

January 28, 2011

Expungement of New Mexico Criminal Records Difficult and Rare!

Expungement of a criminal record is very difficult, and in New Mexico very rare. In order to obtain an expungement, the defendant/petitioner must show extraordinary circumstances justifying the expungement. As it happens, this is a near impossible standard in New Mexico as the law now stands.

The 2010 New Mexico Court Appeals case of *State v. C.L.* makes clear that adverse employment consequences do not rise to the level of "extraordinary circumstances." Rather, the court stated that adverse employment consequences are not an extraordinary consequence but a natural result of a criminal charge or conviction.

State v. C.L. involved an individual that was charged with first degree felony child abuse resulting in great bodily harm. She pled to 4th degree felony child abuse on a conditional discharge. The conditional discharge indicated that upon successful completion of the terms of 5 years of probation, there would be no adjudication of guilt. In fact, the petitioner was released early from probation due to her performance on probation.

The petitioner was denied several employment opportunities due to the charges despite the fact that there was no adjudication of guilt. She therefore sought to have her the charges expunged and all records related to the charges sealed.

The Court of Appeals recognized that many states allow district court judges authority to expunge criminal records. The Court, however, refused such authority for New Mexico's district court judges.

Petitioner's arguments of extraordinary circumstances based upon the fact that she was only an accessory, she entered an Alford plea, she was granted a conditional discharge, she was released early from probation and finally that she was suffering adverse employment consequences collectively did not amount to "extraordinary circumstances."

The Court did not expressly set forth the criteria necessary to establish "extraordinary circumstances." However, the Court in addressing the shortcomings of the petition did suggest some very strict parameters for an

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expungement. The Court referenced the 1997 New Mexico Court of Appeals case of *Toth v. Albuquerque Police* as follows:

" in *Toth*, Defendant does not challenge the accuracy of the information "in her record[,] . . . the general interest of law enforcement agencies in retaining" the criminal records, or "the lawfulness of the underlying arrest," and she has not demonstrated "that the dismissal of [the] charges against [her are] predicated on factual innocence."

In short, based upon this language, it appears that to show "extraordinary circumstances" necessary for an expungement, the defendant/petitioner would have to show inaccuracies in her criminal record, constitutional violations suggesting unlawful arrest, and/or a wrongful conviction. This is an extraordinarily high hurdle that very few defendants will be able to meet.

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