GREATER BOSTON
LEGAL SERVICES
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CRIMINAL RECORD SEALING ALERT FOR ADVOCATES
SJC LOWERS LEGAL STANDARD FOR SEALING IN COMMONWEALTH v. PON

Greater Boston Legal Services won an appeal on August 15, 2014 where the Supreme Judicial Court (SJC) lowered the legal standard for sealing of cases that ended in a dismissal or nolle prosequi (the D.A. dropped the case) by a court. The SJC also listed factors that favor sealing that judges should consider in deciding whether to seal cases.

THE NEW STANDARD

Commonwealth v. Pon[1] makes it easier to seal records. Under the new standard, people only have to show "good cause" to seal their records. This is a lower standard than the past onerous standard that required former defendants to show that the value of sealing the records clearly outweighed the First Amendment protected right of the public to have access to the record.

The Pon case is a victory for many individuals were unduly burdened by an unreasonably high standard when requesting that a court seal their records. The new "good cause" standard will provide countless people with a chance to seal their records, get jobs, support their children, and live productive lives without the lifetime scarlet letter of CORI. The result is extraordinary.[2]

RE-FILING IF A JUDGE PREVIOUSLY DENIED THE PETITION TO SEAL RECORDS

If a judge denied a person's petition to seal records, he or she can file a new petition and ask a judge to seal the cases under the new law.

FACTORS THAT JUDGES MUST NOW CONSIDER

The SJC gave guidance to judges as to how they should approach sealing cases and also listed factors that favor sealing of records. This included, but was not limited to the following:

1. The Commonwealth's "compelling governmental interests in reducing recidivism, facilitating reintegration, and ensuring self-sufficiency by promoting employment and housing opportunities for former criminal defendants."

2. There is a compelling state interest that parents are able to support their children.

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[1] The citation is not yet available. A copy of the decision is posted on the Masslegalservices website under CORI.

[2] Greater Boston Legal Services thanks Rashaan Hall from the Lawyers Committee for Civil Rights and Rebecca Jacobstein from the Committee for Public Counsel (CPCS) for filing amici curiae briefs in support of our client.

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3. Judges may take judicial notice that the existence of a criminal record, *regardless of what it contains*, can present barriers to housing and employment opportunities.

4. Petitioners no longer have to prove a "risk of specific harm" or link a particular charge on their record to a specific harm. "It is unrealistic . . . to require a defendant to prove causation . . . and instead, we entrust the assessment of a *plausible* relationship between CORI availability and the alleged adversity . . . to the sound discretion of the judge."

5. Petitioners can meet the burden of proof if there is a present or foreseeable "disadvantage" that stems from the CORI that is credible. Factors to consider also include, but are not limited to:

- denial of employment or risk of unemployment/underemployment related to CORI;
- housing problems, homelessness or risk of homelessness related to CORI;
- use of CORI by employers in one's present occupation or desired occupation;
- potential for "reduced opportunities for economic or professional advancement" due to CORI availability;
- receipt of public assistance for oneself and/or one's family despite efforts to get a job;
- denial of or impeded ability for participation in volunteer or community activities;
- amount of time since the offense or arrest (a greater amount of time favors sealing);
- sobriety and rehabilitation efforts of the petitioner;
- efforts at self-improvement by the petitioner;
- efforts to get jobs, volunteer work or civic and community work by the petitioner;
- successful completion of probation;
- lack of further contact with the criminal justice system;
- other accomplishments or evidence of rehabilitation after the date of the offense;
- circumstances at the time of the offense (*e.g.* youth may be a mitigating factor); and
- stigma or stereotypes attached to the particular offense if the defendant will not pose an additional safety threat to the community.

5. This list of potential factors is not exhaustive. Factors also "should be tailored appropriately to the particular circumstances of each case." Pon, footnote 27.

6. A prior plea to sufficient facts for a finding of guilt before a dismissal does not outweigh sufficient evidence of rehabilitation and disadvantages that may be remedied from sealing.

7. The judge must consider the nature of and reasons for the particular disposition. For example, the reason for dismissal.

8. "It is no longer necessary . . . to consider the value to law enforcement of keeping the record open to the public." Pon, footnote 31. The SJC noted that Section 100D was added to Chapter 276 as a result of CORI reform which gives law enforcement access to sealed records.

Stay Tuned

We will post practice tips and more information on the masslegalservices and masslegalhelp websites in the future. If you have questions, contact Pauline Quirion at the GBLS CORI & Re-entry Project at 617-603-1554 or pquirion@gbls.org