.

Very truly yours,

Handwritten signature of Linda A. Cartisano in blue ink.
Linda A. Cartisano, P. J.

LAC/si
VIA EMAIL
(ORIGINAL MAILED)
cc: William Martin, Esquire

EXHIBIT I

**REDACTED –
PUBLIC VERSION**



OFFICE OF JUDICIAL SUPPORT
COUNTY OF DELAWARE
GOVERNMENT CENTER BUILDING
201 WEST FRONT STREET
MEDIA, PENNSYLVANIA 19063

PHONE 610-891-4370

COUNCIL

BRIAN ZIDEK
CHAIRMAN

DR. MONICA TAYLOR
VICE CHAIR

KEVIN M. MADDEN
ELAINE PAUL SCHAEFER
CHRISTINE A. REUTHER

MARY J. WALK, ESQUIRE
DIRECTOR
PROTHONOTARY
CLERK OF COURTS

SUSAN RENDLER-TRUESDALE
FIRST DEPUTY CLERK OF COURTS

SHIRLEY SYLVEST
FIRST DEPUTY
PROTHONOTARY

Laurel K. Anderson, Esq
625 Swede Street
Norristown, PA 19401

" 06 " December 2022

In Re : K [REDACTED] K [REDACTED] (CR-922-2016)

Please be advised that the above Expungement Order was entered " 22 " July 2022 and completed. In order for us to send *non-certified* and 4 (four) *certified copies* of the Expungement to all law-enforcement agencies, you must remit to the Office of Judicial Support the sum of **\$9.50** for each certified copy needed.

**** Please be advised that in order to guarantee verification letters from the agencies, you may remit (Self Addressed Stamped Envelopes) to OJS to be attached to the certified copies. ****

As soon as this sum has been received, copies will be sent out by this office.

OJS accepts payments by cash, money order or attorney check payable to "The Office of Judicial Support." Pro-Se Petitioners must pay in cash or money order.

If we do not receive payment within 30 days of the date of this letter we will not be able to comply further.

Sincerely,

Natalia Dolan
Expungement Clerk,
Office of Judicial Support

****After thirty (30) days from the date of this letter, NO COPIES (regular or certified) will be available****

****This is the only notice which you will receive****

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: John S. Yi

Signature: John Yi Digitally signed by John Yi
Date: 2023.10.04 17:14:10 -04'00'

Name: John S. Yi

Attorney No. (if applicable): 318979

EXHIBIT 2

DELAWARE COUNTY SOLICITOR’S OFFICE

By: Ali M. Alkhatib, Esquire
Attorney I.D. No. 332374
201 W. Front Street
Media, PA 19063
Tel.: 610-891-4236
Fax: 610-891-4816
Email: alkhatiba@co.delaware.pa.us

Attorney for Respondents

K.B.	:	
	:	IN THE COMMONWEALTH
	:	COURT OF PENNSYLVANIA
Petitioner	:	
	:	Civil Action No. 446 MD 2023
v.	:	
	:	
DELAWARE COUNTY OFFICE OF	:	
JUDICIAL SUPPORT, and MARY J.	:	
WALK, in her official capacity as	:	
Director of the Delaware County Office	:	
of Judicial Support	:	
	:	
Respondents	:	
	:	

RESPONSE WITH NEW MATTER TO PETITIONER’S PETITION FOR REVIEW

Respondents, Delaware County Office of Judicial Support (“OJS”), and Mary J. Walk (“Walk”), in her official capacity as Director of the Delaware County Office of Judicial Support, by and through their undersigned counsel, hereby submit the following Response with New Matter to Petitioner’s Petition for Review (the “Petition”) in the above-captioned matter:

INTRODUCTION

1. Admitted in part; denied in part. It is admitted that K.B. received a pardon from Governor Wolf for his 2019 conviction of possessing marijuana. It is further admitted that the Honorable Anthony D. Scanlon of the Delaware County Court of Common Pleas signed an order. However, the order is a document that speaks for itself, and any interpretation thereof is denied. The remaining allegations in Paragraph 1 of the Petition contain conclusions of law to

which no response is required.

2. Admitted in part; denied in part. It is admitted that Respondents sent K.B. a letter. However, the letter is a document that speaks for itself, and any interpretation thereof is denied. It is further denied that Respondents ignored the pardon and order. By way of further response, Respondents have processed K.B.'s expungement since the filing of the Petition.

3. Denied. The order is a document that speaks for itself, and any interpretation thereof is denied. It is further denied that Respondents disregarded the order. The remaining allegations in Paragraph 3 of the Petition contain conclusions of law to which no response is required.

4. Admitted in part; denied in part. It is admitted that Respondents sent a letter. It is also admitted that counsel from the American Civil Liberties Union ("ACLU") of Pennsylvania and Legal Aid of Southeastern Pennsylvania ("LASP") sent a letter to Ms. Walk regarding said individual. It is further admitted that Respondents processed the expungement of said individual following a letter from President Judge Linda Cartisano of the Delaware County Court of Common Pleas. It is denied that Respondents refused to process the expungement of said individual. By way of further response, the various documents referenced in Paragraph 4 of the Petition speak for themselves, and any interpretation thereof is denied.

5. Denied. It is denied that Respondents refuse to comply with court orders to expunge cases where there is unpaid court debt. The remaining allegations in Paragraph 5 of the Petition contain conclusions of law to which no response is required.

6. Denied. The allegations in Paragraph 6 of the Petition contain conclusions of law to which no response is required. By way of further response, Respondents have processed K.B.'s expungement since the filing of the Petition.

JURISDICTION AND VENUE

7. Denied. The allegations in Paragraph 7 of the Petition contain conclusions of law to which no response is required.

PARTIES

8. Admitted.

9. Admitted.

10. Admitted.

11. Admitted.

FACTS

12. Admitted.

13. Admitted.

14. Denied. After reasonable investigation, Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14 of the Petition.

15. Denied. After reasonable investigation, Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 15 of the Petition.

16. Admitted in part; denied in part. It is admitted that K.B. surrendered his firearm license. After reasonable investigation, Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegation that K.B. received a notice from the Commonwealth, and therefore deny said allegation. The remaining allegations in Paragraph 16 of the Petition are denied as conclusions of law to which no response is required.

17. Denied. The webpages linked in Paragraph 17 of the Petition, and any quotes

thereof, speak for themselves.

18. Admitted.

19. Denied. The allegations in Paragraph 19 of the Petition contain conclusions of law to which no response is required.

20. Denied. The allegations in Paragraph 20 of the Petition contain conclusions of law to which no response is required.

21. Denied. The allegations in Paragraph 21 of the Petition contain conclusions of law to which no response is required.

22. Denied. The allegations in Paragraph 22 of the Petition contain conclusions of law to which no response is required.

23. Denied. The allegations in Paragraph 23 of the Petition contain conclusions of law to which no response is required.

24. Admitted.

25. Denied. The allegations in Paragraph 25 of the Petition contain conclusions of law to which no response is required.

26. Denied. K.B.'s expungement petition is a document that speaks for itself, and any interpretation thereof is denied.

27. Admitted.

28. Admitted in part; denied in part. It is admitted that the Honorable Anthony D. Scanlon of the Delaware County Court of Common Pleas signed an order (the "Expungement Order"). However, any interpretation of the Expungement Order is denied, as the Expungement Order is a document that speaks for itself.

29. Admitted in part; denied in part. It admitted that the Commonwealth did not

appeal. The remaining allegations in Paragraph 29 of the Petition contain conclusions of law to which no response is required.

30. Denied. The allegations in Paragraph 30 of the Petition contain conclusions of law to which no response is required.

31. Denied. The Expungement Order is a document that speaks for itself, and any interpretation thereof is denied.

32. Denied. The Expungement Order is a document that speaks for itself, and any interpretation thereof is denied.

33. Denied. The Expungement Order is a document that speaks for itself, and any interpretation thereof is denied.

34. Denied. The Expungement Order is a document that speaks for itself, and any interpretation thereof is denied.

35. Denied. The Expungement Order is a document that speaks for itself, and any interpretation thereof is denied.

36. Admitted.

37. Admitted.

38. Denied. The letter is a document that speaks for itself, and any interpretation thereof is denied. By way of further response, the letter is attached as Exhibit D to the Petition, not Exhibit C.

39. Denied. The letter is a document that speaks for itself, and any interpretation thereof is denied.

40. Denied. By way of further response, Respondents' policy is attached as Exhibit "A". See Response Ex. A.

41. Denied. By way of further response, Respondents' policy is attached as Exhibit "A". See id.

42. Admitted in part; denied in part. It is admitted that a Delaware County Court of Common Pleas judge signed an expungement order for a different individual in CP-23-CR-0000922-2016. It is denied that Respondents refused to comply with the expungement order of said individual. After reasonable investigation, Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegation that said individual had not received a pardon, and therefore deny said allegation. The remaining allegations in Paragraph 42 of the Petition contain conclusions of law to which no response is required.

43. Denied. The expungement order in CP-23-0000922-2016 and K.B.'s Expungement Order are documents that speak for themselves, and any interpretation thereof is denied.

44. Admitted in part; denied in part. It is admitted that Respondents sent a letter to counsel. However, any interpretation of the letter is denied, as the letter is a document that speaks for itself.

45. Admitted in part; denied in part. It is admitted that counsel at the ACLU of Pennsylvania and LASP sent a letter to Ms. Walk and President Judge Cartisano. However, any interpretation of the letter is denied, as the letter is a document that speaks for itself.

46. Admitted in part; denied in part. It is admitted that President Judge Cartisano wrote a letter to Ms. Walk. However, any interpretation of the letter is denied, as the letter is a document that speaks for itself.

47. Admitted.

48. Denied as stated. Respondents must indicate in the Case Management System

that court costs and fees were waived by a court order. That has been the policy and procedure in OJS since before Ms. Walk became the Director in 2020. Ms. Walk interpreted the President Judge's letter to mean that she was to deviate from this policy/procedure in this particular matter.

49. Denied. The receipt of the letter from President Judge Cartisano did not make Respondents aware of anything. President Judge Cartisano's letter did not address the question at issue—whether the costs and fees should be expunged despite the trial court Judge's Order being silent on that issue.

50. Admitted in part; denied in part. It is admitted that counsel for K.B. attempted to resolve the matter informally. It is denied that Respondents did not follow K.B.'s Expungement Order. Any assumptions by counsel for K.B. are denied.

51. Admitted.

52. Admitted.

53. Admitted in part; denied in part. It is admitted that K.B.'s expungement was not completed at the time of filing of the Petition. It is denied that Respondents have still not completed processing the Expungement Order. By way of further response, Respondents have processed K.B.'s expungement since the filing of the Petition.

54. Denied. By way of further response, Respondents have processed K.B.'s expungement and served the Expungement Order on the criminal justice agencies listed in the Expungement Order since the filing of the Petition.

55. Denied. By way of further response, Respondents have processed K.B.'s expungement and destroyed all criminal history record information related to the charges in cases CP-23-CR-0000856-2019 and MJ-32237-CR-000003-2019 since the filing of the Petition.

56. Denied. By way of further response, Respondents have processed K.B.'s

expungement and served the Expungement Order on the criminal justice agencies listed in the Expungement Order since the filing of the Petition.

57. Denied. It is denied that records of K.B.'s conviction have not been destroyed. By way of further response, Respondents have processed K.B.'s expungement since the filing of the Petition. After reasonable investigation, Respondents are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 57 of the Petition.

58. Denied. After reasonable investigation, Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 58 of the Petition.

59. Admitted in part; denied in part. It is admitted that K.B. surrendered his firearm license. The remaining allegations in Paragraph 59 of the Petition are denied as conclusions of law to which no response is required.

60. Denied. The allegations in Paragraph 60 of the Petition contain conclusions of law to which no response is required.

61. Denied. The allegations in Paragraph 61 of the Petition contain conclusions of law to which no response is required.

62. Denied. The allegations in Paragraph 62 of the Petition contain conclusions of law to which no response is required.

63. Denied. The Expungement Order is a document that speaks for itself, and any interpretation thereof is denied.

64. Denied. The allegations in Paragraph 64 of the Petition contain conclusions of law to which no response is required.

65. Denied. By way of further response, Respondents have processed K.B.'s expungement and served the Expungement Order on the criminal justice agencies listed in the Expungement Order since the filing of the Petition. After reasonable investigation, Respondents are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 65 of the Petition.

66. Denied. The allegations in Paragraph 66 of the Petition contain conclusions of law to which no response is required.

67. Admitted.

COUNT 1:

Failure to Comply with Ministerial Duties, in Violation of Pa. Const. art. V., Schedule to the Judiciary Article § 15, 42 Pa.C.S. §§ 2756-57, 18 Pa.C.S. § 9101, et seq., and Pa. R. Crim. P. 790

68. The preceding paragraphs are incorporated by reference as if fully set forth herein.

69. Denied. It is denied that Respondents chose to disregard a court order and refused to process the Expungement Order. By way of further response, Respondents have processed K.B.'s expungement since the filing of the Petition.

70. Denied. The allegations in Paragraph 70 of the Petition contain conclusions of law to which no response is required.

71. Denied. The allegations in Paragraph 71 of the Petition contain conclusions of law to which no response is required.

72. Denied. The allegations in Paragraph 72 of the Petition contain conclusions of law to which no response is required.

73. Denied. The allegations in Paragraph 73 of the Petition contain conclusions of law

to which no response is required.

74. Denied. The allegations in Paragraph 74 of the Petition contain conclusions of law to which no response is required.

75. Denied. The allegations in Paragraph 75 of the Petition contain conclusions of law to which no response is required.

76. Denied. The allegations in Paragraph 76 of the Petition contain conclusions of law to which no response is required.

77. Denied. The allegations in Paragraph 77 of the Petition contain conclusions of law to which no response is required.

78. Denied. The allegations in Paragraph 78 of the Petition contain conclusions of law to which no response is required.

79. Denied. The allegations in Paragraph 79 of the Petition contain conclusions of law to which no response is required. By way of further response, Respondents have processed K.B.'s expungement since the filing of the Petition.

COUNT 2:

**Violation of the Criminal History Record Information Act,
18 Pa.C.S. § 9101, et seq.**

80. The preceding paragraphs are incorporated by reference as if fully set forth herein.

81. Denied. The allegations in Paragraph 81 of the Petition contain conclusions of law to which no response is required.

82. Denied. The allegations in Paragraph 82 of the Petition contain conclusions of law to which no response is required.

83. Denied. The allegations in Paragraph 83 of the Petition contain conclusions of law

to which no response is required. By way of further response, Respondents have processed K.B.'s expungement since the filing of the Petition.

84. Denied. The allegations in Paragraph 84 of the Petition contain conclusions of law to which no response is required.

85. Denied. After reasonable investigation, Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 85 of the Petition.

86. Denied. The allegations in Paragraph 86 of the Petition contain conclusions of law to which no response is required.

87. Denied. The allegations in Paragraph 87 of the Petition contain conclusions of law to which no response is required.

88. Admitted in part; denied in part. It is admitted that President Judge Cartisano wrote a letter to Ms. Walk. However, any interpretation of the letter is denied, as the letter is a document that speaks for itself. It is further denied that Respondents willfully, knowingly, and/or intentionally refused to comply with the Expungement Order or any alleged instruction from President Judge Cartisano. By way of further response, Respondents have processed K.B.'s expungement since the filing of the Petition.

89. Denied. The allegations in Paragraph 89 of the Petition contain conclusions of law to which no response is required. By way of further response, Respondents have processed K.B.'s expungement since the filing of the Petition.

COUNT 3:

Violation of K.B.'s Fundamental Right to Reputation in Article 1, Section 1 of the Pennsylvania Constitution

90. The preceding paragraphs are incorporated by reference as if fully set forth

herein.

91. Denied. The allegations in Paragraph 91 of the Petition contain conclusions of law to which no response is required.

92. Denied. The allegations in Paragraph 92 of the Petition contain conclusions of law to which no response is required.

93. Denied. The allegations in Paragraph 93 of the Petition contain conclusions of law to which no response is required.

94. Denied. The allegations in Paragraph 94 of the Petition contain conclusions of law to which no response is required.

95. Denied. By way of further response, Respondents have processed K.B.'s expungement since the filing of the Petition.

96. Denied. The Expungement Order is a document that speaks for itself, and any interpretation thereof is denied. By way of further response, Respondents have processed K.B.'s expungement since the filing of the Petition.

97. Denied. It is denied that Respondents refused to process the Expungement Order. By way of further response, Respondents have processed K.B.'s expungement since the filing of the Petition.

98. Denied. The allegations in Paragraph 98 of the Petition contain conclusions of law to which no response is required.

99. Denied. The allegations in Paragraph 99 of the Petition contain conclusions of law to which no response is required. By way of further response, Respondents have processed K.B.'s expungement since the filing of the Petition.

100. Denied. The allegations in Paragraph 100 of the Petition contain conclusions of

law to which no response is required. By way of further response, Respondents have processed K.B.'s expungement since the filing of the Petition.

COUNT 4:

Declaratory Relief Pursuant to 42 Pa.C.S. § 7531, et seq.

101. The preceding paragraphs are incorporated by reference as if fully set forth herein.

102. Denied. It is denied that Respondents refused to comply with the Expungement Order. The remaining allegations in Paragraph 102 of the Petition contain conclusions of law to which no response is required. By way of further response, Respondents have processed K.B.'s expungement since the filing of the Petition.

103. Denied. The allegations in Paragraph 103 of the Petition contain conclusions of law to which no response is required. By way of further response, Respondents have processed K.B.'s expungement since the filing of the Petition.

104. Denied. The allegations in Paragraph 104 of the Petition contain conclusions of law to which no response is required. By way of further response, Respondents have processed K.B.'s expungement since the filing of the Petition.

NEW MATTER

105. The preceding paragraphs are incorporated by reference as if fully set forth herein.

106. A petition for expungement must set forth "the disposition and, if the sentence includes a fine, costs, or restitution, whether the amount due has been paid." Pa. R. Crim. P. 790(A)(2)(h).

107. "If the judge grants the petition for expungement, the judge shall enter an order

directing expungement.” Id. at 790(B)(4).

108. The order for expungement must include “the disposition and, if the sentence includes a fine, costs, or restitution, whether the amount due has been paid.” Id. at 790(C)(1)(h).

109. “Criminal history record information shall be expunged in a specific criminal proceeding when: a court requires that such nonconviction data be expunged.” 18 Pa.C.S. § 9122(a)(2).

110. 42 Pa.C.S. § 8546(2) provides that:

In any action brought against an employee of a local agency for damages on account of an injury to a person or property based upon claims arising from, or reasonably related to, the office or the performance of the duties of the employee, the employee may assert on his own behalf, or the local agency may assert on his behalf: . . .

(2) The defense that the conduct of the employee which gave rise to the claim was authorized or required by law, or that he in good faith reasonably believed the conduct was authorized or required by law.

42 Pa.C.S. § 8546(2).

111. “[O]fficial immunity is a preliminary question for resolution by the court.”

Dorsey v. Redman, 96 A.3d 332, 345 (Pa. 2014).

112. In this case, K.B.’s petition for expungement indicated that his “sentence includes fines, costs and/or restitution in the amount of \$1,032.75 and \$135.00 has been paid off/adjusted. The balance of \$897.75 was owed prior to the Governor’s granting of a pardon in this matter.” See Petition Ex. A at “Petition for Expungement”.

113. Likewise, the Expungement Order indicated that K.B.’s “sentence includes fines, costs and/or restitution in the amount of \$1,032.75 and \$135.00 has been paid off/adjusted. The balance of \$897.75 was owed prior to the Governor’s granting of a pardon in this matter.” See id. Ex. A at “Order” ¶ 12.

114. However, the Expungement Order did not indicate the waiver of the outstanding \$897.75 in court costs and fees. See id. Ex. A at “Order”.

115. Respondents use the Case Management System mandated by the Administrative Office of Pennsylvania Courts (“AOPC”) in criminal matters.

116. When processing an expungement pursuant to a court order, Respondents must indicate in the AOPC mandated Case Management System that court costs and fees were waived by a court order. That has been the policy and procedure in OJS since before Ms. Walk became the Director in 2020.

117. Since K.B.’s Expungement Order did not waive the outstanding court costs and fees, OJS could not indicate the same in the AOPC mandated Case Management System.

118. Accordingly, Respondents sent counsel for K.B. a letter informing them that OJS was unable to complete the expungement until the outstanding balance of \$897.75 was paid. See Petition Ex. D “Letter dated April 24, 2023”. Respondents did not refuse to process the expungement.

119. Following the filing of the Petition, President Judge Cartisano directed Ms. Walk to process K.B.’s expungement.

120. Accordingly, Respondents deviated from their policy and processed K.B.’s expungement after the filing of the Petition.

121. Ms. Walk, as the Director of OJS, is an employee of a local agency.

122. Due to OJS’ policy and procedure that was in place prior to Ms. Walk’s employment as the Director of OJS, and the AOPC mandated Case Management System’s requirement to indicate whether court costs and fees are waived, Ms. Walk reasonably believed that K.B.’s outstanding court costs and fees were required to be paid prior to processing his

expungement.

123. Therefore, Ms. Walk is immune from any claims arising out of this matter pursuant to 42 Pa.C.S. § 8546(2).

WHEREFORE, Respondents respectfully request that the Court dismiss Petitioner's claims against Respondents.

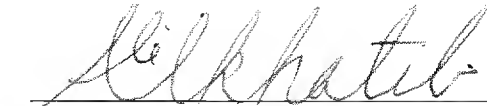
Dated: 12/18/2023

By: /s/ Ali M. Alkhatib
ALI M. ALKHATIB, ESQUIRE
Attorney for Respondents

VERIFICATION

I, Ali M. Alkhatib, hereby verify that I am counsel for Respondents in this matter, that I am authorized to make this Verification on behalf of Respondents, and that the statements contained in Respondents' Response with New Matter to Petitioner's Petition for Review are true and correct to the best of my knowledge, information, and belief. I understand that false statements made herein are subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Date: 12/18/2023



Ali M. Alkhatib, Esquire
Attorney for Respondents

Exhibit “A”

Expungements Forms

*******Go to : ujportal.pacourts.us*******

On Home Page of AOPC

- 1st click on - UJS FORMS (TOP LEFT)
- 2nd click on - For the Public (On a MIDDLE)
- Go Down to where it says EXPUNGEMENTS

*** ONLY Summary Offenses use the **490 Petition and Order** forms

*** for ALL OTHERS use the **790 Petition and Order** forms

On the 1st page of the Order where it says presented by : you must put ATTORNEY's or PETITION's name. (Please Use a BLUE Pen for all Documents)

The Attorney's or the Petitioner's full name and address **HAS** to be on the 1st page of the Order page (either TOP LEFT or BOTTOM LEFT) if the information is not there.

^^^^^ALL CASES HAVE TO HAVE A ZERO BALANCE, ALL COSTS AND FINES HAVE TO BE PAID IN FULL BEFORE YOU CAN FILE THE EXPUNGEMENT ^^^^^

***** All Expungements are required to have a Certificate of Service and Verification Letter

<http://www.co.delaware.pa.us>

***** All Expungements EXCEPT ARD cases HAVE to have a CURRENT Pennsylvania State Police background check, done with the last sixty (60) days.

***** All Attorneys **MUST** enter their Appearance unless they already represent Petitioner.

***** ARD's **MUST** be signed off on by Christine Catch (*Adult Probation & Parole*) and the Certificate of Completion of ARD has to be attached, along with 319 Verification Letter.

***** You need One (1) Original PLUS Six (6) Copies *****

FILING FEES: - If the case is closed at DISTRICT COURT– \$154.50;

- If case ALREADY has a Common Pleas number - \$149.50

(cash, Money Order or Attorney's check)

After a Judge will sign the Order, it will stay at the OJS for thirty (30) day Appeal Period. You will receive a letter notifying you when you may purchase certified copies.