**To: New Jersey Law Review Commission**

**From: Arshiya M. Fyazi, Counsel[[1]](#footnote-1)**

**Re: Satisfactory Completion of Probation and N.J.S. 2C:52-2(a) (*Matter of E.C.,* 454 N.J. Super. 48, 53 (App. Div. 2018))**

**Date: September 9, 2019**

**MEMORANDUM**

**Executive Summary**

In *Matter of E.C.*, the Superior Court of New Jersey considered the meaning of the term “satisfactory” in the context of the state’s expungement statute N.J.S. 2C:52-2 et. seq.[[2]](#footnote-2) The State alleged that the defendant failed to *satisfactorily* complete her probationary term and therefore opposed her application for an expungement.

The Appellate Division determined that the trial court’s denial of the defendant’s application for an expungement did not comport with “the Legislature’s purpose in enacting the expungement statute.”[[3]](#footnote-3) The Appellate Court held that individuals discharged from probation with an imperfect record, who have paid all outstanding fees and fines, have “satisfactorily completed probation” within the meaning of the expungement statute.[[4]](#footnote-4)

**Background**

 In 2002, E.C. was arrested for and convicted of third-degree possession of cocaine with intent to distribute, in violation of N.J.S. 2C:35-5(a)(1).[[5]](#footnote-5) The charges were resolved by way of a plea bargain.[[6]](#footnote-6) The defendant pled guilty and was sentenced to three years of probation contingent on serving six days in jail and paying $1,205 in fines and fees.[[7]](#footnote-7)

In 2005, E.C. pled guilty to a violation of probation for her failure to report to her probation officer and advise the officer that she had moved.[[8]](#footnote-8) E.C. was ultimately discharged from probation “without improvement.”[[9]](#footnote-9) She paid all imposed fines by February 2010.[[10]](#footnote-10)

 In November 2015, E.C. filed a petition seeking to expunge her 2002 arrest, conviction, and dismissed charges under the “early pathway” section of N.J.S. 2C:52-2(a).[[11]](#footnote-11) E.C. had suffered significant consequences as a result of her conviction: she was forced to drop out of college because she lost her federal aid, and she lost her public housing.[[12]](#footnote-12) Further, despite her desire to become a phlebotomist and medical assistant after graduating from college, she was unable to obtain certification and a full-time position in a hospital due to the conviction.[[13]](#footnote-13) The Union County Prosecutor’s Office alleged that E.C. had not “satisfactorily completed” her term of probation within the meaning of N.J.S. 2C:52-2(a) and that she had been discharged from probation without improvement.[[14]](#footnote-14) The trial court held that E.C.’s flawed completion of probation served as a permanent bar to obtaining the expungement of her criminal record.[[15]](#footnote-15) In June 2016, E.C.’s petition to expunge her conviction was denied again.[[16]](#footnote-16)

**Analysis**

On appeal, the Appellate Division reviewed this matter de novo.[[17]](#footnote-17) The Appellate Division determined that the trial court erred in accepting the Prosecutor’s recommendation for denial of E.C.’s application for expungement because it was contrary to the Legislature’s intent in enacting N.J.S.A. 2C:52-2.[[18]](#footnote-18) The Court also determined that the trial court’s construction of the statute was contrary to the meaning of the term “satisfactory” as it is ordinarily defined and as read in the context of the expungement statute.[[19]](#footnote-19)

In interpreting the statute, the Appellate Division stated that it must look to the plain meaning of the words of the statute and it must apply them with the intent of the Legislature in mind.[[20]](#footnote-20) The public policy objective of this statute was to provide relief to one-time offenders who subsequently dissociated themselves from “unlawful activity.”[[21]](#footnote-21) Further, the statute’s purpose was to “address barriers that hinder offenders from obtaining employment and living law-abiding lives.”[[22]](#footnote-22) In addition, the Court explained that the legislative history indicated that reentry of ex-offenders is in the public interest since it improves those individuals’ lives and promotes public safety.[[23]](#footnote-23)

The early pathway section of the expungement statute, N.J.S.A. 2C:52-2(a), requires that an applicant may apply for expungement if at least five years have passed since his or her conviction, and the applicant has paid all applicable fines and satisfactorily completed his or her probation.[[24]](#footnote-24) The trial court said that E.C. did not meet the standards of the statute because she was discharged from probation “without improvement.”[[25]](#footnote-25) The trial court and the Prosecutor’s office maintained that E.C.’s probation violations served as evidence that she failed to meet the “satisfactory standard” set forth in the statute.[[26]](#footnote-26)

The term “satisfactory” is not defined in N.J.S.A. 2C:52-2. In the absence of a definition in the statutory framework, the Appellate Division examined the plain meaning of the term as defined in The Oxford Dictionary, noting that it was defined there as “[f]ulfilling expectations or needs; acceptable, though not outstanding or perfect.”[[27]](#footnote-27) The Court further explained that the probation statute itself

further illustrates the meaning of the term. As part of a probationary sentence, a court may require a defendant to satisfy certain conditions, including paying a fine. N.J.S.A. 2C:45–1(b)(11). The court may sentence a defendant to a term of probation of up to five years. N.J.S.A. 2C:45–2(a). However, “[t]he court, on application of a probation officer or of the defendant, or on its own motion, may discharge the defendant at any time.” N.J.S.A. 2C:45–2(a) (emphasis added). *Upon the termination of the probationary period, “or the earlier discharge of the defendant,” the defendant “shall have satisfied his sentence for the offense” unless the defendant has failed to pay any fines imposed*, in which case the probationary period may be extended. N.J.S.A. 2C:45–2(c)(1). On the other hand, the court may revoke probation and resentence the defendant if she has failed to comply with a “substantial requirement” imposed as a condition of probation or has been convicted of another offense. N.J.S.A. 2C:45–3(a)(4) [emphasis added].[[28]](#footnote-28)

The Appellate Division held that an individual who has been discharged from probation, even with an imperfect record, and has paid all fines, has satisfactorily completed probation as contemplated by the expungement statute.[[29]](#footnote-29) Furthermore, citing *In re Lobasso*, the Court inferred that probation violations are not an absolute bar to expungement.[[30]](#footnote-30)

 The Court observed that amendments to the statute in 2017 to reduce the waiting period for an expungement application and increase the number of offenses that may be expunged, suggest “an intent to expand rather than restrict the opportunities available to first offenders to obtain expungement.”[[31]](#footnote-31) The Court stated that in light of the legislative history of the statute, the trial court’s and the Prosecutor’s restrictive reading of the expungement statute was at odds with the underlying public-policy objectives.[[32]](#footnote-32)

**Conclusion**

Although there is proposed legislation regarding N.J.S. 2C:52-2, none of bills currently introduced address the ambiguity of the term “satisfactory” in N.J.S. 2C:52-2(a). Staff seeks authorization to conduct additional research on the meaning of “satisfactory” as the term is used in N.J.S. 2C:52-2(a) to determine whether the statute could be clarified in an effort to avoid future litigation regarding this issue.

1. Preliminary work in this area was completed by Elizabeth Brown – 2019 NJLRC Legislative Law Clerk – during her tenure with the Commission. [↑](#footnote-ref-1)
2. *Matter of E.C.*, 454 N.J. Super. 48, 53 (App. Div. 2018). [↑](#footnote-ref-2)
3. *Id.* [↑](#footnote-ref-3)
4. *Id.* at 57. [↑](#footnote-ref-4)
5. *Id.* [↑](#footnote-ref-5)
6. *Id.* [↑](#footnote-ref-6)
7. *Id.* [↑](#footnote-ref-7)
8. *Id.* [↑](#footnote-ref-8)
9. *Id.* [↑](#footnote-ref-9)
10. *Id.* at 52. [↑](#footnote-ref-10)
11. *Id.* The early pathway section states that the court may grant expungement after five years if the applicant paid off the fines and persuades the court that it would be “in the public interest.” N.J.S. 2C:52-2(a). [↑](#footnote-ref-11)
12. *Id.* [↑](#footnote-ref-12)
13. *Id.* [↑](#footnote-ref-13)
14. *Id.* at 53. [↑](#footnote-ref-14)
15. *Id.* [↑](#footnote-ref-15)
16. *Id.*at 51. [↑](#footnote-ref-16)
17. *Id. at 53.* [↑](#footnote-ref-17)
18. *Id.* [↑](#footnote-ref-18)
19. *Id.* [↑](#footnote-ref-19)
20. *Id.* (citing *Leggette v. Govt’ Emps. Ins. Co.,*450 N.J. Super.261, 265 (App. Div. 2017)) [↑](#footnote-ref-20)
21. *Id.*at 54. [↑](#footnote-ref-21)
22. *Id*. [↑](#footnote-ref-22)
23. *Id.* at 55. [↑](#footnote-ref-23)
24. *Id.* at 54. [↑](#footnote-ref-24)
25. *Id.* at 53 [↑](#footnote-ref-25)
26. *Id.* [↑](#footnote-ref-26)
27. *Id.* at 56 (noting Satisfactory Oxford Dictionaries Online, https://en.oxforddictionaries.com/definition/satisfactory (last visited Feb. 26, 2018)) [↑](#footnote-ref-27)
28. *Id*. [↑](#footnote-ref-28)
29. *Id.* at 57. [↑](#footnote-ref-29)
30. *Id.* (citing *In re Lobasso*, 423 N.J. Super. 475, 492 (App. Div. 2012)). [↑](#footnote-ref-30)
31. *Id.* at 55-56. [↑](#footnote-ref-31)
32. *Id.* at 55. [↑](#footnote-ref-32)