SJC-13153

COMMONWEALTH vs. K.W.

Suffolk. January 7, 2022. - September 8, 2022.

Present: Budd, C.J., Gaziano, Lowy, Cypher, Kafker, Wendlandt, & Georges, JJ.

Expungement. Criminal Records. Marijuana. Statute, Construction. Words, "Best interests of justice."

Complaints received and sworn to in the Dorchester Division of the Boston Municipal Court Department on June 30, 2003, and May 22, 2006.

A petition for expungement, filed on June 26, 2019, was heard by Jonathan R. Tynes, J., and a motion for reconsideration was considered by him.

The Supreme Judicial Court granted an application for direct appellate review.

Pauline Quirion for the petitioner.

Andrew S. Doherty, Assistant District Attorney, for the Commonwealth.

Ruth A. Bourquin, Katharine Naples-Mitchell, & Joshua M. Daniels, for American Civil Liberties Union of Massachusetts Foundation, Inc., & others, amici curiae, submitted a brief.

GEORGES, J. K.W. filed a petition pursuant to G. L. c. 276, § 100K, in the Boston Municipal Court, seeking to have expunged two sets of criminal records stemming from separate arrests that had both occurred more than fifteen years earlier. Each set of records involved charges or convictions of possession of an amount of marijuana that since has been decriminalized. See, e.g., G. L. c. 94C, § 32L. A Boston Municipal Court judge denied both petitions on the ground that it was not "in the best interests of justice" to expunge the records. See G. L. c. 276, § 100K (b). The judge subsequently denied K.W.'s motion for reconsideration. Because we conclude that the judge abused his discretion in concluding that, here, expungement was not "in the best interests of justice," the order denying K.W.'s petition for expungement must be reversed. More generally, we conclude that petitions for expungement that satisfy G. L. c. 276, § 100K (a), are entitled to a strong presumption in favor of expungement, and petitions for expungement in such cases may be denied only if a significant countervailing concern is raised in opposition to the petition.[1]

[1] We acknowledge the amicus brief submitted by the American Civil Liberties Union of Massachusetts Foundation, Inc., the Charles Hamilton Houston Institute for Race and Justice, and the Massachusetts Association of Criminal Defense Lawyers in support of the petitioner.

1. Background. a. Facts. K.W. seeks to have expunged records related to two incidents, in 2003 and 2006, in which he was arrested for possession of marijuana. In each instance, the facts are undisputed.

In 2003, K.W. was a rear-seat passenger in a vehicle that was stopped for asserted traffic violations. During the stop, an officer pat frisked K.W. and found what the officer later described as "a small plastic bag of green vegetable-like substance believed to be marijuana." K.W. subsequently was charged with possession of a class D controlled substance, G. L. c. 94C, § 34. He filed a motion to suppress the evidence seized during the stop, and when no police officer appeared at the hearing on that motion, the case was dismissed.

In 2006, K.W. was stopped by a police officer for driving at approximately forty miles per hour in a residential area. During the stop, K.W. presented the officer with another person's driver's license, and was found with what the officer later described as "two plastic bags containing an undetermined amount of a vegetable matter believed to be a Class D substance, to wit, marijuana." K.W. later provided his actual name to the officer, and from this, police learned that he had been driving with a suspended driver's license.

K.W. was arraigned on six charges. To three of these charges -- one count of possession of a class D substance, G. L.

c. 94C, § 34; refusal to identify himself, G. L. c. 90, § 25; and operating a motor vehicle with a suspended license, G. L. c. 90, § 23 -- K.W. pleaded guilty. The other three charges -- concealing identification, G. L. c. 90, § 23; use of a motor vehicle without authority, G. L. c. 90, § 24 (2) (a); and the other count of possession of a class D substance, G. L. c. 94C, § 34 -- were dismissed at the Commonwealth's request. K.W. was sentenced to one year of probation, and later petitioned successfully for the sealing of all records pertaining to both the 2003 and 2006 incidents.[2]

b. The expungement statute. In 2018, Massachusetts enacted an omnibus package of criminal justice reforms entitled "An Act relative to criminal justice reform" (2018 criminal justice reform act or act). See St. 2018, c. 69. Among other changes, the act created two distinct pathways by which to seek expungement of two different types of criminal records. See Matter of Expungement, 489 Mass. 67, 69 (2022). One pathway, typically referred to as "time-based" expungement, is available

[2] When a record is sealed, it becomes inaccessible to all except "[c]riminal justice agencies" performing "their criminal justice duties," see G. L. c. 6, § 172 (a) (1); firearms licensing authorities, see id.; and numerous entities whose work involves, among others, mental health care and the care and protection of children or the elderly, see, e.g., G. L. c. 6, § 172. Those whose criminal records are sealed may answer "no record" to inquiries about their criminal records on applications for housing or employment. See G. L. c. 276, § 100A.

to those who committed certain low-level offenses before the age of twenty-one. See id. The pathway at issue here, generally known as "reason-based" expungement, id. at 71, is set forth in G. L. c. 276, § 100K. That statute provides:

> "(a) Notwithstanding the requirements of [G. L. c. 276, §§] 100I and 100J, a court may order the expungement of a record created as a result of criminal court appearance, juvenile court appearance or dispositions if the court determines based on clear and convincing evidence that the record was created as a result of:
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> "(1) false identification of the petitioner or the unauthorized use or theft of the petitioner's identity;
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> "(2) an offense at the time of the creation of the record which at the time of expungement is no longer a crime, except in cases where the elements of the original criminal offense continue to be a crime under a different designation;
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> "(3) demonstrable errors by law enforcement;
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> "(4) demonstrable errors by civilian or expert witnesses;
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> "(5) demonstrable errors by court employees; or
>
> "(6) demonstrable fraud perpetrated upon the court.
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> "(b) The court shall have the discretion to order an expungement pursuant to this section based on what is in the best interests of justice. Prior to entering an order of expungement pursuant to this section, the court shall hold a hearing if requested by the petitioner or the district attorney. Upon an order of expungement, the court shall enter written findings of fact.
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> "(c) The court shall forward an order for expungement pursuant to this section forthwith to the clerk of the court where the record was created, to the commissioner [of probation] and to the commissioner of criminal justice information services appointed pursuant to [G. L. c. 6, § 167A]." (Emphasis added.)

c. Procedural history. In 2019, K.W. filed a petition in the Boston Municipal Court seeking expungement of the marijuana-related records created in 2003 and 2006. Attached to the petition was an affidavit in which K.W. averred that the amount of marijuana at issue in both incidents was under one ounce. In the petition, K.W. described the "cloud of prosecution" that would continue to linger over him if those marijuana-related records were not expunged. The affidavit explained the steps K.W. was taking to secure new employment, and his involvement with his religious community. The affidavit also indicated that K.W. was then living with a friend and providing child care for his friend's children, and that he hoped to secure a home of his own to better facilitate spending time with his own children. Representatives from an organization with which K.W. had completed a job training program and the community with which K.W. worshiped both submitted letters commending K.W. for his efforts at self-improvement, attesting to his character, and supporting his attempt to expunge the marijuana-related criminal records.

A hearing on the petition took place in August of 2019. Present were K.W.'s attorney and an assistant district attorney. The assistant district attorney told the judge that the Commonwealth did not object to the petition for expungement. At

the conclusion of the hearing, the following exchange took place:

> The prosecutor: "There would be no objection from the Commonwealth [to the petition], Your Honor."
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> The judge: "All right. And do you know the effects of expungement?"
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> The prosecutor: "So I believe it limits anybody's access to the record where if it were to be viewed, the [criminal offense record information] would come up empty, including to police, [State] agencies, employers, anybody who would have access to a previously sealed record."
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> The judge: "What do you say about the effects of expungement?"
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> K.W.'s counsel: "Well, Your Honor, these would destroy the police records."
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> The judge: "Destroy all records?"
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> K.W.'s counsel: "Yes, and as well as the Court records and so the only record that would still exist, Your Honor, would be left to the [Federal Bureau of Investigation (FBI)], and with this new expungement act, there is actually a system being set up so that the expungement notices go to the FBI so that they can decide whether or not to also take it off of the FBI record."
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> The judge: "Okay. All right. All right. Thank you. I'll take it under advisement."

In October of 2019, the judge denied the petition for expungement on the grounds that K.W. had not filed his petition correctly with the Commissioner of Probation (commissioner), and that "the Court does not find that it is in the interest of justice to destroy all records relating to the charges." In December of 2019, K.W. filed a motion for reconsideration. A

few days later, the commissioner's deputy legal counsel submitted to the court a letter asserting that K.W.'s initial petition had been filed properly; because it sought a reason-based expungement, there was no need to submit it to the commissioner. In April of 2020, the same judge denied the motion for reconsideration. The judge's order stated, in full, "As previously noted the Court does not find that it is in the interest of justice to destroy all records relating to the charges." K.W. appealed, and we granted his application for direct appellate review.

2. Discussion. a. Standards of review. In reviewing a decision on a motion to expunge, we consider whether the judge abused his or her discretion. See Commonwealth v. Pon, 469 Mass. 296, 299 (2014). That determination is based in part on whether the judge made an error of law in interpreting the relevant statutes; we review the interpretation of a statute de novo. See People for the Ethical Treatment of Animals, Inc. v. Department of Agric. Resources, 477 Mass. 280, 285 (2017). "Where the words [of a statute] are 'plain and unambiguous' in their meaning, we view them as 'conclusive as to legislative intent'" (citation omitted). Dorrian v. LVNV Funding, LLC, 479 Mass. 265, 271 (2018). But where "the meaning of a statute is not plain from its language, familiar principles of statutory construction guide our interpretation. We look to the intent of

the Legislature 'ascertained from all its words . . . considered in connection with the cause of [the statute's] enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated'" (citation omitted). Id.

b. The "best interests of justice" standard. The judge concluded that granting K.W.'s petition for expungement would not be "in the best interests of justice." See G. L. c. 276, § 100K (b). This phrase is both undefined in the statute and open to a nearly endless number of plausible interpretations; the plain statutory text therefore is ambiguous. See, e.g., Falmouth v. Civil Serv. Comm'n, 447 Mass. 814, 818 (2006) ("When a statute is 'capable of being understood by reasonably well-informed persons in two or more different senses,' it is ambiguous" [citation omitted]). Much can be gleaned, however, from examining both the structure of the statute as a whole and the other provisions of G. L. c. 276, § 100K. See Casseus v. Eastern Bus Co., Inc., 478 Mass. 786, 795 (2018) ("When the meaning of any particular section or clause of a statute is questioned, it is proper, no doubt, to look into the other parts of the statute . . ." [citation omitted]). A judge ordering expungement under G. L. c. 276, § 100K (a), must employ a two-part analysis. "First, the judge must make findings based on clear and convincing evidence that the relevant criminal record

was created because of one or more of the reasons listed in G. L. c. 276, § 100K (a)." Matter of Expungement, 489 Mass. at 68. Only after making such findings may a judge consider "whether expungement would be 'in the best interests of justice.'" Id, quoting G. L. c. 276, § 100K (b).

Because a petition only receives consideration under G. L. c. 276, § 100K (b), if it first satisfies G. L. c. 276, § 100K (a),[3] we may look to the development of the factors enumerated in G. L. c. 276, § 100K (a), to inform our interpretation of the phrase "the best interests of justice" in G. L. c. 276, § 100K (b). See, e.g., Worcester v. College Hill Props., LLC, 465 Mass. 134, 139 (2013) ("if reasonably possible, all parts [of a statute] shall be construed as consistent with each other so as to form a harmonious enactment effectual to accomplish its manifest purpose"). The factors enumerated in

[3] As the judge found, K.W.'s petition falls squarely within the set of enumerated factors in G. L. c. 276, § 100K (a) (2), as his marijuana-related charges and conviction were for possession of marijuana in an amount that since has been decriminalized. In his affidavit, K.W. averred that the amount of marijuana at issue in both the 2003 and 2006 incidents was less than one ounce. Nothing in the record suggests otherwise, and the Commonwealth does not dispute this averment. In 2008, the Legislature decriminalized the possession of up to one ounce of marijuana, see G. L. c. 94C, § 32L, inserted by St. 2008, c. 387, § 2; in 2017, the Legislature modified the statute to decriminalize possession of up to two ounces of marijuana, see St. 2017, c. 55, §§ 15-18. See also G. L. c. 94G, § 13 (e), added by St. 2016, c. 334, § 5. K.W.'s petition therefore clearly satisfies G. L. c. 276, § 100K (a).

G. L. c. 276, § 100K (a), set a very high bar: the record at issue must pertain to a now-decriminalized offense or have been the product of "fraud" or "demonstrable error." See, e.g., Commonwealth v. A.G., 97 Mass. App. Ct. 1126 (2020) (affirming denial of petition for reason-based expungement because arrest that created record, according to motion judge, was "judgment call" by police, which is not "the kind of demonstrable error contemplated by the statute").

These factors, furthermore, appear to be a direct response to decisions issued by this court in the years leading up to the enactment of the 2018 criminal justice reform act. Two cases, Commonwealth v. Boe, 456 Mass. 337 (2010), and Commonwealth v. Moe, 463 Mass. 370 (2012), cert. denied, 568 U.S. 1231 (2013), are particularly salient in this regard. In both, we concluded that even though the petitioners' records had been created as a result of profound errors or fraud, those records could not be expunged because the Legislature had decided that sealing was the sole remedy available for records generated as a result of such situations.

In Boe, 456 Mass. at 338-340, for instance, the petitioner sought the expungement of a record that had been created because of a litany of errors by a number of government officials. The fiasco began when a man driving Boe's vehicle got into a two-car accident. When the other driver requested the license and

registration of the male driver, "he told her that the car was not his, he threatened to return to the scene with a gun, and then he drove away without providing" any information. Id. at 338. "The police traced the registration plate information through the registry of motor vehicles and learned that" the vehicle was registered to Boe. Id.

Notwithstanding that the offending driver had been identified as a man, while Boe was a woman, police applied for a criminal complaint charging Boe with leaving the scene of an accident after causing personal injury, see G. L. c. 90, § 24 (2) (a 1/2) (1), and a hearing was scheduled "to determine whether probable cause existed to support the charge." Boe, 456 Mass. at 338. Boe "arrived on time for the hearing," but she mistakenly was directed by a court employee to an arraignment session. Id. After waiting for "a long period of time," she inquired about the status of her hearing and was informed, by a different employee, that she was in the wrong place. Id. at 338-339. In the interim, Boe learned, her absence from the hearing had resulted in the issuance of a criminal complaint against her, and she was told to expect a summons with information about her next court date. Id. at 339. Eventually, these errors were revealed, and Boe and the Commonwealth filed a joint motion to dismiss the complaint and to expunge Boe's record, asserting that, as this court summarized it,

"expungement was appropriate because the complaint should not have issued in the first instance." Id.. The motion judge agreed, dismissed the complaint, and ordered the record expunged. The commissioner, however, filed a motion for reconsideration of the order of expungement on the ground that the judge lacked the statutory authority to order expungement of a record of this type, and that sealing thus was Boe's only available remedy. Id.

The Appeals Court upheld the order, Commonwealth v. Boe, 73 Mass. App. Ct. 647 (2009), but this court reversed. In holding that Boe's record could not be expunged, we acknowledged that the record was created by compounding errors in which Boe played no part, from the "error by the police in misidentifying Boe as the operator of the vehicle" to "the court's error in misdirecting Boe" when she arrived for her show cause hearing. Boe, 456 Mass. at 347. Nonetheless, we concluded that "where the Legislature has clearly prescribed [sealing as] the remedy for limiting access to probation records when a criminal case has been dismissed, it is not the province of this court to decide that a different remedy would be more appropriate." Id.

Two years later, in Moe, we applied the holding of Boe to a similarly unfortunate set of circumstances. Moe was the victim of blatant extortion. See Moe, 463 Mass. at 370-371. A man named Ramon Benzan told police that Moe had "pulled a gun" on

him in an attempt to avoid paying Benzan a debt he owed. Id. at 371. The incident was entirely fabricated, but police nonetheless arrested Moe at his home and charged him with assault by means of a dangerous weapon, in violation of G. L. c. 265, § 15B (b). Id. While Moe prepared his defense, Benzan told Moe's attorney that he would go on "national television" and describe the assault if Moe did not pay him $5,000. Id.

Eventually, Benzan's story fell apart; after a detective expressed doubts about the allegations, "the prosecutor filed a nolle prosequi," which attested that "based on the evidence it would not be in the interest of justice to further prosecute this case." Id. at 372. As in Boe, Moe filed a motion to expunge the record, and the commissioner opposed the motion. Id. A Boston Municipal Court judge denied the motion for expungement on the ground that the judge "had no legal authority to expunge the criminal records," and that the only available remedy was sealing. Id. After concluding that "this case presents a set of facts very similar to those in Boe, and that case governs," we affirmed the denial. Id. at 375.

"By the enactment of G. L. c. 276, § 100K (a)," however, "the Legislature provided courts precisely the expungement authority that they lacked when Boe and Moe were decided." Matter of Expungement, 489 Mass. at 78. Indeed, many of the factors enumerated in G. L. c. 276, § 100K (a), describe the

precise errors that led to the creation of the records in those cases; such factors include "false identification of the petitioner," G. L. c. 276, § 100K (a) (1); "demonstrable errors by law enforcement," G. L. c. 276, § 100K (a) (3); and "demonstrable errors by court employees," G. L. c. 276, § 100K (a) (5). Other factors concern closely related errors. See, e.g., G. L. c. 276, § 100K (a) (4) ("demonstrable errors by civilian or expert witnesses"), and G. L. c. 276, § 100K (a) (6) ("demonstrable fraud perpetrated upon the court"). In light of this legislative directive, it would be a mistake to interpret "the best interests of justice" provision as allowing judges wide latitude to deny otherwise-eligible reason-based petitions for expungement. See, e.g., Rosnov v. Molloy, 460 Mass. 474, 482 (2011) (noting that "this court has interpreted 'swift legislative action in the wake' of a contrary judicial ruling to evince legislative intent to clarify its position on the issue" [citation omitted]).

The reason-based expungement provisions, moreover, differ in crucial and illuminating ways from the time-based expungement provisions, which the Legislature also enacted as part of the 2018 criminal justice reform act. See G. L. c. 276, § 100I. Broadly speaking, time-based expungement is available to petitioners who were under the age of twenty-one at the time the record was created, whose offenses or alleged offenses were

"lower level," and for whom at least three and as many as seven years have passed since the successful completion of any sentence imposed as a result of the offense. See Matter of Expungement, 489 Mass. at 69, citing G. L. c. 276, § 100I (a) (1)-(3). Petitioners also are excluded from time-based expungement if their record pertains to any of the twenty categories of offenses enumerated in G. L. c. 276, § 100J. See G. L. c. 276, § 100I (a) (1).

Reason-based expungement, by contrast, requires none of these hurdles; reason-based petitioners may have been any age at the time of the creation of the record, and the records they seek to expunge may be from any time and may pertain to any kind of criminal offense, no matter how serious. The relative lack of constraint on those seeking reason-based expungement evinces that the Legislature conceived of expungement as likely appropriate in those rare cases in which the record exists because of "fraud," "false identification," or "demonstrable error," or pertains to behavior that no longer constitutes a criminal act. Reason-based expungement, therefore, is a pathway for which few will meet the threshold qualifications, but those petitioners who do must be entitled to a strong presumption that their records should be expunged.

We previously have observed that "there are situations where the maintenance of criminal records of a particular

individual cannot be said to serve any valid law enforcement purpose because the events whose happening they reflect are of little or no relevance to the individual's likelihood of participation in future criminal activities or necessary to the achievement of other ancillary goals of the criminal justice system." Police Comm'r of Boston v. Municipal Court of the Dorchester Dist., 374 Mass. 640, 658 (1978). Indeed, the record of a decriminalized offense is the paradigmatic example of such a record; even if a petitioner were again to engage in the same conduct as that which created the record, the petitioner would not have committed a criminal act. And this principle applies with equal force to records whose origins in "demonstrable error," "false identification," or "fraud," see G. L. c. 276, § 100K (a), suggest that the records should not have been created in the first instance.

The context for the development of the other reason-based factors, moreover, as typified by the Legislature's response to Boe and Moe, shares a common purpose with the development of G. L. c. 276, § 100K (a) (2). The fact that the Legislature chose to include expungement of decriminalized records in the reason-based factors indicates that it viewed all six types of records as equally worthy of expungement and intended that they be subject to the same level of judicial discretion. Fundamentally, both types of factors represent an effort to make

expungement more available where the Legislature has determined that the continued existence of those types of records would be unjust. For instance, the cochair of the committee that led the Legislature's criminal justice reform efforts noted, before the final vote on the legislation, that adoption of the act would mean that "the hope for a fairer and more equitable criminal justice system is being realized," highlighting in particular that the legislation would "allow adult expungement including an offense that is no longer a crime" as part of the Legislature's efforts to "let people reenter society." Report on Senate Bill No. 2371 -- An Act relative to criminal justice reform, at 9 (statement of Rep. Claire Cronin, Apr. 2, 2018).

Nonetheless, we recognize that the factors enumerated in G. L. c. 276, § 100K (a), are not self-executing. The Legislature could have made the kinds of records described therein automatically eligible for expungement, as it has done for the sealing of records of decriminalized offenses, see G. L. c. 276, § 100A, yet it did not. The choice to reserve some judicial discretion for reason-based expungement, however, should not be understood as a grant of broad authority. Rather, G. L. c. 276, § 100K (b), provides a mechanism by which judges considering whether to eliminate a criminal record permanently can account for the kind of rare countervailing factors that the Legislature could not anticipate with precision, but that would

warrant retaining a record that either should never have been created or no longer represents criminal behavior. To conclude otherwise would risk resetting the expungement landscape to something similar to that of the era of Boe, 456 Mass. at 348, and Moe, 463 Mass. at 375, a landscape the Legislature clearly has rejected.

K.W. argues that this case presents a situation similar to that in Pon, 469 Mass. at 312. We disagree. The context there differs meaningfully from the inquiry here. In Pon, we established a new standard for judges to apply in determining whether "substantial justice would best be served" by the sealing of a criminal record pursuant to G. L. c. 276, § 100C, and interpreted that phrase "to mean that the defendant must establish that good cause exists for sealing." Pon, supra.[4] In so doing, we noted that the relevant amendments to the sealing statute derived from the Legislature's attempt to balance the public's right of access to information contained in criminal records with the Commonwealth's interest in helping those who have served their criminal sentences to be reintegrated as productive members of society, and the defendant's interest in receiving a fresh start. Id. at 315. As we explained,

[4] See G. L. c. 276, § 100C, second par. ("In any criminal case wherein . . . it appears to the court that substantial justice would best be served, the court shall direct the clerk to seal the records of the proceedings in his [or her] files").

> "judges evaluating a petition for sealing must recognize the interests of the defendant and of the Commonwealth in keeping the information private. These interests include the compelling governmental interests in reducing recidivism, facilitating reintegration, and ensuring self-sufficiency by promoting employment and housing opportunities for former criminal defendants. . . . Where there is persuasive evidence that employers and housing authorities consider criminal history in making decisions, there is now a fully articulated governmental interest in shielding criminal history information from these decision makers where so doing would not cause adverse consequences to the community at large."

Id. The good cause standard announced in Pon, id. at 312, as well as our detailed explanation of the factors that judges should consider in applying that standard, see id. at 316-319, explicitly reflected that particular legislative "balancing." See id. at 315.

This case, however, deals with markedly different types of criminal records. By creating the list of factors in G. L. c. 276, 100K (a), involving fraud, falsity, "demonstrable" errors, and conduct that is no longer criminal, the Legislature itself has identified factors that establish good cause for expungement. Records created as a result of one of these factors have virtually no bearing on whether the petitioner might commit a criminal act in the future, and their value to society therefore is vanishingly small. See Police Comm'r of Boston, 374 Mass. at 658. By contrast, the sealing statute at issue in Pon pertained to any record of a case resulting "in the entry of a nolle prosequi or a dismissal," including records

involving offenses to which the petitioner, like Pon himself, had admitted to having committed. See id. at 297-298. The significant differences between such records and the records described in the reason-based factors therefore demand different considerations, and countenance different degrees of judicial discretion, when judges weigh the merits of a petition filed under G. L. c. 276, § 100K.[5]

This strong presumption in favor of expungement for petitioners who meet the reason-based requirements of G. L. c. 276, § 100K (a), is supported by the legislative history of the 2018 criminal justice reform act. Statements made by legislators around the time the act was adopted indicate that the Legislature conceived of its changes to the expungement scheme as transformational. One legislator described the act as evidence of a "shift in philosophy," reflecting an understanding that "sometimes something someone has done will plague them for the rest of their life," and that this "doesn't help us []or them." Report on Senate Bill No. 2371 -- An Act relative to criminal justice reform, at 3 (statement of Rep. Sheila C. Harrington, Apr. 4, 2018). Another legislator, describing the

[5] Moreover, where a petitioner seeks reason-based expungement of a record that already has been sealed, that record, unlike the records at issue in Pon, is not "subject to a common-law presumption of public access." See Pon, 469 Mass. at 311.

act as "momentous" and as providing "hope for a fairer and more equitable criminal justice system," noted that the act "allow[s] adult expungement[,] including [of] an offense that is no longer a crime." Id. at 9 (statement of Rep. Claire Cronin, Apr. 2, 2018). On the floor of the House later that year, a different legislator observed that adoption of the act meant "that we can finally start living up to our end of the bargain and give every ex-offender a real ability to become a rehabilitated and productive member of society." State House News Service (House Sess.), Dec. 4, 2018 (statement of Rep. Juana Matias). Adhering to the legislative intent to allow this rehabilitation, therefore, requires affording petitioners whose records fall within the enumerated list of reasons in G. L. c. 276, § 100K (a), a strong presumption in favor of expungement.

Given these considerations, we conclude that judges considering whether reason-based expungement is in "the best interests of justice," see G. L. c. 276, § 100K (b), must balance the petitioner's strong presumption in favor of expungement against any significant countervailing concern. Unlike petitioners seeking to seal their records, whose criminal records may still be of some value to society, petitioners who clear the high bar of G. L. c. 276, § 100K (a), need not articulate the particular disadvantages they might confront as a

result of their records remaining accessible to those who have access to sealed records.

If no substantial countervailing concern is raised, judges must grant the petition for expungement; if a concern is raised, judges who chose to deny motions for expungement in response to those concerns must make written findings as to the basis of their decisions. There "must be some mechanism by which an appellate court can meaningfully assess whether a judge acted appropriately in granting or denying . . . relief," because such a mechanism "allows the appellate court to test the judge's reasoning for abuse of discretion." Commonwealth v. Grassie, 476 Mass. 202, 214–215 (2017), S.C., 482 Mass. 1017 (2019). Nothing in the language of G. L. c. 276, § 100K (b) -- which provides simply that "[u]pon an order of expungement, the court shall enter written findings of fact" -- prevents judges from also entering written findings on a denial, as we now conclude they must.

Although we decline to speculate as to what might constitute a substantial countervailing factor, we note that the existence of any other criminal record belonging to a petitioner, regardless of whether that record is sealed, may not factor into judges' analyses regarding whether reason-based expungement is "in the best interests of justice" under G. L. c. 276, § 100K (b). General Laws c. 276, § 100E, defines a

"record" as "public records and court records . . . which concern a person and relate to the nature or disposition of an offense, including, without limitation, an arrest, a criminal court appearance, a [J]uvenile [C]ourt appearance, a pre-trial proceeding, [or] other judicial proceedings" (emphasis added). Thus, under this scheme, expungement is decided on an offense-by-offense basis, and not incident-by-incident. Put another way, a judge may not deny expungement on the ground that, in the judge's view, expunging the requested record would make no practical difference to the defendant, given the existence of other criminal records for that defendant.

Judges, therefore, may not deny an otherwise-eligible reason-based petition on the theory that a petitioner's other records make negligible the benefits of expunging the reason-based record or records in question. What is required for the denial of a petition for reason-based expungement on the grounds of "the best interests of justice" is a countervailing consideration regarding the expungement of that particular record that is sufficient to weigh against the petitioner's strong interests in having that record expunged.

c. Application to K.W.'s petition. Turning to K.W.'s petition, the record suggests no countervailing factors that might weigh against allowing K.W.'s efforts to expunge his marijuana-related records. The Commonwealth has offered none;

to the contrary, it consistently has supported K.W.'s petition for expungement.[6] Nor did the motion judge identify any such factor. These records, one of which pertains to a conviction of a now-decriminalized amount of marijuana, and the other of which pertains to a charge that was dismissed without any conviction or pretrial diversion program, are canonic candidates for expungement.

We note, however, that the motion judge ultimately denied K.W.'s petition on the grounds that, in the judge's words, it was not in the "interest of justice to destroy all records relating to the charges" (emphasis added). We have scant insight into the motion judge's thinking beyond these findings. Nonetheless, we recognize that the motion judge's denial could be read to imply that he interpreted the statute to mean that expungement of K.W.'s marijuana-related records required the destruction of both the 2003 and 2006 records (including the 2006 records pertaining to traffic offenses that are ineligible for expungement) in their entirety. We therefore take this opportunity to clarify this aspect of the expungement scheme.

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[6] In a letter to the Boston Municipal Court concerning whether K.W. properly had filed his initial petition for expungement, the commissioner's deputy legal counsel wrote that the commissioner did "not take a position as to whether the court should allow the petition to expunge in the interest of justice."

As discussed supra, under this statutory scheme expungement is done record-by-record, not event-by-event. Moreover, the expungement scheme explicitly permits expungement via redaction. General Laws c. 276, § 100E, which contains definitions for key terms used in G. L. c. 276, §§ 100E through 100U, defines "expungement" as "the permanent erasure or destruction of a record so that the record is no longer accessible to, or maintained by, the court, any criminal justice agencies or any other state agency, municipal agency or county agency." That definition also states that "[i]f the record contains information on a person other than the petitioner, it may be maintained with all identifying information of the petitioner permanently obliterated or erased." Id.

Judges considering expungement of a record containing information on multiple individuals, therefore, need not be concerned about the effect of allowing expungement on information pertaining to anyone besides the petitioner. Furthermore, the allowance of a petition for expungement also need not mean that law enforcement officers are unable to access other information in the record, beyond the petitioner's identifying information, that officers may need for an ongoing or future investigation. The expungement of records featuring multiple defendants differs, of course, from the expungement of records that may continue to have investigative value.

Nonetheless, G. L. c. 276, § 100E, makes clear that the Legislature anticipated that effectuating the expungement scheme sometimes would require redacting parts of some records rather than destroying those records entirely. Thus, expungement by redaction, done for the purposes of preserving the future investigative value of other parts of a record, is permissible under the statute.

If, therefore, the Commonwealth were concerned that the destruction of a record would hinder an ongoing law enforcement investigation, it could ask that the judge, in granting a petition for reason-based expungement, do so on the condition that all identifying information related to the petitioner be fully and permanently redacted, while the rest of the record would be left unchanged and would remain accessible to law enforcement. This approach might be necessary, for example, in situations in which a petitioner's record was created by an act of fraud, and law enforcement officials wanted to preserve the record for purposes of investigating or prosecuting the person who perpetrated the fraud on the petitioner. Thus, the expungement of one record has no effect on other records a petitioner may have, and judges may, in appropriate situations, expunge a record by permanently redacting a petitioner's identifying information, so as to preserve the investigative value of another part of a record.

3. Conclusion. The order denying K.W.'s petition for expungement is vacated and set aside, and the matter is remanded to the Boston Municipal Court, where an order shall enter allowing the petition for expungement and for further proceedings consistent with this opinion.

So ordered.