STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT I
Case No. 2017AP0633-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

CHENEYE LESHIA EDWARDS,

Defendant-Appellant.

On Appeal from a Judgment of Conviction, and an Order
Partially Denying a Postconviction Motion,
Entered in Milwaukee County Circuit Court,
the Honorable Jeffrey A. Kremers, Presiding.

BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

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ISSUES PRESENTED

1. If a circuit court denies expunction at the time of sentencing, does the circuit court possess inherent authority to later modify its decision?

   The postconviction court said no.

2. Did the circuit court in this case erroneously exercise its discretion at sentencing when it denied first-time offender Cheneye Edwards's request for expunction of his misdemeanor conviction without considering any of the necessary factors?

This issue was raised in a postconviction motion, but the circuit court did not specifically address it.

POSITION ON A THREE-JUDGE PANEL, PUBLICATION, AND ORAL ARGUMENT

Mr. Edwards was convicted of disorderly conduct, which is a misdemeanor. *See* Wis. Stat. § 947.01(1). Thus, this case will be decided by a single judge pursuant to Wis. Stat. § 752.31(2) and (3).

However, this case involves an issue of substantial and continuing public interest—whether a circuit court can subsequently modify a sentencing decision denying expunction. A decision will provide clarity to circuit courts, prosecutors, and defense attorneys. Thus, Mr. Edwards would welcome conversion to a three-judge panel, publication, and oral argument. *See* Wis. Stat. Rule 809.41(3) (a three-judge panel may be ordered on the court's own motion); Wis. Stat. Rule 809.23(criteria for publication).

STATEMENT OF THE CASE AND FACTS

Charges

The State charged first-time offender Cheneye Leshia Edwards with: (1) strangulation and suffocation, domestic abuse, contrary to Wis. Stat. §§ 940.235(1) & 968.075(1)(a)2; and (2) misdemeanor battery, domestic abuse, contrary to Wis. Stat. §§ 940.19(1) & 968.075(1)(a)1. (R.1:1). According to the criminal complaint, K.H. said that her live-in boyfriend, Mr. Edwards,[1] struck and choked her to the point of losing consciousness. (R.1:2).

Subsequently, an amended information charged Mr. Edwards with: (1) strangulation and suffocation, domestic abuse assessments, contrary to Wis. Stat. §§ 940.235(1) & 973.055(1); (2) misdemeanor battery, domestic abuse assessments, contrary to Wis. Stat. §§ 940.19(1) & 973.055(1); and (3) disorderly conduct, domestic abuse assessments, contrary to Wis. Stat. §§ 947.01(1) & 973.055(1). (R.8).

Plea

Mr. Edwards entered a guilty plea to count three, disorderly conduct. (R.44:2; *see also*, R.12). In exchange, the State agreed to recommend probation with terms and conditions to the court. (*Id.*). The other two counts were dismissed. (*Id.*). Regarding the factual basis, trial counsel stated:

> Your Honor, most of the complaint we don't agree with. I would just put forward that Mr. Edwards got into a

[1] Mr. Edwards is a female undergoing a sex change and prefers the male pronoun. (1:2).

> shouting match, completely verbal incident between himself and [K.H.] that did indeed wake up the neighbors and aggravate the situation.

(R.44:5).

Sentencing

At sentencing, the State informed the court that two calls came in to the police from a neighbor that a female was screaming "help" and "somebody was being beaten." (R.45:5; App. 108). When officers approached the apartment door, they heard "what they described as a fight." (*Id.*). Officers observed K.H. "bleeding heavily from her nose." (*Id.*) K.H. "gesture[ed] into the back room where they found the defendant." (*Id.*). K.H. said that a fight began at a bar when another guy "hit on" her. (R.45:6; App. 109). Mr. Edwards and K.H. then came home and were both intoxicated. (*Id.*). K.H. tried to run out of the apartment and Mr. Edwards pulled her back in. (*Id.*). She had a bloody nose from the incident. (*Id.*). Mr. Edwards also had a scratch on his nose. (*Id.*).

The State explained that a disorderly conduct conviction was appropriate because on the date of the trial, the State learned of a "recant to a Defense Investigator that we were not aware of." (R.45:7; App. 110). Additionally, the State noted that Mr. Edwards had no prior record, had been employed, and did not have any prior referrals for domestic violence. (*Id.*). The State also noted that "there are some substance abuse issues" and "perhaps some inner personal violence, inner personal relationship issues that could be addressed through probation." (*Id.*).

Trial counsel requested a four-day time-served sentence. (*Id.*). Trial counsel indicated that "probation would be appropriate if Mr. Edwards hadn't on his own and with

absolutely no guidance from me, gone and completed an anger management program." (*Id.*). Trial counsel also stated that when the felony charge was filed in this case, Mr. Edwards's life went into a "downward spiral." (45:8; App. 111). He lost his job as a baggage handler at the airport and then subsequently lost his house. (*Id.*). In regards to the allegations in the case, trial counsel stated:

> It was an incident that he still holds to this day that the complaining witness in this matter got into a fight outside of a bar, which is, as the District Attorney stated, and that that's how she sustained the injuries to her nose.
>
> And they came home from the bar, and she was very angry at Mr. Edwards for not standing up for her and a screaming match that ensued, a pushing match ensued, but that was not at no time any sort of more aggravated allegations [sic]. That is a version of the story that at least at some point she agreed with.
>
> She told our investigator almost the exact same story with no prompting from the investigator. That recantation of what was originally told to the police was then apparently recanted again for the day of trial.

(R.45:9; App. 112).

Mr. Edwards stated that this was his "first time doing anything like this and being accused of things that I did not do, I am very ashamed of what I have done." (R.45:14; App. 117). Mr. Edwards also stated that, "More ashamed of what I have been accused of and I just really want to put this in my past. I am very apologetic for it" and "I never want to be in a situation like this again." (*Id.*).

The Honorable Jeffrey Kremers imposed nine months of probation and imposed and stayed 60 days in the House of Correction. (R.45:18; App. 121).

Expunction Request at Sentencing

During sentencing, trial counsel argued that Mr. Edwards should be eligible for expunction because he is 23 years old and had no prior arrest history or prior record. (R.45:12; App. 115). Trial counsel also noted that Mr. Edwards "suffered a significant . . . penalty through losing a job and losing a home because of these allegations." (*Id.*). Trial counsel also stated that Mr. Edwards spent four days in custody "which I think is a real eye opener to anyone who has sat in custody" and "as a transgender person, it is significantly more uncomfortable for him than it was for many other people that would sit in that same position." (R.45:12-13; App. 115-16). Additionally, Mr. Edwards underwent anger management, enrolled in AODA, and took responsibility for the disturbance that occurred. (R.45:13; App. 116).

The court denied the request for expunction. The court stated:

> I, as to the expungement issue, I have said this before, I don't know if your attorney happened to be in court when I said it, I am very unhappy with the state of the law in Wisconsin, I strongly support some legislation that has been drafted to try and find sponsors to get it through the legislature that will change the expungement statute to give judges the discretion to make that call at the end of the sentence, whether it is probation or whatever, so that judges can more properly make that call based on whatever it is the defendant does to justify it as opposed to some kind of line request now, and I don't mean that in a pejorative sense or a criticism to Defense Counsel, they have to do it, now is the time that the statute requires it.
>
> But the fact is, if I say yes, if you successfully complete probation, I don't – it doesn't really mean that, because the Department of Corrections will discharge you from

probation if you make it through the end of the period of probation without getting revoked regardless of whether you have done all the things the judge asked you to do.

Whether you go to counseling, pay fines or costs, they will discharge you and that qualifies you automatically for expunction or expungement without – without them – without you actually having successfully completed probation and that is the problem that I am and other judges have, I am not sure you really care about that.

(R.45:16-18; App. 119-21).

Subsequently, the following exchange occurred:

TRIAL COUNSEL: One solution that I know Judge Dallet has found is that on cases where she finds it appropriate, she says –

THE COURT: It is not legal. I know, we have talked about it.

It is, I don't think judges – my read of the statute is judges don't have the authority to do that and most – without criticizing Judge Dallet, I – the overwhelming number of judges I have talked to, including the community of chief judges, don't think that is a legal alternative or per legal Counsel of the court system, so I am not going to engage in that practice.

* * *

THE COURT: I am not going to find expungement is appropriate in this case. . .

TRIAL COUNSEL: Your Honor, I suppose I struggle with, if not expunction on this case, when is it appropriate in a D.V. case?

THE COURT: I don't know I have done it, but I am not doing it on this case.

> TRIAL COUNSEL: I mean, he engaged in treatment ahead of time. He is–
>
> THE COURT: I know he did. I am not going to debate this anymore . . . I am not even going to respond to it.

(R.45:18, 20-21; App. 121, 123-24).

Postconviction Proceedings

In light of Mr. Edwards's successful completion of probation, he filed a postconviction motion requesting that the circuit court grant expunction using its inherent authority. (R.28:5-8). Alternatively, the motion argued expunction should be granted because the circuit court erroneously exercised its discretion. (R.28:8-10).[2] Attached to the motion was documentation that Mr. Edwards had completed probation and paid off all court costs, surcharges, and supervision fees. (*See* R.28:15-17). The motion also requested a hearing and alleged that Mr. Edwards's probation agent would testify that he did not commit any violations and compiled with all conditions, including completing AODA and anger management programming. (R.28:7-8; 31:3).

In response, the State argued that the circuit court has no authority to change its decision on expunction. (R.31:1-4). The State also argued that the circuit court properly exercised its discretion. (R.31:2).

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[2] The postconviction motion also requested that the court vacate the $100 domestic abuse assessment, or in the alternative, grant plea withdrawal on the grounds that at the time of the plea Mr. Edwards did not know that a $100 domestic abuse assessment could be imposed. (R.28:10-13). The circuit court granted Mr. Edwards's request to vacate the $100 domestic abuse assessment, so he does not pursue this on appeal. (R.33:2-3; App. 102-03).

After the completion of briefing, the Honorable Jeffrey A. Kremers denied Mr. Edwards's request for expunction. The court stated:

> For the same reasons set forth at sentencing, the court denies the request. The State is correct: both section 973.015, Stats., and ***State v. Matasek***, 353 Wis. 2d 601 (2014) require the court to make a decision on expungement at the time of sentencing. That is exactly what the court did. The defendant argues that the court nonetheless has inherent authority to grant expungement at any time. The court finds that it has no expungement authority beyond that which has been delegated to it by the legislature under section 973.015, Stats., as interpreted by existing case law. Until the law changes to allow the court to consider expungement after termination of probation, the court will follow the law as it is written.

(R.33:2; App. 102). The court did not specifically address whether it had erroneously exercised its discretion.

Additional relevant facts will be referenced below.

ARGUMENT

I. If a circuit court denied expunction at the time of sentencing, the court has inherent authority to subsequently modify its decision.

A. Introduction.

Expunction "provides a means by which trial courts may, in appropriate cases, shield youthful offenders from some of the harsh consequences of criminal convictions." ***State v. Anderson***, 160 Wis. 2d 435, 440, 466 N.W.2d 681 (Ct. App. 1991); *see also* ***State v. Leitner***, 2002 WI 77, ¶ 38, 253 Wis. 2d 449, 646 N.W.2d 341.

Expunction of a criminal conviction allows an offender an opportunity to have a "fresh start without the burden of a criminal record and a second chance at becoming a law-abiding and productive member of the community." ***State v. Hemp***, 2014 WI 129, ¶¶ 18-20, 359 Wis. 2d 320, 856 N.W.2d 811. "Expunction allows individual defendants a chance to move past the barriers that can be created by a criminal record by giving them an 'incentive to rehabilitate,' which in turn, 'promotes the public's safety.'" ***Id.***

Wis. Stat. § 973.015 authorizes the expunction of the record of a conviction if a person is under the age of 25 at the time of the commission of the offense, the maximum period of imprisonment for the offense is six years or less, and if the circuit court determines that the person will benefit and society will be not be harmed.

As discussed below, where expunction has been denied at the time of sentencing, this Court should hold that a circuit court has inherent authority to subsequently modify

that decision.[3] Moreover, in this case, expunction should be granted in light of Mr. Edwards's successful performance and completion of probation.

B. Neither the expunction statute nor ***Matasek*** bars the subsequent modification of a decision denying expunction.

The postconviction decision states that the expunction statute, Wis. Stat. § 973.015, and ***State v. Matasek***, 2014 WI 27, 353 Wis. 2d 601, 846 N.W.2d 811, "require the court to make a decision on expungement at the time of sentencing," and that the court does not have authority to grant expunction later. (R.33:2; App. 102).

The expunction statute reads in part: "[a] circuit court may order at the time of sentencing the expunction of a record upon the offender's successful completion of a sentence." Wis. Stat. § 973.015(1)(a).

In ***Matasek***, at the time of sentencing, the defense counsel requested that the circuit court delay its decision on expunction until after the defendant had completed probation. 353 Wis. 2d 601, ¶ 8. The circuit court concluded that the expunction statute restricted the decision to the time of sentencing. ***Id.*** The Wisconsin Supreme Court held the plain language of the statute requires that "if a circuit court is going to exercise its discretion to expunge a record, the discretion must be exercised at the sentencing proceeding." ***Id.*** ¶ 45.

While ***Matasek*** indicates that a circuit court cannot *delay* a decision on expunction and must make a decision at

[3] Whether a circuit court can grant expunction if the defendant did *not* request expunction at the time of sentencing is currently pending in the Wisconsin Supreme Court in ***State v. Diamond J. Arberry***, 2016AP0866.

the time of sentencing, ***Matasek*** does not address whether a decision *denying* expunction made at the time of sentencing can subsequently be modified.

Additionally, ***Matasek*** left open the question of whether a circuit court has inherent power to order expunction of a court record when the circuit court cannot expunge the record under Wis. Stat. § 973.015. ***Id.*** ¶ 6 n.4.[4]

Thus, neither the expunction statute nor ***Matasek*** bars the subsequent modification of a decision denying expunction.

C. Circuit courts have inherent authority to modify a criminal sentence.

Circuit courts have inherent authority to modify criminal sentences. ***State v. Hegwood***, 113 Wis. 2d 544, 546, 335 N.W.2d 399 (1983). This power is exercised "to prevent the continuation of unjust sentences." ***State v. Crochiere***, 2004 WI 78, ¶ 11, 273 Wis. 2d 57, 681 N.W.2d 524. With a few exceptions, a court may modify a sentence and rectify an unjust sentence if the defendant proves a new factor.[5]

The two-step process for modifying a sentence on the basis of a new factor is laid out in ***State v. Harbor***, 2011

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[4] ***In the Interest of E.C.***, 130 Wis. 2d 376, 387 N.W.2d 72 (1986), the Court determined that circuit courts lack inherent authority to expunge juvenile police records. ***E.C.*** did not address whether circuit courts have inherent authority to expunge court records.

[5] A court may also modify a sentence to correct a legal error or because the sentence is unduly harsh or unconscionable. ***State v. Stenklyft***, 2005 WI 71, ¶¶ 60 & 115, 281 Wis. 2d 484, 697 N.W.2d 769. However, [i]f there are cases that overturn a sentence" on the later ground "they are few and far between." ***Id***. ¶ 115.

WI 28, 333 Wis.2d 53,797 N.W.2d 828. First, the defendant bears the burden of demonstrating the existence of a new factor by clear and convincing evidence. ***Id.*** ¶ 36. A "new factor" is defined as "a fact or set of facts highly relevant to the imposition of the sentence, but not known to the trial judge at the time of the original sentencing, either because it was not then in existence or because, even though it was then in existence, it was unknowingly overlooked by all of the parties." ***Id***. ¶ 40 (citing ***Rosado v. State***, 70 Wis. 2d 280, 288, 234 N.W.2d 69 (1975)). Once a defendant has satisfactorily demonstrated the existence of a new factor, the Court moves to step two of the analysis. It exercises its discretion and determines "whether that new factor justifies modification of the sentence." ***Id***. ¶ 37. It is not necessary, however, that the new factor "frustrate" the purpose of the original sentence. ***Id***. ¶ 48.

Whether a defendant presents information constituting a new factor is a question of law reviewed independently by this Court. ***Id.*** ¶ 33. But whether a new factor justifies sentence modification is a matter within the circuit court's discretion. ***Id.***

Since the time of sentencing, Mr. Edwards has successfully completed probation, including paying off court costs and extended supervision fees. (R.28:15-17). While on probation, Mr. Edwards did not commit any violations and complied with all conditions, including completing AODA and anger management programming. (*See* R.28:7-8; 31:3).

Therefore, expunction should be granted. Mr. Edwards's future performance on probation was not known at the time of sentencing. ***Harbor***, 333 Wis.2d 53, ¶ 40. Additionally, given the circuit court's concern at the time of sentencing about granting expunction without knowing

whether Mr. Edwards had completed counseling or paid fines and court costs (*See* R.45:16-18; App. 119-21), Mr. Edwards's performance on probation is highly relevant. ***Id.***

D. Circuit courts have inherent authority to expunge court records.

Circuit courts have "inherent, implied and incidental powers." ***State ex rel. Friedrich v. Circuit Court for Dane County***, 192 Wis. 2d 1, 16, 531 N.W.2d 32 (1995), *quoted with approval in* ***State v. Henley***, 2010 WI 97, ¶ 73, 328 Wis. 2d 544, 787 N.W.2d 350. These powers are those that are necessary to enable courts to accomplish their constitutionally and legislatively mandated functions. ***Id.*** The issue of judicial authority is a question of law reviewed de novo. ***Henley***, 328 Wis. 2d 544, ¶ 29.

A circuit court has inherent authority to ensure that it "functions efficiently and effectively to provide the fair administration of justice." ***City of Sun Prairie v. Davis***, 226 Wis. 2d 738, 749-50, 595 N.W.2d 635 (1999).

This Court should hold that circuit courts possess inherent authority to grant expunction outside of Wis. Stat. § 973.015. A circuit court's ability to control and manage its docket and records is essential to its functioning. *See generally*, ***Davis***, 226 Wis. 2d 738, 750 (noting cases in which courts exercised inherent authority "to dispose of causes on their dockets"). Expunction is a means of exercising management and control over a docket and records. Additionally, the expunction of a court record advances the "administration of justice" because it "provides a means by which trial courts may, in appropriate cases, shield youthful offenders from some of the harsh consequences of criminal convictions." *See* ***Anderson***, 160 Wis. 2d 435, 440; *see also* ***Leitner***, 253 Wis. 2d 449, ¶ 38.

Thus, inherent authority to grant expunction ensures that a court operates "efficiently and effectively to provide the fair administration of justice." ***Davis***, 226 Wis. 2d 738, 749-50.

Therefore, because circuit courts have inherent authority to grant expunction, expunction should be granted in this case. As trial counsel asserted at sentencing, Mr. Edwards is young and had no prior arrest history or record. (R.45:12; App. 115). Mr. Edwards "suffered a significant . . . penalty through losing a job and losing a home because of these allegations." (*Id.*). Additionally, Mr. Edwards has completed anger management, AODA, and taken responsibility for the disturbance that occurred. (R.45:13; App. 116). Thus, in this case, expunction is appropriate.

II. The circuit court erroneously exercised its discretion when it denied first-time offender Mr. Edwards's request for expunction of his misdemeanor conviction at the time of sentencing.

A. Introduction.

The expunction statute, Wis. Stat. § 973.015, states that "the court may order at the time of sentencing that the record be expunged upon successful completion of the sentence *if the court determines that the person will benefit and society will be not be harmed* . . ." (Emphasis added).

"The determination of this sentencing issue involves the circuit court's discretion, which, on review, an appellate court will not disturb unless erroneously exercised." ***State v. Helmbrecht***, 2017 WI App 5, ¶ 8, 373 Wis. 2d 203, 891 N.W.2d 412. "A circuit court properly exercises its discretion if it relies on relevant facts in the record and applies a proper legal standard to reach a reasonable decision." ***State v. Thiele***, 2012 WI App 48, ¶ 6, 340 Wis. 2d 654, 813 N.W.2d 709.

"The record on appeal must reflect the circuit court's reasoned application of the appropriate legal standard to the relevant facts of the case." ***Helmbrecht***, 373 Wis. 2d 203, ¶ 11 (citation omitted). "The analysis starts with the presumption that the court has acted reasonably, and the defendant-appellant has the burden to show unreasonableness from the record." ***Id.***

B. The circuit court erroneously exercised its discretion when it denied Mr. Edwards's request for expunction.

In ***Helmbrecht***, this Court examined whether a circuit court properly denied a defendant's request for expunction at the time of sentencing. In so doing, this Court held that "the sentencing court should put forth in the record the facts it considered and the rationale underlying its decision for deciding whether to grant or deny expungement . . ." ***Id.*** ¶ 12. This Court further explained:

> Thus, in exercising discretion, the sentencing court must do something more than simply state whether a defendant will benefit from expungement and that society will or will not be harmed. We have repeatedly held that the utterance of "magic words" is not the equivalent of providing a logical rationale. Rather, the sentencing record should reflect the process of reasoning in ***Gallion.***

Id. (citations omitted).

In this case, at the time of sentencing, the circuit court did not even reference the two statutory factors: (1) whether the person will benefit from expunction and (2) whether society will be harmed by expunction. *See* Wis. Stat. § 973.015; ***Helmbrecht***, 373 Wis. 2d 203, ¶ 11. Nor did the circuit court provide any reasoning related to these two

factors. Instead, the court focused on its displeasure with "the state of the law in Wisconsin":

> I, as to the expungement issue, I have said this before, I don't know if your attorney happened to be in court when I said it, I am very unhappy with the state of the law in Wisconsin, I strongly support some legislation that has been drafted to try and find sponsors to get it through the legislature that will change the expungement statute to give judges the discretion to make that call at the end of the sentence, whether it is probation or whatever, so that judges can more properly make that call based on whatever it is the defendant does to justify it as opposed to some kind of line request now, and I don't mean that in a pejorative sense or a criticism to Defense Counsel, they have to do it, now is the time that the statute requires it.
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> But the fact is, if I say yes, if you successfully complete probation, I don't – it doesn't really mean that, because the Department of Corrections will discharge you from probation if you make it through the end of the period of probation without getting revoked regardless of whether you have done all the things the judge asked you to do.
>
> Whether you go to counseling, pay fines or costs, they will discharge you and that qualifies you automatically for expunction or expungement without – without them – without you actually having successfully completed probation and that is the problem that I am and other judges have, I am not sure you really care about that.

(R.45:16-18; App. 119-21).

Likewise, in the postconviction motion decision, the court again did not reference or discuss whether Mr. Edwards would benefit or whether society would be harmed:

> For the same reasons set forth at sentencing, the court denies the request. The State is correct: both section

> 973.015, Stats., and ***State v. Matasek***, 353 Wis. 2d 601 (2014) require the court to make a decision on expungement at the time of sentencing. That is exactly what the court did. The defendant argues that the court nonetheless has inherent authority to grant expungement at any time. The court finds that it has no expungement authority beyond that which has been delegated to it by the legislature under section 973.015, Stats., as interpreted by existing case law. Until the law changes to allow the court to consider expungement after termination of probation, the court will follow the law as it is written.

(R.33:2; App. 102).

This reasoning does not reflect a proper exercise of discretion. The circuit court did not reference or discuss whether Mr. Edwards would benefit or society would be harmed. Nor did the circuit court discuss any individualized facts specific to Mr. Edwards. *See generally*, ***State v. Gallion***, 2004 WI 42, ¶ 48, 270 Wis. 2d 535, 678 N.W.2d 197 ("Individualized sentencing . . . has long been a cornerstone to Wisconsin's criminal justice jurisprudence.").

Moreover, the circuit court's comments appear to reflect a preconceived policy that it will not grant expunction in any case because the defendant's performance on probation is unknown. This also is not a proper exercise of discretion. Trial courts may not have preconceived policies that are closed to individual mitigating factors. ***State v. Ogden***, 199 Wis. 2d 566, 572, 544 N.W.2d 574 (1996). In ***Ogden***, the circuit court denied the defendant's request to grant Huber release for child care, stating it never granted Huber privileges for child care unless it was "absolutely necessary." ***Id***. at 569. This Court reversed, noting that "one 'unreasonable and unjustifiable basis' for a sentence is a trial judge's employment of a preconceived policy of sentencing

that 'is closed to individual mitigating factors.'" ***Id.*** at 571. (citation omitted). This Court stated that an inflexible, preconceived policy is "unacceptable." ***Id.***

Therefore, in this case, the circuit court erroneously exercised its discretion when denying Mr. Edwards's request for expunction.

CONCLUSION

For the reasons stated above, this Court should enter an order reversing the circuit court's denial of the postconviction motion, remanding this matter, and ordering the circuit court to consider whether Mr. Edwards's performance on probation entitles him to expunction, or alternatively, to properly exercise its discretion on the question of expunction eligibility.

Dated this 18th day of August, 2017.

Respectfully submitted,

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CERTIFICATION AS TO FORM/LENGTH

I hereby certify that this brief conforms to the rules contained in § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 4,396 words.

CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12)

I hereby certify that I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of § 809.19(12). I further certify that this electronic brief is identical in content and format to the printed form of the brief filed on or after this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 18th day of August, 2017.

Signed:

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CERTIFICATION AS TO APPENDIX

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with § 809.19(2)(a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; (3) a copy of any unpublished opinion cited under § 809.23(3)(a) or (b); and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using one or more initials or other appropriate pseudonym or designation instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 18th day of August, 2017.

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