



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

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February 6, 2024

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Re: *A.M.Z.P.*¹ v. *Commonwealth of Virginia*
Case No. CL-2023-11261

Dear Counsel:

The issue before the Court is whether it must expunge an emergency protective order entered pursuant to an expunged criminal charge. The Court holds that once it expunges a

¹ Following Supreme Court of Virginia practice, and on Petitioner's Motion, the Court uses Petitioner's initials to minimize any potential impact on Petitioner. *See, e.g., A.R.A. v. Commonwealth*, 295 Va. 153, n.1 (2018) ("A published opinion employing her full name would be counterproductive to the object of the expungement petition.").

OPINION LETTER

criminal charge, it must include in the expungement any emergency protective order “related to” the expunged charge.

I. BACKGROUND.

Officer P. Marra arrested A.M.Z.P. (“Petitioner”) May 2, 2023, for domestic assault and battery. VA. CODE ANN. § 18.2–57.2. When Officer Marra presented the case to a magistrate, the magistrate issued an emergency protective order (“EPO”) against Petitioner because of the nature of the charge, pursuant to Virginia Code § 16.1–253.4. The complaining witness had requested the EPO on the basis that a “warrant [had been] issued for domestic assault.” To support the EPO, the magistrate wrote on the EPO the finding that “[a] warrant for a violation of § 18.2–57.2 has been issued and there is a probable danger of further acts of family abuse against the allegedly abused person . . . by the [Petitioner].” The EPO included no further information as to the basis of its issuance.

The EPO expired on May 5, 2023. Thereafter, on June 15, 2023, the Juvenile and Domestic Relations District Court entered a *nolle prosequi* of the charge against Petitioner on the Commonwealth’s motion.

Petitioner filed the present Petition for Expungement August 3, 2023. On its face, the Petition complies with the requirements of Virginia Code § 19.2–392.2. The underlying charge in this matter is a misdemeanor and Petitioner has no prior criminal record; thus, the underlying charge is expungement eligible absent a showing of good cause against expungement by the Commonwealth.

The Commonwealth does not now object to the expungement of the underlying charge in this case, but initially objected to the expungement of the EPO issued in relation to the warrant for Petitioner’s arrest. Petitioner’s counsel represented at the February 2, 2024, hearing on the Petition that the Commonwealth no longer opposes the expungement of the EPO. The Commonwealth’s Attorney filed no brief in opposition to the Petition.²

II. ANALYSIS.

“When the language of a statute is unambiguous, we are bound by the plain meaning of that language.” *Conyers v. Martial Arts World of Richmond, Inc.*, 273 Va. 96, 104 (2007).

² According to Petitioner, the Commonwealth principally objected to the expungement of the EPO in this case because the General Assembly recently attempted to pass legislation that would have permitted the expungement of a variety of emergency and preliminary protective orders, regardless of the basis of their issuance. 2020 Bill Text Va. S.B. 1264 (Jan. 11, 2021). Senate Bill 1264 failed, but the fact that it failed is irrelevant. The Court does not look to extrinsic materials to explain a statute unless the statute is ambiguous. *See Jackson v. Jackson*, 298 Va. 132, 139 (2019) (“When a statute is clear and unambiguous, [the Court] may look only to the words of the statute to determine its meaning. [The Court] may not consider rules of statutory construction, legislative history, or extrinsic evidence.”). The Court holds the statute is unambiguous.

Virginia Code § 19.2–392.2(A) provides, in pertinent part, that, “[i]f a person is charged with the commission of a crime, a civil offense, or any offense defined in Title 18.2 . . . he may file a petition setting forth the relevant facts and requesting expungement of the police records and the court records *relating to the charge*.” (Emphasis supplied).³ The plain language is clear and unambiguous; by its terms a court may expunge (1) crimes, (2) civil offenses, and (3) any offenses defined under Title 18.2. It is undisputed that police arrested Petitioner on criminal allegations under Title 18.2. The only question is whether the contemporaneously issued EPO must be expunged along with the other police and court records relating to the criminal charge.

The word “relate” means to “be causally connected: *high unemployment is related to high crime rates*.” *Relate*, NEW AM. OXFORD DICTIONARY (3rd ed. 2010). “Relate something to” means “discuss something in such a way as to indicate its connections with (something else).” *Relate something to*, *id.* Hence, when an arrest causes the issuance of both a criminal charge and a protective order because of that arrest, it follows that the associated protective order that issued because of the arrest “relate[s] to” the criminal charge.

Protective orders often relate to criminal charges. A protective order, and its liminal counterparts, may issue in connection with a warrant for any criminal offense resulting from the commission of an act of violence, force, or threat. VA. CODE ANN. § 19.2–152.10(A) (“The court may issue a protective order . . . upon . . . the issuance of a petition or warrant for . . . any criminal offense . . .”); VA. CODE ANN. § 19.2–152.9(A) (“Upon the filing of a petition alleging that . . . a petition or warrant has been issued for the arrest of the alleged perpetrator for any criminal offense . . . the court may issue a preliminary protective order . . .”); VA. CODE ANN. § 19.2–152.8(B) (“When a law enforcement officer or an alleged victim asserts under oath to a judge or magistrate that such person is being or has been subjected to an act of violence, force, or threat, and . . . the judge . . . finds that . . . a petition or warrant for the arrest of the respondent has been issued for any criminal offense . . . the judge or magistrate shall issue an *ex parte* [EPO] . . .”).

Therefore, by a plain reading of Virginia Code § 19.2–392.2, if a court expunges the criminal charge, it must also expunge the associated protective order which relates to the criminal charge.

Of course, not all protective orders relate to criminal charges. Protective orders, just like substantial risk orders and mental health commitments, are prophylactic tools not always triggered by criminal or civil offense behavior. A court may issue an EPO upon a finding of “probable danger” of acts of violence, force, or threat against a petitioner for a protective order. VA. CODE ANN. § 19.2–152.8(B). A full protective order may issue “to protect the health and safety of the petitioner” after a civil hearing determining that the petitioner has been subjected to an act of violence, force, or threat, independent of the alleged commission of any crime. VA. CODE ANN. § 19.2–152.10. *See also* VA. CODE ANN. §§ 37.2–801, 37.2–809–820 (providing for

³ Virginia Code § 19.2–392.2(F), in turn, mandates expungement of “police and court records, including electronic records, *relating to the charge*.” (Emphasis supplied).

the involuntary admission of “[a]ny person alleged to have a mental illness to a degree that warrants treatment in a facility”); VA. CODE ANN. § 19.2–152.14(A) (providing for the issuance of a substantial risk order where the court finds by clear and convincing evidence that the subject “poses a substantial risk of personal injury to himself or to other individuals in the near future by such person’s possession or acquisition of a firearm”). *See also* VA. CODE ANN. § 16.1–253 (“[T]he court may issue a preliminary protective order, after a hearing, if necessary to protect a child’s life, health, safety, or normal development pending the final determination of any matter before the court.”). The Court does not reach the question of whether a court may expunge a protective order, substantial risk order, or mental health commitment independent of a criminal charge or a civil offense.⁴

In the case at bar, an EPO issued pursuant to Virginia Code § 16.1–253.4, in connection with Petitioner’s domestic assault and battery arrest in violation of Code § 18.2–57.2. Virginia Code § 16.1–253.4 provides for the discretionary issuance of an EPO upon a finding that a warrant for a violation of Code § 18.2–57.2 has been issued; further, the statute provides that a judge or magistrate issuing an EPO under this section “shall presume that there is probable danger of further acts of family abuse against a family or household member by the respondent unless the presumption is rebutted[.]”

The EPO issued against Petitioner explicitly states that it was entered based on the issuance of a criminal warrant. Allowing this EPO to remain a part of the public record while expunging the underlying charge itself would run afoul of the purposes of the Commonwealth’s expungement scheme. The Commonwealth has expressed a concern that “arrest records can be a hindrance to an innocent person’s ability to obtain employment, and an education and to obtain credit.” VA. CODE ANN. § 19.2–392.1. Failing to expunge this EPO along with other police and court records relating to Petitioner’s arrest would defeat the purpose of her pursuit of an expungement in the first place. What is the point of expunging a domestic assault and battery charge while leaving public a protective order that facially reports that the court entered it because of the assault charge? The protective order would disclose the very assault charge intended to be expunged from the public record.

The Juvenile and Domestic Relations District Court entered a *nolle prosequi* of the domestic assault and battery charge, rendering the underlying charge expungement eligible. Because the EPO was issued because of Petitioner’s arrest, the EPO relates to the underlying charge sought to be expunged. As a result, the EPO must be expunged along with all other police and court records pertaining to the underlying charge.

⁴ A litigant recently asked the Supreme Court of Virginia to answer the question of whether a circuit court has jurisdiction to expunge a protective order. The high court declined to do so because the appellant failed to properly preserve the issue for appeal. *Fowler v. Commonwealth*, Record No. 201255, 2022 Va. Unpub. LEXIS 1, at **5–6 n.3 (Jan. 13, 2022) (“Assuming without deciding that the circuit court lacked the authority to expunge the protective orders . . .”).

III. CONCLUSION.

Petitioner brings this Petition to expunge police and court records relating to her arrest for a violation of Virginia Code § 18.2-57.2, including the EPO issued by virtue thereof. The Court holds it must expunge an EPO issued because of a criminal arrest if it expunges the underlying charge. Here, Petitioner's underlying charge is expungement eligible and will be expunged. Therefore, the associated EPO must be expunged along with all other police and court records relating to that charge.

An appropriate Order will issue.

Kind regards,



David A. Oblon
Judge, Circuit Court of Fairfax County
19th Judicial Circuit of Virginia