

To: New Jersey Law Review Commission
From: Samuel M. Silver, Dep. Dir.
Re: Meaning of “closely related circumstances” in New Jersey’s Expungement statute, N.J.S. 2C:52-2 and as discussed in the *Matter of C.P.M.*, 461 N.J. Super. 573, 577 (App. Div. 2019), cert. denied 241 N.J. 204 (2020)
Date: September 06, 2021

MEMORANDUM¹

Project Summary

Subject to certain enumerated exceptions, New Jersey’s expungement statute allows a person to present an expungement application to the Superior Court for more than one indictable offense.² Crimes, or a combination of crimes, and offenses that were interdependent or closely related in circumstances and were committed as part of a sequence of events that took place within a comparatively short period of time, colloquially referred to as a “crime spree”, may be eligible for expungement under certain circumstances.³

In the *Matter of C.P.M.*, the Appellate Division analyzed the term “closely related in circumstances” to determine whether the offenses committed by a petitioner who was under the influence of drugs during the three-month period in which the offenses occurred were sufficiently related to grant his petition for an expungement.⁴

Statute Considered

N.J.S. 2C:52-2 provides, in relevant part:

a. In all cases, except as herein provided, a person may present an expungement application to the Superior Court pursuant to this section if:

* * *

the person has been convicted of multiple crimes or a combination of one or more crimes and one or more disorderly persons or petty disorderly persons offenses under the laws of this State, which crimes or combination of crimes and offenses were interdependent or closely related in circumstances and were committed as part of a sequence of events that took place within a comparatively short period of time, regardless of the date of conviction or sentencing for each individual crime or offense, and the person does not otherwise have any prior or subsequent conviction for another crime or offense in addition to those convictions included in the

¹ Preliminary work on this subject was performed by Ayiah-Bideha Al-Qanawi and Samantha E. Schultz, Legal Interns during their time with the N.J. Law Rev. Comm’n.

² N.J. STAT. ANN. 2C:52-2a ¶5 (West 2021). See *Matter of C.P.M.*, 461 N.J. Super. 573, 577 (App. Div. 2019), cert. denied, 241 N.J. 204 (2020).

³ *Id.*

⁴ *Id.* at 576.

expungement application, whether any such conviction was within this State or any other jurisdiction

Background

According to the record, on April 9, 2005, C.P.M. was out all night, drinking and using drugs with a friend.⁵ The next morning he was pulled over for speeding, arrested, and charged with driving while intoxicated.⁶ During a search at the police station, the police found cocaine in his pocket.⁷

On the evening of June 22, 2005, the petitioner drank alcohol, used cocaine, returned to the house he formerly shared with his ex-girlfriend, and climbed through an open window.⁸ After hearing what he believed to be his ex-girlfriend with another man in a locked bedroom, C.P.M. grabbed a baseball bat and broke down the door to the room.⁹ Following his arrest the petitioner was not tested for drugs.¹⁰ He subsequently described his behavior as being fueled by a “drug-induced rage.”¹¹

Ultimately, the petitioner plead guilty to third-degree possession of a controlled dangerous substance (CDS) arising from the events of April 10, 2005¹² and fourth-degree burglary and criminal mischief related to the events of June 22, 2005.¹³ In March of 2006, C.P.M was sentenced to one day of incarceration and three years of probation on the CDS charge.¹⁴ A concurrent three-year probationary sentence was imposed by the sentencing court on the burglary and criminal mischief charges.¹⁵

In 2018, C.P.M. filed a petition to expunge his 2005 convictions under the “crime spree” exception to New Jersey’s expungement statute.¹⁶ At the hearing on his petition, he contended that he was “eligible for expungement under the crime spree exception in the newly amended statute” because he was under the influence of drugs during the months in which the offenses occurred.¹⁷ He argued the April and June 2005 convictions were sufficiently related.¹⁸ The State disagreed and said that “there was no evidence that C.P.M. was under the influence of [CDS] when he broke into his former home.”¹⁹ The State argued that the crimes “were not interdependent or closely

⁵ *Id.* at 578.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 579.

⁹ *Id.*

¹⁰ *Id.* at 580.

¹¹ *Id.* The characterization of his behavior appeared in C.P.M.’s petition for an expungement which was filed in 2018.

¹² *Id.* at 579.

¹³ *Id.*

¹⁴ *Id.* at 579-580.

¹⁵ *Id.* at 580.

¹⁶ *Id.* at 578.

¹⁷ *Id.* at 580.

¹⁸ *Id.*

¹⁹ *Id.*

related in circumstances nor were they committed as part of a sequence of events in a comparatively short period of time” and he was not entitled to an expungement.²⁰

The trial court requested and subsequently considered independent corroboration that C.P.M.’s drug dependency fueled his additional criminal activity.²¹ The Court said that “because the term ‘crime spree’ was not defined by the legislature, statutory interpretation was necessary.”²² The trial court determined that the petitioner’s “drug use during the time period of the offenses was the ‘nexus’ permitting the court to determine that the two incidents were closely related in circumstances.”²³ In a letter opinion, the trial court granted C.P.M.’s expungement petition pursuant to the crime spree exception set forth in N.J.S. 2C:52-2a.²⁴

The State appealed the decision of the trial court and maintained that such a reading of the statute would lead to an absurd result.²⁵ Under the trial court’s interpretation of the expungement statute, “any individual [would] be eligible to have more than the statutorily allowed number of crimes... expunged so long as they [could] provide any type of similar nexus between the crimes.”²⁶

Analysis

In 2006, when C.P.M. was sentenced, the expungement statute permitted an individual to expunge one crime.²⁷ Despite the “single crime” limitation set forth in the expungement statute, “petitions were periodically granted under a ‘single spree’ or ‘crime spree’ doctrine.”²⁸ In 2015, the New Jersey Supreme Court held that the Legislature clearly intended to “permit expungement of a single conviction arising from multiple offenses only if those offenses occurred as part of a single, uninterrupted criminal event.”²⁹

In 2018, the Legislature amended the expungement statute³⁰ to permit expungement of multiple crimes or a combination of one or more crimes and one or more disorderly persons or petty disorderly persons offenses under the laws of this State, which crimes or combination of crimes and offenses were **interdependent or closely related in circumstances** and were committed as part of a sequence of events that

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 581.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at 583.

²⁶ *Id.*

²⁷ *Id.* at 576. See N.J.S. 2C:52-2a (2006) (providing for expungement where “a person has been convicted of a crime under the laws of this State and who has not been convicted of any prior or subsequent crime ...”).

²⁸ *Id.* at 576-577. This doctrine was first articulated in *In re Fontana*, 146 N.J. Super. 264, 267 (App. Div. 1976) and subsequently rejected in *In re Ross*, 400 N.J. Super. 117 (App. Div. 2008).

²⁹ *Id.* at 577 quoting *In re Expungement Petition of J.S.*, 233 N.J. 54, 73 (2015).

³⁰ *Id.* at 577-578. See N.J. STAT. ANN. 2C:52-2a ¶5 (West 2021).

took place within a **comparatively short period of time**, regardless of the date of conviction or sentencing for each individual crime or offense...³¹

The statute also required that the petitioner not “have any prior or subsequent conviction for another crime or offense in addition to those convictions included in the expungement application, whether any such conviction was within this state or any other jurisdiction...”³²

The Appellate Division in *C.P.M.* considered the meaning of the phrase “closely related circumstances” as it is used in the newly-amended expungement statute.³³ The Court examined the facts underlying *C.P.M.*’s petition for expungement and determined that “[t]hese offenses were not committed as part of some larger criminal scheme” but rather, “each offense was a distinct crime perpetrated under entirely different and unrelated circumstances.”³⁴ While recognizing that the 2018 amendments to the expungement statute “increased the number of convictions that could be expunged” the Court noted that “[it] did not allow for the expungement of all offenses with any arguable nexus among the crimes.”³⁵

The Appellate Court said that *C.P.M.*’s reading of the expungement statute could require a court to “consider a petitioner’s motivations behind his... commission of an offense...”³⁶ Furthermore, it would “invite the submission of certifications that could consist of self-serving statements designed to show that the crimes... were ‘interdependent and closely related in circumstances’.”³⁷ The result could be that a trial court could “grant [an] expungement based on statements that only establish a loose and vague nexus between the crimes... for which the expungement [was] sought.”³⁸ The Court noted the “uncertainty a trial judge would face, and [the] uneven applications that would result” under such an interpretation.³⁹

In reversing the decision of the trial court, the Appellate Division concluded that the petitioner’s convictions “were not interdependent or closely related in circumstances.”⁴⁰ As a result, the Court did not address “the second prong of the statute – whether the offenses were committed within a ‘comparatively short period of time.’”⁴¹

Pending Legislation

To this time, fifteen bills have been introduced during the current legislative session.⁴² Although A.B. 1903 would eliminate the cap on the number of convictions a person may expunge

³¹ *Id.* at 578. (Emphasis added).

³² *Id.*

³³ *Id.* at 584.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* at 585-586.

³⁷ *Id.* at 586.

³⁸ *Id.*

³⁹ *Id.* at 585.

⁴⁰ *Id.* at 586.

⁴¹ *Id.*

⁴² S.B. 568, 219th Leg., First Annual Sess. (N.J. 2020) (requires notification of local law enforcement prior to expungement of certain mental health records of prospective firearms purchasers) (identical to A.B. 714); A.B. 799,

and S.B. 1276 would amend the eligibility for expungement, neither of these bills directly address the crime spree exception discussed by the court in the *Matter of C.P.M.*

Conclusion

Staff requests authorization to conduct additional research to determine whether it would be useful to clarify the meaning of “interdependent”, “closely related circumstances,” and “comparatively short period of time” as set forth in subsection a. of New Jersey’s expungement statute, N.J.S. 2C:52-2.

219th Leg., First Annual Sess. (N.J. 2020) (permits applicant for expungement to file one, duly verified petition for multiple convictions); S.B. 2535, 219th Leg., First Annual Sess. (N.J. 2020) (provides for certain criminal and civil justice reforms, particularly addressing legal consequences associated with certain marijuana and hashish offenses as well as raising awareness of available expungement relief) (identical to A.B. 1897); **A.B. 1903, 219th Leg., First Annual Sess. (N.J. 2020) (expands expungement eligibility; eliminates cap on number convictions person may expunge; eliminates limitation on number of times person may be granted expungement)**; A.B. 2515, 219th Leg., First Annual Sess. (N.J. 2020) (provides affirmative defense to and permits expungement of certain trespass offenses committed as a result of person’s homelessness); A.B. 4269, 219th Leg., First Annual Sess. (N.J. 2020) (provides for certain criminal and civil justice reforms, particularly with respect to legal consequences associated with certain marijuana and hashish offenses as well as broadening awareness of available expungement relief); S.B. 2951, 219th Leg., First Annual Sess. (N.J. 2020) (expands offenses eligible for expungement upon successful discharge from drug court); S.B. 3493, 219th Leg., Sec. Annual Sess. (N.J. 2021) (permits expungement of possession of hypodermic syringe in cases of expungement); S.B. 312, 219th Leg., First Annual Sess. (N.J. 2020) (decriminalizes possession of small amounts of marijuana, hashish and marijuana-infused products); S.B. 800, 219th Leg., First Annual Sess. (N.J. 2020) (bars the denial of expungement application in certain instances); **S.B. 1276, 219th Leg., First Annual Sess. (N.J. 2020) (amends eligibility for expungement of criminal records).**