VIRGINIA ACTS OF ASSEMBLY -- 2007 SESSION

CHAPTER 465

An Act to amend and reenact §§ 19.2-327.5, 19.2-327.13, and 19.2-392.2 of the Code of Virginia, relating to expungement of police and court records.

[H 2076]

Approved March 19, 2007

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-327.5, 19.2-327.13, and 19.2-392.2 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-327.5. Relief under writ.

Upon consideration of the petition, the response by the Commonwealth, previous records of the case, the record of any hearing held under this chapter and the record of any hearings held pursuant to § 19.2-327.1, and if applicable, any findings certified from the circuit court pursuant to § 19.2-327.4, the Court shall either dismiss the petition for failure to state a claim or assert grounds upon which relief shall be granted; or upon a hearing the Court shall (i) dismiss the petition for failure to establish allegations sufficient to justify the issuance of the writ, or (ii) only upon a finding of clear and convincing evidence that the petitioner has proven all of the allegations contained in clauses (iv) through (ix) of subsection A of § 19.2-327.3, and upon a finding that no rational trier of fact could have found proof of guilt beyond a reasonable doubt, grant the writ, and vacate the conviction, or in the event that the Court finds that no rational trier of fact could have found sufficient evidence beyond a reasonable doubt as to one or more elements of the offense for which the petitioner was convicted, but the Court finds that there remains in the original trial record evidence sufficient to find the petitioner guilty beyond a reasonable doubt of a lesser included offense, the court shall modify the conviction accordingly and remand the case to the circuit court for resentencing. The burden of proof in a proceeding brought pursuant to this chapter shall be upon the convicted person seeking relief. *If a writ vacating a conviction is granted, the Court shall forward a copy of the writ to the circuit court, where an order of expungement shall be immediately granted.*

§ 19.2-327.13. Relief under writ.

Upon consideration of the petition, the response by the Commonwealth, previous records of the case, the record of any hearing held under this chapter and, if applicable, any findings certified from the circuit court pursuant to an order issued under this chapter, the Court of Appeals, if it has not already summarily dismissed the petition, shall either dismiss the petition for failure to state a claim or assert grounds upon which relief shall be granted; or the Court shall (i) dismiss the petition for failure to establish previously unknown or unavailable evidence sufficient to justify the issuance of the writ, or (ii) only upon a finding that the petitioner has proven by clear and convincing evidence all of the allegations contained in clauses (iv) through (viii) of subsection A of § 19.2-327.11, and upon a finding that no rational trier of fact could have found proof of guilt beyond a reasonable doubt, grant the writ, and vacate the conviction, or in the event that the Court finds that no rational trier of fact could have found sufficient evidence beyond a reasonable doubt as to one or more elements of the offense for which the petitioner was convicted, but the Court finds that there remains in the original trial record evidence sufficient to find the petitioner guilty beyond a reasonable doubt of a lesser included offense, the court shall modify the order of conviction accordingly and remand the case to the circuit court for resentencing. The burden of proof in a proceeding brought pursuant to this chapter shall be upon the convicted person seeking relief. *If a writ vacating a conviction is granted, and no appeal is made to the Supreme Court, or the Supreme Court denies the Commonwealth's petition for appeal or upholds the decision of the Court of Appeals to grant the writ, the Court of Appeals shall forward a copy of the writ to the circuit court, where an order of expungement shall be immediately granted.*

§ 19.2-392.2. Expungement of police and court records.

A. If a person is charged with the commission of a crime 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, or

3. Is granted an absolute pardon for the commission of a crime for which he has been unjustly convicted, 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.

B. If any person whose name or other identification has been used without his consent or authorization by another person who has been charged or arrested using such name or identification, he may file a petition with the court disposing of the charge for relief pursuant to this section.

C. The petition with a copy of the warrant or indictment if reasonably available shall be filed in the

circuit court of the county or city in which the case was disposed of by acquittal or being otherwise dismissed and shall contain, except where not reasonably available, the date of arrest and the name of the arresting agency. Where this information is not reasonably available, the petition shall state the reason for such unavailability. The petition shall further state the specific criminal charge to be expunged, the date of final disposition of the charge as set forth in the petition, the petitioner's date of birth, and the full name used by the petitioner at the time of arrest.

D. A copy of the petition shall be served on the attorney for the Commonwealth of the city or county in which the petition is filed. The attorney for the Commonwealth may file an objection or answer to the petition within twenty-one days after it is served on him.

E. The petitioner shall obtain from a law-enforcement agency one complete set of the petitioner's fingerprints and shall provide that agency with a copy of the petition for expungement. The law-enforcement agency shall submit the set of fingerprints to the Central Criminal Records Exchange (CCRE) with a copy of the petition for expungement attached. The CCRE shall forward under seal to the court a copy of the petitioner's criminal history, a copy of the source documents that resulted in the CCRE entry that the petitioner wishes to expunge, and the set of fingerprints. Upon completion of the hearing, the court shall return the fingerprint card to the petitioner.

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, 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.

G. The Commonwealth shall be made party defendant to the proceeding. Any party aggrieved by the decision of the court may appeal, as provided by law in civil cases.

H. Notwithstanding any other provision of this section, when the charge is dismissed because the court finds that the person arrested or charged is not the person named in the summons, warrant, indictment or presentment, the court dismissing the charge shall, upon motion of the person improperly arrested or charged, enter an order requiring expungement of the police and court records relating to the charge. Such order shall contain a statement that the dismissal and expungement are ordered pursuant to this subsection. Upon the entry of such order, it shall be treated as provided in subsection I hereof.

I. Upon the entry of an order of expungement, the clerk of the court shall cause a copy of such order to be forwarded to the Department of State Police, which shall, pursuant to rules and regulations adopted pursuant to § 9.1-134, direct the manner by which the appropriate expungement or removal of such records shall be effected.

J. Costs shall be as provided by § 17.1-275, but shall not be recoverable against the Commonwealth.

K. Upon receiving a copy of a writ vacating a conviction pursuant to § 19.2-327.5 or 19.2-327.13, the court shall enter an order requiring expungement of the police and court records relating to the charge and conviction. Such order shall contain a statement that the dismissal and expungement are ordered pursuant to this subsection. Upon the entry of the order, it shall be treated as provided in subsection I hereof.