

TESTIMONY IN SUPPORT OF SB17:

Criminal Procedure - Expungement of Records - Good Cause

TO: Members of the Senate Judicial Proceedings and House Judiciary Committee

FROM: **Glenn Rosenberg**

DATE: February 2nd, 2023

My name is Glen Rosenberg, and I support the REDEEM Act as a means of reducing the impact of incarceration and passing common-sense legislation. I would like an expansion of expungement added to the list regarding the current expungement conversations. I've extensively examined case law regarding expungement and found some exciting nuances that the committee members should consider.

By hindering you from work, help, more education, and public assistance, it is making the original sentence harsher than what the court gave you and what the legislature intended. If you did what the court imposed you to do and finished, which may be as much as five years probation or more in some cases after you are off all court orders, you should not be punished further. It violates the Supreme Court case North Carolina v. Pearce, 395 US 711 - Supreme Court 1969

(" . . . [T]he Constitution was designed as much to prevent the criminal from being twice punished for the same offense as from being twice tried for it." Id., at 173.)

That being said, it is criminal to hold people from advancement years after they have served their time and or punishment. I have a few misdemeanors dating back thirty years. They are non-violent, non-sexual, or gun related, but for whatever reason, I do have a theory of why they were not included within the expungement list. **I will be 70 years old soon.** Regarding the misdemeanors I mentioned herein, I don't believe I spent more than 30 days in jail, so I do not believe even the court thought they were that serious, yet they are still on my record. If you are human, you make mistakes. Some may not get caught and some do. Still, most convictions are based on who you know and how much money you have to afford a reasonable attorney if the police officer uses his "discretion" to arrest you. If they do, the prosecutor can nolle prosequi it, offer you a stet or PBJ, or dismiss it for reasons I will not go into. Even the Judge can offer a plea or a reduction of a sentence as well as set aside a verdict. This is not equal justice. On the entrance of the Supreme Court, it says "Equal Justice Under the Law"

Many of the legislative decisions I see are based on funds and not on what is right. You voted against the Unit Rule because it would be tough to do and also expensive. The fact is, if you repeal the Unit Rule, it won't remove all convictions, but it may help. In Stoddard v. State, 911 A. 2d 1245 - Md: Court of Appeals 2006, you can do a partial expungement under certain circumstances. Most believe that all Indictments are a Unit, but that is not always the case. Some indictments may have 5, or even 10 Units within one indictment. The COA stated, just because the State crams 10 or 20 charges into one indictment, does not make it one Unit. Like they did with me. Therefore if one or two Units in the same indictment have all not guilty s or they nolle prosequi some of the charges in that same unit, then all of them can be expunged.

Prosecutors will be overzealous and charge someone with everything possible. Maybe because they have a personal reason, or to try and force them into a plea and I am sure for other reasons, but that alone does not make it a Unit. It may cost the government a lot in the beginning to repeal the Unit Rule, but after most are expunged, it will trickle down to a normal amount. It is unfair to leave charges you were not guilty of on your record for life. Especially because the State added serious charges knowing they would probably not get convictions on them but if they get one conviction it will remain on their record for Life. I know because of the Stoddard case, you can do a partial expungement under certain circumstances because I did it, and for this reason, you should vote to repeal the Unit Rule. Even better would be to add all misdemeanors to the list and that would cut out most applying for a Unit Rule expungement, and expunge it all at once instead of twice.

I am sure the States Attorney's office will object to expanding expungements to include most all misdemeanors, but if the wait time is lowered, it may give people a chance to change their life for the better. There is a lot of crime now, and I contribute a lot of this because people can't get jobs or public assistance because of their records, no matter how old. Even with a record, if you are recharged with a new crime, if you're original charge is 15 years old or more, they cannot use it to impeach you with it if you testify. So for the States Attorneys to argue it should not be expunged, how does it help them unless you are found guilty of the new crime even though 15 years have passed? To be fair and honest, there is one exception to the 15-year rule, and it only refers to one particular conviction, which may cover two convictions even though it should not exclude these two convictions since they are 15-plus years old and non-violent misdemeanors as well. Perjury is the only one listed, but I have a subornation of Perjury conviction. First of all, I did not suborn anyone to lie, and my attorneys asked him for corroboration, and he produced a fake work order. I was not there when they neither asked him, nor was I ever told about it, and if I was, I would have told my attorney not to use it unless they verify it because that person never mentioned it to me. My attorney after the trial told me they will check this work order and it better be accurate. They had an obligation to protect me but did not and gave this guy immunity to testify against me to get off. The elements for Perjury and Subornation are different. For perjury, you need two witnesses, but for Subornation, you only need one who is the one who lied, and of course, they gave him immunity so he would not be charged. We learned he had a sex-related charge statted or a PBJ I believe for solicitation and his wife at the time was divorcing him for being a compulsive liar but it was too late.

So I have been stuck with this now for 30 years. I always had pride in my word, and anyone who knows me knows my word is gold. I wrote this to add to what I sent in for JOTF, but this compliments the above.

If you have any questions about what I wrote you do not understand, call me. I know the cases well I cited.

I tried to shorten the issues so you would understand what I meant.

If you put yourself 'in the same position as someone who got out of prison, they may understand all the roadblocks they will encounter. (Schools, jobs, public assistance etc. People with money though go to prison. It really does not affect much like Martha Stewart.

It had a little effect on me either. I was single, kept my house, and made sure my dog was cared for and all my bills were paid and only my Chihuahua lived in the house. I did not want him to suffer. My accountant did a lot for me as well.

The state lied, the police lied and it was proven. The state piled on charges like I was saying they do and as the COA said in Stoddard. With me they charged me with carrying a loaded gun even though I had a permit in my pocket to carry it. They charged me with carrying a concealed weapon, which was a bottle key chain they removed from my keys. They Nollie the key chain because the person who sold it to me was there and would testify to what it was but the judge still allowed us to talk about it. They had the State police there since they control carry permits but they decided not to put them on so we did and all he could say is I had a permit. They charged me under one indictment but there actually 3 Units within that indictment which only I knew. When I did that partial expungement, the judge never saw the case I cited, Stoddard. He was very impressed. All the attorneys said I could not expunge any of them because it was a Unit but they interpreted the Unit rule wrong. You should not base someone's life because you do not want to spend the money having to deal with a lot of Units. Once they make the investment and get most done, like they do in Stoddard, they will have very few do each week or month. But if they allowed more expungements, they would not have to deal with many Units as much and instead of expunging non convictions based on the Unit rule, if they expanded expungements to cover all misdemeanors maybe with the exception of sexual related ones, they would not have to process a case twice. Unit Rule once and again for the non-convictions and once the other conviction becomes expunge-able, they will have to do it all again. Do it once and save time and money. I also feel they should do away with all mandatory minimums, They are not fair and like the higher courts say in most opinions, the judge saw the person testify etc. . So they give the court more credibility for that reason of why he made a decision at sentencing. This is what the judge is for. I will not say all judges are fair or equal since I had one years ago for two counts of theft of hand tools 30 years and consecutive but suspended 10 of that but 5 years' probation. I later found out that he offered my attorney a deal in chambers of about 2 years but said if I do not take his deal and go to court and lose, he would Hammer me at sentencing and so he did. I did receive a new sentencing but even he was just as bad and all he did was suspend 10 more years. Normally they should have given me the plea offer the original judge offered to make me whole, so to speak, but he did not. People with Murder do not get 30 years or 20 and sometimes less. Does this seem lie equal justice?

Thank You

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