NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

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August 15, 2023

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Re: ***W.H.D.*[1] *v. Commonwealth of Virginia***
Case No. CL–2022–9997

Dear Counsel:

The issue before the Court is whether it may expunge a Driving Under the Influence of Alcohol arrest that resulted in a Reckless Driving conviction with alcohol-related remedial components in the sentence. In the present case, the Court holds these two criminal offenses share conceptual similarities and a common nucleus of operative facts and, therefore, the Court

[1] Following Supreme Court of Virginia practice, 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). The Court will order the file unsealed after exhaustion of appeal rights unless otherwise directed by an appellate court. This Opinion Letter is unsealed.

OPINION LETTER

may not expunge the DUI records. *See Williams v. Commonwealth*, 885 S.E.2d 457, 460-61 (Va. 2023).

I. FACTUAL OVERVIEW.

Fairfax County Police Department Officer, B.R. Minger, arrested W.H.D. March 26, 2022, for Driving Under the Influence of Alcohol ("DUI"). FAIRFAX, VA., ORDINANCES § 82-1-6 (incorporating VA. CODE ANN. § 18.2-266). A magistrate "found probable cause to believe that [W.H.D.] committed the offense charged." (Warrant of Arrest). On May 12, 2022, W.H.D. pled guilty in the General District Court to the amended charge of Reckless Driving. VA. CODE ANN. § 46.2.852. Pursuant to a plea agreement, that court sentenced him to serve 30 days in jail, pay a $500 fine, complete the Virginia Alcohol Safety Action Program, and suffer a suspended drivers' license for 6 months. The court suspended the entire jail sentence, $250 of the fine, and permitted a restricted drivers' license with an ignition interlock. The court permitted him to drive directly home after sentencing.

On July 25, 2022, W.H.D. filed a Petition for Expungement in the Circuit Court. In his Petition he asked the Court to expunge the DUI because it was amended to Reckless Driving, arguing Reckless Driving is not a lesser-included offense of DUI. W.H.D. argued his Petition August 11, 2023. The Commonwealth does not oppose W.H.D.'s petition but concedes that the Court may not grant the petition merely because both sides want the Court to grant it. *See Williams*, 885 S.E.2d at 459 (despite both parties agreeing to the expungement, the Supreme Court did not order that the circuit court grant the petition on that basis). If parties could agree to an unauthorized expungement and bind the Court to their agreement, they could demand that the Court expunge criminal *convictions* despite a longstanding prohibition to doing so. *See Gregg v. Commonwealth*, 227 Va. 504 (1984) ("The expungement statute applies to innocent persons, not to those who are guilty.").

II. ANALYSIS.

A. The Supreme Court Clarifies Virginia Expungement Law.

A circuit court may expunge criminal charges under limited circumstances. VA. CODE ANN. § 19.2-392.2. The expungement statue reads, in relevant part,

> "A. If a person is charged with the commission of a crime, a civil offense, or any offense defined in Title 18.2, and
> 1. Is acquitted, or
> 2. A nolle prosequi is taken or the charge is otherwise dismissed, including dismissal by accord and satisfaction, pursuant to § 19.2-151, 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.
>
> *********

OPINION LETTER

> F. after receiving the criminal history record information from the CCRE, the court shall conduct a hearing on the petition. If the court finds that the continued existence and possible dissemination of information relating to the arrest of the petitioner causes or may cause circumstances which constitute a manifest injustice to the petitioner, it shall enter an order requiring the expungement of the police and court records, including electronic records, relating to the charge. Otherwise, it shall deny the petition. However, if the petitioner has no prior criminal record, and the arrest was for a misdemeanor violation or the charge was for a civil offense, the petitioner shall be entitled in the absence of good cause shown to the contrary by the Commonwealth, to expungement of the police and court records relating to the charge, and the court shall enter an order of expungement."

As a preliminary requirement for expungement, the petitioner must prove a right to expunge the charge. *A.R.A. v. Commonwealth*, 295 Va. 153, 158 (2018). This means the petitioner must prove that the charge he or she wishes to expunge was resolved through an acquittal, a nolle prosequi, or was "otherwise dismissed." VA. CODE ANN. § 19.2-392.2(A); *Williams*, 885 S.E.2d at 459. The Supreme Court reads the term "otherwise dismissed" very narrowly. It held the expungement statute applies only to those innocent of the offense they seek to expunge. *Id.* at 459-460 ("we have considered the purpose of the statute, which is to allow 'innocent citizens' to avoid the consequences that flow from the existence of arrest records"); *Dressner v. Commonwealth*, 285 Va. 1, 10 (2013) (Powell, J., Goodwyn, J., and McClanahan, J. dissenting) ("The policy is clear: expungement should only be available to an *innocent* citizen.") (Emphasis in original); *Gregg*, 227 Va. at 507 (denying expungement of a Possession of Marijuana charge dismissed through a deferred disposition program where the defendant pled guilty); *Daniel v. Commonwealth*, 268 Va. 523, 528 (2004) (denying expungement of an Assault charge after a court found facts sufficient to find the defendant guilty, but never made a finding of guilt).

Once a court finds an original charge had been resolved through an acquittal, a nolle prosequi, or was "otherwise dismissed," it then determines whether a manifest injustice to the petitioner warrants expungement of that charge. *Dressner*, 285 Va. at 7-8; VA. CODE ANN. § 19.2-392.2(F). If the petitioner shows such an injustice, the court may expunge the original charge. A "manifest injustice" sounds like a higher hurdle for a petitioner to leap than it is. However, in practice, the bar is set very low—a mere fear of a future adverse career impact justifies expungement. *A.R.A.*, 295 Va. at 163.

In cases where a petitioner has no criminal record and the charge to be expunged is a misdemeanor, the law relieves the petitioner of even the low burden of showing a "manifest injustice." Instead, the court "shall enter an order requiring the expungement." VA. CODE ANN. § 19.2-392.2(F). Thus, for expungements of misdemeanors for one with no prior criminal record, the two-step determination is really only one step. After the petitioner establishes the right to expunge the charge the court must grant the expungement without considering manifest injustice to the petitioner.

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In cases where an original charge is amended, a court may expunge the original charge if the charge qualifies. This is so even though the expungement distorts the records. *Compare Necaise v. Commonwealth*, 281 Va. 666, 669 (2011) (raising a concern that expunging original charges that result in a conviction to an amended charge distorts the records), *with Dressner v. Commonwealth*, 285 Va. 1, 7 (2013) (dismissing *Necaise* concerns because *Necaise* lacked a statutory basis).

Prior to April 20, 2023, the law related to the expungement of charges amended to different charges to which a petitioner was found guilty seemed settled. The Supreme Court denied expungement of original charges where a person pled guilty to lesser included offenses. *Necaise*, 281 Va. at 669-70. Thus, when police initially charged a person with felony eluding and felony assault, but the court only convicted him of the misdemeanor versions of the offenses, the court could not expunge the original felony charges. *Necaise,* 261 Va. at 669-71. However, the Supreme Court later allowed a defendant charged with Possession of Marijuana who pled guilty to Reckless Driving per a plea agreement to expunge the Possession of Marijuana charge. *Dressner v. Commonwealth*, 285 Va. 1 (2013). The high court reasoned that the two charges were "completely separate and unrelated." *Id.* at 6. Applying these two principles seemed easy. A separate and unrelated charge may be expunged; but a conviction of a lesser included offense bars expungement of the original offense. So, a trial court should be forgiven for concluding that it had authority to expunge a DUI when a petitioner was only convicted of Reckless Driving. After all, DUI and Reckless Driving, like Possession of Marijuana and Reckless Driving, each contain different elements and would seemingly survive the *Blockburger* test for double jeopardy purposes. *Blockburger v. United States*, 284 U.S. 299, 304 (1932).

The expungement law was not as settled as some believed. The Supreme Court of Virginia issued two new opinions this year, both involving the expungement of charges that were later amended to other offenses, clarifying the law. In *Forness v. Commonwealth*, 882 S.E.2d 201 (Va. 2023), the high court held a court may not expunge a felony DUI charge that resulted in a misdemeanor DUI conviction. It reasoned that the felony and misdemeanor each involved the same offense but with different sentencing enhancements. *Id.* at 203. "In other words, the difference between the two charges is one of degree and not of kind." *Id.* A few months later it issued *Williams v. Commonwealth*, 885 S.E.2d 457 (Va. 2023), which held that a court may not expunge an Accessory After the Fact—Homicide[2] charge that resulted in a conviction of only the amended charge of Obstruction of Justice[3] without conducting a two-pronged test it announced in its opinion.

Williams clarified *Dressner* by defining when an original charge is "separate and unrelated" to the charge of conviction. *Id.* at 460. It rejected "a mechanical application of the *Blockburger* test" and held that courts "should (1) compare the conceptual similarities and differences between the original charge and the amended charge and (2) examine whether the

[2] VA. CODE ANN. § 18.2-19.
[3] VA. CODE ANN. § 18.2-460.

two charges share a common nucleus of operative facts." *Id.* at 461.[4] To complete this test, the court "may consult the underlying records of the petitioner's criminal cases, including any transcripts." *Id.* "However, the presentation of new evidence to prove the petitioner's guilt or innocence is not permitted." *Id.*

B. Applying Expungement Precedent, the Court May Not Order an Expungement of W.H.D.'s DUI Records.

In the present case, using the *Williams* test, the Court rules that it may not expunge W.H.D.'s DUI charge because he pled guilty to Reckless Driving and the sentence obviously reflected the original DUI allegations. The two charges are not completely separate and unrelated to one another. They each contain "conceptual similarities" and "share a common nucleus of operative facts."

1. DUI and Reckless Driving Share "Conceptual Similarities."

The "conceptual similarities" between DUI and Reckless Driving are great. The DUI statute, in relevant part reads:

> "It shall be unlawful for any person to drive or operate any motor vehicle, engine or train (i) while such person has a blood alcohol concentration of 0.08 percent or more . . . (ii) while such person is under the influence of alcohol, (iii) while such person is under the influence of any narcotic drug or any other self-administered intoxicant or drug of whatsoever nature . . . (iv) while such person is under the combined influence of alcohol and any drug or drugs . . . (v) while such person has a blood concentration of [three specific drugs in specified quantities]."

VA. CODE ANN. § 18.2-266.

The Reckless Driving statute reads:

> "Irrespective of the maximum speeds permitted by law, any person who drives a vehicle on any highway recklessly or at a speed or in a manner so as to endanger the life, limb, or property of any person shall be guilty of reckless driving."

VA. CODE ANN. § 46.2-852.

[4] The Supreme Court also rejected reliance on Virginia Code § 19.2-231, which governs the amendment of a charging instrument. *Id.* at 461.

The General Assembly itself implicitly declared DUI and Reckless Driving to be conceptually similar. It passed a law that expressly prohibits the conviction of both DUI and Reckless Driving from the same acts. VA. CODE ANN. § 19.2-294.1.[5] The law reads:

> "Whenever any person is charged with a violation of [DUI] or any similar ordinances of any county, city, or town and with [Reckless Driving] . . . growing out of the same act or acts and is convicted of one of these charges, the court shall dismiss the remaining charge."

There is no reason for this special statutory double jeopardy provision unless the General Assembly believes the two crimes are conceptually similar. It seems obvious the legislature enacted § 19.2-294.1 so that one is not punished twice for committing, essentially, a single crime. This is a legislative declaration of a conceptual similarity between the two crimes.

Even without the legislature's declaration of conceptual similarity, the two statutes have objective similarities. They each involve one's use of a motor vehicle in a manner extremely dangerous to the public. The DUI clearly applies to a person driving recklessly due to alcohol ingestion. *See, e.g., Doughty v. Commonwealth*, 204 Va. 240 (1963) (a defendant who had two drinks, drove on the shoulder, across the center line, and into a telephone pole was DUI). It also applies to one who is only *deemed* dangerous due to being under the influence of alcohol. *Sarafin v. Commonwealth*, 288 Va. 320, 327 (2014) (one is guilty of DUI if merely behind the steering wheel with a key in the ignition while under the influence of alcohol). The Reckless Driving crime only involves one who is *demonstratively* dangerous due to his behavior—which behavior could be caused by being under the influence of alcohol. *See. e.g., Hall v. Commonwealth*, 25 Va. App. 352, 355 (1997) (Reckless Driving requires proof of actual reckless driving behavior). Both crimes aim to deter drivers from driving recklessly.

W.H.D. argues that the appellate courts have separated DUI from Reckless Driving based on this distinction to the degree they are not "conceptually similar." In *Hall* the defendant was "passed out" behind the wheel of a car, smelling of alcohol. He was stopped in a heavily travelled roadway with the car engaged. He was confused, unsteady, spoke with slurred speech, and admitted "driving" the vehicle." However, since there was no evidence as to the "manner and circumstances" of Hall's driving, the Court of Appeals reversed his Reckless Driving conviction. *Id.* at 724; *see also Thompson v. Commonwealth*, 27 Va. App. 720, 724-25 (1998) ("Reckless driving is not a status offense."). Conversely, DUI is a status offense. A court may convict one of DUI who is merely in the driver's seat with a key in the ignition. *Sarafin,* 288 Va. at 327. Because Reckless Driving proscribes behavior not always present for a DUI, W.H.D. argues, the two charges are not conceptually similar. *See Spickard v. City of Lynchburg*, 174 Va. 502, 504 (1940) (Reckless Driving is not a lesser included offense to DUI).

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[5] There are several statutory types of Reckless Driving. Virginia Code § 19.2-294.1 applies only to "general" Reckless Driving in violation of Virginia Code § 46.2-852, not to any other version, such a Virginia Code § 46.2-862 (Reckless Driving by excessive speed).

W.H.D.'s argument, however, is an appeal to *Blockburger* distinctions that is not the test used to compare DUI and Reckless Driving. *Williams*, 885 S.E.2d at 460-61. Or, the argument is an appeal to the *Dressner* "completely separate and unrelated" and "not a lesser-included offense" test that is no longer the test. *Dressner*, 285 Va. at 6. The Supreme Court clearly recognizes that two charges may have different elements that could require different proof yet remain "substantially similar." In *Williams* the petitioner was originally charged with felony Accessory After the Fact—Homicide ("AAFH") but convicted of misdemeanor Obstruction of Justice. The elements of the homicide charge are:

> "(1) that some person other than the defendant committed the crime of [homicide class 1 or 2]; and (2) that the [homicide class 1 or 2] was completed; and (3) that the defendant knew or should have known that the person had committed [homicide class 1 or 2]; and (4) that the defendant comforted, relieved, hid, or in any other way assisted the person who committed the [homicide class 1 or 2] with the intent of helping that person escape or delay capture, prosecution, or punishment."

VIRGINIA MODEL JURY INSTRUCTIONS—Criminal Instruction No. 3.300 (LexisNexis Matthew Bender) (2022-2023 ed.).

The misdemeanor version of Obstruction of Justice prohibits one from obstructing an enumerated government agent, juror, or witness in the performance of his or her duties or from failing or refusing to cease such obstruction when requested to do so by that agent. VA. CODE ANN. § 18.2-460(A). It also prohibits one from using threats of force to knowingly attempt to intimidate or impede such government agent, juror, or witness in the performance of those duties. VA. CODE ANN. § 18.2-460(B).[6]

Facially, the two crimes have completely different elements and criminalize different behavior. The Supreme Court certainly saw this. "[A] *Blockburger* test would render [Williams'] charge eligible for expungement. Comparing the elements of the two crimes reveals that they share no similarities under a traditional *Blockburger* analysis." *Williams*, 885 S.E.2d at 466 (Mann, J. concurring). Because the Supreme Court had the power to declare, as a matter of law, that AAFH and Obstruction of Justice do not share conceptual similarities in *Williams*, it implicitly held that they do. Otherwise, it never would have remanded the question back to the trial court. It would have stated that the two charges lack conceptual similarities as a matter of law. If Williams showed a manifest injustice, then under *Dressner* the circuit court was required to grant the expungement petition. The Supreme Court would not have remanded the case to the

[6] The Obstruction of Justice elements relevant to the *Williams* case are: "the accused (1) knowingly obstructs an enumerated officer of the law or does not cease obstruction when requested, (2) by threat or force intimidates or impedes an enumerated officer, (3) knowingly or willfully makes a materially false statement to an officer during an investigation, or (4) intentionally prevents or tries to resist their own lawful arrest." *Williams*, 885 S.E.2d at 466, n.7 (Mann, J. concurring).

trial court to do fact finding on the effectively mooted second prong of the *Williams* test—the question of whether there is a common nucleus of operative facts.

Per the logic of *Williams*, the fact that DUI and Reckless Driving do not share the same elements, and the fact that one could be convicted of DUI but not Reckless Driving, and *vice versa*, does not negate the hypothesis that the two are "conceptually similar." By rejecting *Blockburger* as the test to determine whether a charge has been "otherwise dismissed" through an amendment to be eligible for expungement, the Court in *Williams* made the test of whether an original charge and an amended charge are conceptually similar a broader observation of the two offenses. The fact that the Commonwealth would have to prove different elements under each charge is no longer dispositive.

In the present case, the Court concludes that DUI and Reckless Driving are conceptionally similar, chiefly because the General Assembly implicitly said so by barring conviction of both from the same acts. VA. CODE ANN. § 19.2-294.1. However, the Court also reasonably envisions circumstances where a person is under the influence of alcohol and is also driving in an alcohol-fueled, reckless manner triggering criminal culpability for either DUI or Reckless Driving—or both—making them conceptually similar. The fact that the two offenses are not lesser included charges, and do not share the same elements, has little effect on the Court's determination of whether they are conceptually similar, since the *Williams* Court rejected that test. Thus, the Court need move to the second prong of the *Williams* test.

2. The DUI and Reckless Driving Charges Share a "Common Nucleus of Operative Facts."

The Supreme Court defines the term "common nucleus of operative facts" as two crimes originating from the same background facts. *Williams*, 885 S.E.2d at 461. It gave an example: "robbery that is amended to grand larceny from the person." *Id.*[7]

In the present case the Court primarily infers a "common nucleus of operative facts" from the disposition of W.H.D.'s case. The General District Court ordered him to (1) enter the Virginia Alcohol Safety Action Program ("VASAP"); (2) suffer the maximum license suspension period for Reckless Driving—six months; and (3) obtain a restricted drivers' license only on condition that he install and use an ignition interlock.

The VASAP is a statutorily created program. VA. CODE ANN. § 18.2-271.2. It is a presumptive requirement for anyone convicted of DUI. VA. CODE ANN. § 18.2-271.1(A). There is no requirement that a court order a defendant convicted of Reckless Driving to the VASAP. The parties, through their plea agreement, would never have imposed a VASAP requirement unless alcohol was substantially related to W.H.D.'s case.

[7] Just as with Reckless Driving and DUI, Grand Larceny is not a lesser-included offense of Robbery. *Commonwealth v. Hudgins*, 269 Va. 602 (2005).

Ignition interlock is an installed breath testing device that measures a driver's blood alcohol content, prevents vehicle operation where it detects a trace level of breath alcohol, and logs the testing results. VA. CODE ANN. § 18.2-270.1(A). For all DUI convictions, a court must order anyone so convicted who obtains a restricted drivers' license to install and use an ignition interlock device. VA. CODE ANN. § 18.2-270.1(B). There is no requirement for a court to order a defendant convicted of Reckless Driving to install or use an ignition interlock device. The parties, through their plea agreement, would never have imposed an intrusive ignition interlock device unless alcohol was substantially related to W.H.D.'s case.

In addition to W.H.D.'s Reckless Driving conviction with the alcohol-related sentencing components, the Court gleans important information from W.H.D.'s Warrant of Arrest. *Williams*, 885 S.E.2d at 461. "[A] court may consult the underlying records of the petitioner's criminal cases, including any transcripts.[8]" *Id.* "However, the presentation of new evidence to prove the petitioner's guilt or innocence is not permitted." *Id.* "The burden rests with the petitioner to show that the original charge that was later amended qualifies as one that was "otherwise dismissed." *Id.* (*citing Eastlack v. Commonwealth*, 282 Va. 120, 123 (2011)). W.H.D. did not carry his burden. All he offered the Court to determine whether the charges arose from a common nucleus of operative facts was the verdict and sentence from the General District Court. If there was evidence to prove his DUI arrest arose from facts different from the Reckless Driving conviction, and was thus "otherwise dismissed," W.H.D. did not offer them to the Court.

To the contrary, according to the Warrant, the Commonwealth charged W.H.D. with DUI. A magistrate found probable cause to believe W.H.D. committed DUI. W.H.D. did not successfully win suppression of the seizure or arrest.

Thus, the common nucleus of operative facts in the present case are: (1) W.H.D.'s reckless driving, as proven by his plea to and conviction of Reckless Driving; (2) the probable cause determination that alcohol was involved; and (3) W.H.D's acceptance of a plea agreement requiring both the VASAP and the ignition interlock device.[9] W.H.D. drove "recklessly" or "in a manner so as to endanger the life, limb, or property of any person," with significant connection to alcohol to justify a magistrate's DUI probable cause finding confirmed by W.H.D.'s sentence that includes alcohol-related punishments—VASAP and ignition interlock. All of this is enough for the Court to find as fact that the DUI and Reckless Driving charges share a common nucleus of operative facts in the present case.

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[8] The Court could not give weight to any records other than the Warrant with the General District Court's verdict and sentence on the back because the parties did not provide the Court with anything else.

[9] As directed by *Williams*, the Court's ruling on the "common nucleus of operative facts" in this case is specific to W.H.D.'s case. The Court heavily weighed the conceptually similar crimes of DUI and Reckless Driving along with W.H.D.'s sentence—a sentence that greatly resembled a DUI sentence because of its alcohol-related punishments of the VASAP and the ignition interlock. The Court is not holding that all DUI charges amended to Reckless Driving under all circumstances are ineligible for expungement. The records must be examined in each case to determine whether an original charge and conviction of an amended charge share the same common nucleus of operative facts.

3. There is No Automatic Expungement of Misdemeanor Charges.

W.H.D. might have argued that courts must grant petitions to expunge misdemeanor charges. This is not the law. Virginia Code § 19.2-392.2(F) reads:

> "However, if the petitioner has no prior criminal record and the arrest was for a misdemeanor violation or the charge was for a civil offense, the petitioner shall be entitled, in the absence of good cause shown to the contrary by the Commonwealth, to expungement of the police and court records relating to the charge, and the court shall enter an order of expungement."

In the present case the DUI is a misdemeanor, W.H.D. has no prior criminal record, and the Commonwealth has not shown cause to deny expungement.

However, paragraph F of this statute applies only to step two of the two-step expungement procedure discussed in Section II(A), *supra*. The first step is to determine if a petitioner has a right to expunge a particular charge. *A.R.A.*, 295 Va. at 158. The second step is to determine if maintaining the records of the charge to be expunged causes a manifest injustice to the petitioner. *Dressner,* 285 Va. at 7-8. The directory language in paragraph F applies only to the second step of the analysis.

Paragraph F merely means that if W.H.D. showed his DUI was "otherwise dismissed," then the Court must grant his petition to expunge that charge because it is a misdemeanor and he has no criminal record. It does not mean that all those without criminal records seeking expungement of a misdemeanor are entitled to an expungement by right; it only means they need not prove a manifest injustice to the petitioner by the maintenance of the records.

The Court is not bound to expunge W.H.D.'s DUI records merely because he has no prior conviction, the charge is a misdemeanor, and the Commonwealth cannot show good cause to block an expungement. The charge must still be one eligible for expungement to permit the Court to grant such an expungement. Because the Court rules W.H.D. has no right to expunge the DUI, it does not reach the paragraph F "shall enter an order of expungement" requirement.

III. CONCLUSION.

W.H.D. petitions to expunge his DUI records after the General District Court amended his original DUI charge to Reckless Driving and found him guilty only of Reckless Driving. The Court will deny W.H.D.'s Petition for Expungement. Applying the *Williams* test, the Court holds the DUI and Reckless Driving charges have conceptual similarities, and it finds as fact that the two charges share a common nucleus of operative facts. *Williams*, 885 S.E.2d at 461. Comparing the two, the Court determines it may not expunge the DUI arrest and associated records. The DUI was not "otherwise dismissed," W.H.D. is not in the position of being "innocent" of the charge, and thus the DUI arrest is ineligible for expungement.

OPINION LETTER

An appropriate Order is attached.

Kind regards,

[redacted]

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

Enclosure

OPINION LETTER

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

W.H.D.[1],
Petitioner,

v.

COMMONWEALTH OF VIRGINIA,
Respondent.

CL-2022-9997

ORDER

THIS MATTER came before the Court August 11, 2023, on Petitioner's Petition for Expungement. It is

ADJUDGED for the reasons set forth in the Opinion Letter issued this day, which is incorporated into this Order by reference, the Petition for expungement should be denied. Therefore, it is

ORDERED Petitioner's Petition for Expungement is DENIED.

THIS CAUSE IS ENDED.

[redacted]
Judge David A. Oblon

AUG 15 2023

Entered

PURSUANT TO RULE 1:13 OF THE RULES OF THE SUPREME COURT OF VIRGINIA, ENDORSEMENT OF THIS ORDER IS WAIVED BY DISCRETION OF THE COURT. ANY DESIRED ENDORSEMENT OBJECTIONS MAY BE FILED WITHIN TEN DAYS.

[1] Following Supreme Court of Virginia practice, 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). The Court will order the file unsealed after exhaustion of appeal rights unless otherwise directed by an appellate court. This Order is unsealed.