[J-60-2010]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

CASTILLE, C.J., SAYLOR, EAKIN, BAER, TODD, McCAFFERY, ORIE MELVIN, JJ.

COMMONWEALTH OF PENNSYLVANIA,	:	No. 17 EAP 2010
	:	
Appellant	:	Appeal from the Judgment of the Superior
	:	Court entered on 8/10/2009 at 1101 EDA
	:	2008 reversing the Order entered on
v.	:	3/5/2008 and remanding to the Court of
	:	Common Pleas, Criminal Division at Nos.
	:	CP-51-CR-0603191-1986 and CP-51-CR-
VINCENT A. MOTO,	:	0519001-1986
	:	
Appellee	:	980 A.2d 131 (Pa.Super. 2009)
	:	
	:	ARGUED: September 14, 2010

OPINION

MR. JUSTICE McCAFFERY **DECIDED: May 26, 2011**

The Commonwealth appeals from the order of the Superior Court reversing the trial court's denial of the petition filed by Vincent A. Moto ("Appellee") to expunge his criminal record. Because we hold that the Superior Court erred in reversing the trial court, we now reverse the order of the Superior Court.

In 1987, a jury convicted Appellee of rape, involuntary deviate sexual intercourse, robbery, and criminal conspiracy, following which the court imposed a sentence of 12 to 24 years' imprisonment. These convictions and sentence arose from the following circumstances. Appellee was arrested and charged with the above offenses after the victim, L.Y., saw Appellee walking down the street and recognized him as one of two men who had sexually assaulted and robbed her several months before. At Appellee's trial, L.Y.

testified that, while she had been walking home one evening in December 1985, Appellee and another man had forced her into a car at gunpoint and had raped her repeatedly in the car. L.Y. testified further that she had had the opportunity to look closely at her assailants as the assault went on for more than an hour in a well-lit area, and she was unwavering in her identification of Appellee as one of the men who had raped and robbed her. Police artists had made a composite sketch of Appellee and the other assailant based on L.Y.'s descriptions of them; the sketch of Appellee was shown to the jury. In addition, L.Y. testified that after Appellee's arrest and while he was awaiting trial, the other assailant had stopped her at gunpoint on the street, and had threatened her and her children with harm if she were to testify against "Vincent." In defense, Appellee claimed mistaken identity and proffered an alibi, which the jury rejected, finding him guilty of all counts.

In 1992, Appellee filed a Post Conviction Relief Act[1] ("PCRA") petition seeking DNA testing of the panties worn by L.Y. on the night of the assault. The petition was granted, the testing was conducted, and it revealed the presence of DNA from three different men, none of whom could have been Appellee. Based on these findings, in 1995, the PCRA court vacated Appellee's convictions and granted him a new trial. In 1996, the Commonwealth withdrew the charges against Appellee, and an order of nolle prosse was entered. The Commonwealth explained that it could not meet its burden of proof at a second trial because it was unable to locate the victim, who had moved from the area after Appellee's 1987 trial.[2]

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[1] 42 Pa.C.S. §§ 9541-46.

[2] Appellee has maintained his innocence of the sexual assault of L.Y. throughout the various proceedings. His petition to expunge represents that he was "exonerated on the basis of DNA evidence" and that DNA testing "conclusively established that [he] could not have committed the crimes for which he was convicted." Appellee's Petition to Expunge, dated 3/5/08, at 1, 2. In Appellee's Brief at 19, he refers to the DNA results as "exculpatory DNA evidence." However, it is important to emphasize that the PCRA court did **not** hold or (continued…)

Years later, in 2007, Appellee filed a petition to expunge all records of his arrest, trial, conviction, and sentence for offenses related to the sexual assault and robbery of L.Y. At an expungement hearing on March 5, 2008, the prosecutor summarized the evidence presented against Appellee at his 1987 trial, evidence to which Appellee stipulated as having been presented. The prosecutor then called the assistant district attorney who had prosecuted the 1987 case against Appellee, to the witness stand. He testified that L.Y.'s account of the assault was detailed and consistent and her identification of Appellee was convincing, but that the threats against her and her children had frightened her and caused her to move from the neighborhood. This witness opined that the DNA evidence did not exculpate Appellee because he may not have ejaculated during the rape. Next, the Commonwealth called the assistant district attorney who was the assistant chief of the Family Violence and Sexual Assault Unit in 1996 when Appellee's case was nolle prossed. He testified that the case was nolle prossed because of an inability to locate the victim, but stated that if she had been located, the Commonwealth would have retried Appellee. He also opined that the DNA results did not exonerate Appellee, and offered potential

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(…continued)
conclude that the DNA results exonerated Appellee. Rather, the PCRA court found that the DNA results raised a jury question that should have been considered along with the other relevant evidence, and so the court granted Appellee a new trial.

The PCRA court's reasoning is consistent with that in other sexual assault cases from the Superior Court, which has held that the mere failure of DNA testing to show a match between a semen stain on the victim's underwear and the defendant is not per se exculpatory. In Commonwealth v. Wall, 953 A.2d 581 (Pa.Super. 2008), the defendant-appellant had been convicted of the rape of a 12-year old girl even though DNA testing of a sperm sample found on her underwear excluded him as the depositor of the sperm. On appeal, he claimed that his conviction was against the weight of the evidence, but the Superior Court rejected his claim, concluding that, while the DNA evidence established a plausible alternative theory contradicting the victim's testimony, "it did not require the conclusion that [the appellant] did not rape the victim." Commonwealth v. Burns, 988 A.2d 684, 694 (Pa.Super. 2009) (en banc) (discussing Wall, supra).

explanations for why the DNA on the victim's underwear did not match Appellee's DNA, i.e., Appellee may not have ejaculated during the rape, and the DNA patterns might reflect prior sexual activity with other partners, particularly since biological stains can remain on clothing for many years, even after laundering. Appellee called only a single witness, a private investigator, who testified that, with a brief search of public databases, he had found several addresses where L.Y. was reported to have lived from 1995-1997, which was close to the time when the Commonwealth claimed it could not locate her.

The trial court denied Appellee's petition to expunge, concluding that the Commonwealth had justified the retention of Appellee's arrest record. Trial Court Opinion, dated 6/30/08 (hereinafter "Trial Court Opinion"), at 4. The trial court cited the strength of the Commonwealth's case against Appellee; the credibility of its witnesses; the fact that Appellee had not been found not guilty; and the public's interest in retaining the arrest record of an individual convicted of a serious crime, such as rape, who is subsequently granted a new trial due to DNA evidence. Id. at 4-5.

Appellee appealed to the Superior Court, where a divided panel held that the trial court had abused its discretion and remanded with instructions to expunge Appellee's record. Commonwealth v. V.A.M., 980 A.2d 131 (Pa.Super. 2009). The Superior Court concluded that the Commonwealth had not borne its burden of proof, and, in addition, questioned whether the trial court was in possession of information of record required to conduct an appropriate evaluation of Appellee's petition. Id. at 137.

We accepted the Commonwealth's petition for allowance of review on the following question:

> Did Superior Court err in a matter of first impression where a divided panel in a published opinion: (1) reversed the Common Pleas Court and ordered that [Appellee's] criminal record for rape, involuntary deviate sexual intercourse, conspiracy, and related charges be destroyed; (2) denied that the Common Pleas Court had applied the legal standard set forth in its Rule

> 1925(a) opinion; and (3) ordered expungement on the extraordinary rationale that it did not know whether the Common Pleas Court was aware of the evidence of record.

Commonwealth v. V.A.M., 991 A.2d 884 (Pa. 2010).

There is a long-standing right in this Commonwealth to petition for expungement of a criminal arrest record, a right that is an adjunct of due process. Carlacci v. Mazaleski, 798 A.2d 186, 188 (Pa. 2002). The decision to grant or deny a petition to expunge rests with the sound discretion of the trial court, and we review that court's decision for abuse of discretion. Commonwealth v. Waughtel, 999 A.2d 623, 624-25 (Pa.Super. 2010); Commonwealth v. A.M.R., 887 A.2d 1266, 1268 (Pa.Super. 2005).

Judicial analysis and evaluation of a petition to expunge depend upon the manner of disposition of the charges against the petitioner. When an individual has been convicted of the offenses charged, then expungement of criminal history records may be granted only under very limited circumstances that are set forth by statute. 18 Pa.C.S. § 9122; Hunt v. Pennsylvania State Police, 983 A.2d 627, 633 (Pa. 2009). When a petitioner has been tried and acquitted of the offenses charged, we have held that the petitioner is "automatically entitled to the expungement of his arrest record." Commonwealth v. D.M., 695 A.2d 770, 772-73 (Pa. 1997). When a prosecution has been terminated without conviction or acquittal, for reasons such as nolle prosse of the charges or the defendant's successful completion of an accelerated rehabilitative disposition program ("ARD"), then this Court has required the trial court to "balance the individual's right to be free from the harm attendant to maintenance of the arrest record against the Commonwealth's interest in preserving such records." Commonwealth v. Wexler, 431 A.2d 777, 879 (Pa. 1981); D.M., supra at 772 ("We reiterate the authority of Wexler and the balancing test approved therein as the means of deciding petitions to expunge the records of all arrests which are terminated without convictions except in cases of acquittals.").

To aid courts in applying the balancing test for expungement, we also adopted in Wexler the following non-exhaustive list of factors that the court should consider:

> These factors include [1] the strength of the Commonwealth's case against the petitioner, [2] the reasons the Commonwealth gives for wishing to retain the records, [3] the petitioner's age, criminal record, and employment history, [4] the length of time that has elapsed between the arrest and the petition to expunge, and [5] the specific adverse consequences the petitioner may endure should expunction be denied.

Wexler, supra at 879 (citation omitted).

We have emphasized that in applying the balancing test and considering the above factors, the court must analyze the particular, specific facts of the case before it. Id. at 880-81. The mere assertion by the Commonwealth of a general interest in maintaining accurate records of those accused of a crime does not outweigh an individual's specific, substantial interest in clearing his or her record. Id. at 881-82.

In addition, Wexler explicitly placed the burden of proof on the Commonwealth. The case against the Wexler appellants had been nolle prossed after the Commonwealth had admitted that it would be unable to sustain its burden of proof at trial. Wexler, supra at 880. Nonetheless, the trial court denied the appellants' petition to expunge their arrest records, and the Superior Court affirmed. This Court reversed and ordered expungement, concluding that the Commonwealth had not proffered "compelling evidence" to justify the retention of the appellants' arrest records. Id. at 881. Importantly, in general terms, we held that when the Commonwealth admits that it is unable to bear its burden of proof beyond a reasonable doubt at trial, then "the Commonwealth must bear the burden of justifying why the arrest record should not be expunged." Id. at 880.

Just a few months after Wexler was decided, we extended its rationale, balancing test, and non-exhaustive list of relevant factors to order expungement of the arrest record

of an offender who had successfully completed an ARD program. Commonwealth v. Armstrong, 434 A.2d 1205 (Pa. 1981). In Armstrong, we emphasized the policy undergirding ARD, i.e., to provide first-time offenders a fresh start. Id. at 1208.

Following this Court's decisions in Armstrong and Wexler, the Superior Court considered petitions to expunge under a number of diverse circumstances. For example, the Superior Court held that expungement of an arrest record was proper, based on application of the Wexler factors, when the petitioner had agreed to resign his school employment in consideration of the Commonwealth's dropping of the charges against him, which were related to an alleged library theft. Commonwealth v. A.M.R., 887 A.2d 1266, 1267-70 (Pa.Super. 2005). The court emphasized the petitioner's altruistic motivation, the lack of any evidence that charges would ever be reinstated, and the immediate deleterious effects of the record of petitioner's arrest on his employment possibilities. Id. at 1271. In Rambo v. Commissioner of Police, 447 A.2d 279 (Pa.Super. 1982), the Superior Court reversed the trial court and ordered expungement of a petitioner's arrest record after his conviction on drug-related charges was unanimously overturned by this Court based on insufficient evidence. The Superior Court emphasized that the effect of our ruling was to acquit the petitioner, and thus there was no reason to retain his arrest record. Id. at 281-82.

In other circumstances, the Superior Court has concluded that a petitioner's arrest record should be retained. For example, the Superior Court affirmed a trial court's order denying expungement of domestic assault charges, at least temporarily, in a case where the Commonwealth had dismissed the charges due to the wife-complainant's refusal to testify against the husband-defendant. Commonwealth v.Drummond, 694 A.2d 1111 (Pa.Super. 1997). Applying the Wexler factors, the Superior Court recognized the Commonwealth's strong case against the husband-defendant; the severity of the wife-complainant's injuries and her complaints of a continuing pattern of abuse; and the short

time period, i.e., just over a year, between the husband-defendant's arrest and his petition to expunge. Id. at 1113-14. Similarly, the Superior Court affirmed the denial of a petition to expunge in Commonwealth v. Persia, 673 A.2d 969 (Pa.Super. 1996), a case in which the Commonwealth nolle prossed charges related to sexual molestation of a minor, because the minor was unable to testify in court against the alleged offender.

In the instant case, the parties, the trial court, and the Superior Court appear to agree that the balancing test set forth in Wexler applies and should control the outcome of the instant case. However, there is wide disagreement concerning how the Wexler factors should be applied to the facts and circumstances here presented. The Commonwealth argues that the trial court properly applied the Wexler balancing test and reasonably afforded great weight to the first Wexler factor, i.e., the strength of the Commonwealth's case against Appellee, as presented during his 1987 trial. In direct contrast, Appellee asserts that the trial court's reliance on evidence presented at his 1987 trial to assess the strength of the Commonwealth's current case against him was improper because he had been granted a new trial and thus was presumed to be innocent. In addition, in agreement with the Superior Court, Appellee contends that the trial court's Wexler analysis was flawed because it did not include an analysis of the additional specified factors.

We are unable to agree with Appellee's assertions or the Superior Court's determinations of trial court error, as we explain in detail infra. The Superior Court's conclusion that the trial court failed to consider all of the Wexler factors not only lacks support in the record, but also is inconsistent with legal presumptions of this Commonwealth. V.A.M., 980 A.2d at 137. In its opinion, the trial court clearly and correctly explained the Wexler balancing test, listed the prescribed factors, and stated that it had "conducted … the balancing test set forth in Wexler." Trial Court Opinion at 3-4. The trial court then expressly stated that, in reaching its decision that the Commonwealth had met its burden to justify retention of Appellee's arrest record, the court had "placed great weight

in the strength of the Commonwealth's case against [Appellee]." Id. at 4. The trial court further explained that Appellee was never found not guilty, and was not retried after his conviction was vacated because the Commonwealth could not locate the victim. Id. at 5. The trial court also expressly found the testimony of the two assistant district attorneys "to be entirely reasonable and credible," and concluded that the DNA results did not establish Appellee's innocence of the rape. Id. Thus, the trial court explained in considerable detail its reasons for denying Appellee's petition to expunge, even though it did not specifically and individually address each and every Wexler factor.

In this Commonwealth, there is a presumption that when a court has facts in its possession, it will apply them. Commonwealth v. Jackson, 722 A.2d 1030, 1034 (Pa. 1999) (articulating this presumption in the context of an adult certification matter); Commonwealth v. Devers, 546 A.2d 12, 18 (Pa. 1988) (articulating this presumption in the context of a sentencing court's decision). Furthermore, in the absence of evidence to the contrary, we presume that the trial court carefully considered the **entire** record, and we do not require the court to prove that it did so by citing to each fact and circumstance of the case. See Jackson, supra at 1034. In Jackson, where the issue was the adequacy of the juvenile court's explanation of its decision to transfer the appellee's case to the adult criminal division for trial, we explained this principle as follows: "A juvenile court must consider all of the factors set forth in [the relevant section] of the Juvenile Act, but it need not address, seriatim, the applicability and importance of each factor and fact in reaching its final determination." Id. What a trial court **must** do is to explain the rationale for its decision in legal and factual detail sufficient to allow meaningful review. See id. at 1036.

Here, the trial court expressly made clear both its correct understanding of Wexler's balancing test, as well as its reasons for denying Appellee's petition. See supra (citing Trial Court Opinion). The record reveals information concerning each of the Wexler factors. That the trial court opinion did not explicitly discuss each and every one of the Wexler

factors is of no moment, and certainly does not lead to the inference that the trial court did not thoroughly consider all the factors and did not properly apply the balancing test. Accordingly, we hold that the Superior Court erred in concluding that the trial court failed to address all the Wexler factors and thus abused its discretion.[3]

As mentioned above, the trial court denied Appellee's petition to expunge based primarily on the strength of the original 1987 case against him and the inability of the DNA evidence to exonerate him, as set forth by the unrefuted testimony of two assistant district attorneys, both of whom the court found credible and reasonable. See Trial Court Opinion at 2-5. The trial court also credited the Commonwealth's evidence that it nolle prossed Appellee's case because of an inability to locate the victim. Id. at 5. The Superior Court,

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[3] The Superior Court also stated that it was "not able to confirm that the [trial] court was in possession of [ ] information relating to the other Wexler factors," while at the same time acknowledging that the information was in the record. V.A.M., 980 A.2d at 137. We do not understand this comment, and we are unable to discern the nature or extent of the information to which the Superior Court is referring. In dissenting from the Superior Court panel's holding, Judge Shogan concluded that the trial court did indeed have sufficient information to conduct a Wexler balancing test. V.A.M., 980 A.2d at 138 (dissenting opinion, Shogan, J.).

The Commonwealth indicates that, for unknown reasons, certain information, including Appellee's criminal history, was omitted from the record certified to the Superior Court on appeal. Commonwealth's Brief at 25 n.11. It is undisputed that defense counsel provided the trial court with a summary chart of Appellee's arrest history, including the date and disposition of each arrest. Notes of Testimony ("N.T."), Expungement Hearing, 3/5/08, at 62. The Commonwealth filed a motion to correct an omission in the record on appeal to this Court, seeking to include, inter alia, the summary chart of Appellee's arrest history. Appellee did not object to inclusion of this summary chart in the certified record, and we granted the Commonwealth's motion. Whether the Superior Court was specifically referring to this summary chart in its comment above, we do not know.

for unexplained reasons, declined to comment on the trial court's finding that the Commonwealth's case against Appellee was strong. V.A.M., 980 A.2d at 137.[4]

Appellee contends that it was improper for the trial court to assess the strength of the Commonwealth's case against him using evidence presented at his 1987 trial. Appellee asserts that, in 1995, when the trial court vacated Appellee's convictions and granted him a new trial, his 1987 trial was rendered a "legal nullity" and he was "again cloaked in the presumption of innocence." Appellee's Brief at 14, 17. Thus, Appellee argues, the strength of the Commonwealth's case for purposes of his petition to expunge the nolle prossed charges against him can be assessed **only** on the basis of evidence that was available at the time he was granted a new trial. Appellee's Brief at 16. Because the Commonwealth could not find the victim and there were no other witnesses to testify as to Appellee's involvement in the crime, Appellee maintains that the case against him was not just weak, but was non-existent, at the time he was granted a new trial -- the only relevant time, in Appellee's view. Id. at 16-17.

To support this argument, Appellee cites Commonwealth v. Miller, 473 A.2d 193 (Pa.Super. 1984), in which the Superior Court ordered the trial court to expunge the appellant's arrest for burglary. See Appellee's Brief at 14, 20. The appellant had pled guilty to the burglary charge on the advice of his counsel; however, a federal district court concluded that defense counsel had been ineffective for failing to disclose that he also represented the victim of the burglary in an unrelated civil matter, and so granted the appellant a new trial. The Commonwealth never retried the appellant on the burglary

[4] We do not understand the reason for the Superior Court's failure to address this aspect of the case. We note, however, that the propriety of the Superior Court's failure to comment is highly questionable given that the strength of the Commonwealth's case was a determining factor in the trial court's denial of Appellee's petition to expunge, and that this consideration was primary among the Wexler factors.

charge. Years later, the appellant sought expungement of the burglary arrest from his criminal record. The trial court denied his petition to expunge, but the Superior Court reversed, reasoning that "a guilty plea entered by a defendant who has not been afforded the effective assistance of counsel is a nullity." Id. at 194.

Appellee's attempt to extend Miller's holding to his own circumstances is unavailing because he reads Miller too broadly. In Miller, the only evidence of record supporting the appellant's guilt was his guilty plea, which he had entered on the advice of counsel.[5] By holding that defense counsel's undisclosed conflict of interest made the guilty plea a "nullity," the Superior Court in Miller rendered completely infirm the **only** evidence of record supporting the appellant's guilt. Hence, during the expungement proceedings, when the court sought to assess the strength of the Commonwealth's case against the appellant, there was absolutely no evidence of record on which it could rely. Accordingly, analysis of the first Wexler factor militated strongly in favor of expungement. Miller, supra at 195.

In contrast, here, the DNA results did not render infirm or reduce to a "nullity" **any** of the evidence presented at Appellee's 1987 trial for the sexual assault of L.Y. Rather, the DNA results would have constituted another item of evidence for the jury, which item necessarily would have rested alongside the other evidence proffered and other questions raised for that body's deliberation. It would have been for the jury to decide whether the failure to detect Appellee's DNA was more compelling than the victim's testimony, or, alternatively, whether the DNA results were not determinative in light of the other evidence implicating Appellee and the variety of possible explanations for the failure to detect his DNA. Of course, Appellee is correct that, had he been retried, he would have entered that proceeding "cloaked in the presumption of innocence," and there he would have remained

[5] In Miller, the appellant had also signed a confession to the burglary, but this was not a part of the record and therefore it was not considered. Miller, 473 A.2d at 193-94.

unless he were convicted a second time. Appellee's Brief at 17. But an expungement hearing is not the same as a new trial. The Superior Court has recognized that an expungement hearing is not a criminal proceeding and the relief sought is civil in nature. Commonwealth v. Bailey, 419 A.2d 1351, 1352 (Pa.Super. 1980). An expungement hearing is characterized by its own inquiry and its own standards, which are distinct from those of a criminal trial.

We cannot agree that the evidence presented at Appellee's 1987 trial was irrelevant to or improperly considered during his expungement proceedings, given the circumstances presented here, i.e., where Appellee was tried and convicted by jury; where subsequently analyzed DNA evidence led to the grant of a new trial, but did not render infirm the evidence presented at the original trial, and did not exonerate Appellee; and where a second trial was precluded by the Commonwealth's inability to locate the victim many years after the offense because she had moved.

In sum, the trial court in this case held an expungement hearing, applied the proper standard according to prevailing law in Wexler to the facts of the case, balanced the relevant factors, and then denied Appellee's petition to expunge. Given the circumstances of this case and the record before us, we cannot conclude that the court abused its discretion.[6] Accordingly, we hold that the Superior Court erred in reversing the trial court's

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[6] Appellee contends that the trial court incorrectly interpreted and applied the second Wexler factor, i.e., the Commonwealth's reasons for wishing to retain the criminal records, and that the Superior Court properly determined that the trial court had abused its discretion in this regard. Appellee's Brief at 27-30 (citing V.A.M., 980 A.2d at 137).

In Wexler, we explained that the Commonwealth's "mere assertion of a **general interest** in maintaining accurate records of those accused of crime" would not suffice to convince the court of the necessity to retain the arrest records of any particular individual. Wexler, 431 A.2d at 880-81 (emphasis added). Rather, the special facts and particular circumstances of each individual case must be cited and analyzed to establish why the Commonwealth wishes to retain that specific individual's records. There is no dispute between the parties (continued…)

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here that the Commonwealth's assertion of a general interest in maintaining accurate criminal records is not sufficient to justify retention of the records.

We acknowledge that, as Appellee asserts, some of the trial court language, if viewed in isolation, may suggest that the trial court was indeed giving weight to the Commonwealth's "general interest" in maintaining accurate criminal records. For example, the trial court wrote that "the Commonwealth has a great interest in retaining the arrest record stemming from crimes as serious as rape." Trial Court Opinion at 5. However, we do not interpret this sentence in isolation, but rather view it in the context of the rest of the paragraph in which it was found, which clarifies that the trial court did analyze the specific facts and circumstances of Appellee's case.

Immediately after the sentence quoted above, the trial court discussed the particular facts and circumstances of Appellee's case as follows: "The general public should have knowledge of the arrest of a person for rape where they [sic] are convicted, and then later are granted a new trial due to DNA evidence." Id. This sentence does not assert a "general interest," but rather conveys concern for individuals such as Appellee who were convicted of rape and subsequently granted a new trial as a result of new DNA evidence that did not per se exonerate them. Finally, the last sentence of the paragraph makes very clear that the trial court was indeed contemplating Appellee's specific circumstances: "Specifically in this case, a nolle prosse of [Appellee's] charges, ten years after the incident occurred, because the victim could not be found, is not enough to justify granting the expungement of [Appellee's] arrest record for that crime." Id.

While the trial court could have articulated its rationale more artfully, we cannot conclude that the trial court's legal understanding or practical application of Wexler suggests deficiencies constituting an abuse of discretion.

Appellee further contends that all of the remaining Wexler factors "weigh heavily" in favor of expungement, and that the trial court erred by not considering them. Appellant's Brief at 30, 32, 37. As we have already explained, the trial court provided, in sufficient detail, its reasons for denying expungement, and thus the fact that the court did not explicitly address each and every Wexler factor is of no moment. See text supra. Furthermore, based on our comprehensive review of the record, we cannot agree with Appellee that the remaining Wexler factors uniformly and strongly support expungement. We briefly discuss each of the remaining Wexler factors in light of the facts of record, infra.

Appellee was 44 years of age at the time of the expungement hearing, and he provides no authority to suggest that his middle age can be a mitigating factor. In fact, Appellee admits that his "current age may not itself be a mitigating factor." Appellee's Brief at 33. We (continued…)

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agree. See Commonwealth v. Rivers, 644 A.2d 710, 719-20 (Pa. 1994) (discussing age in the context of the penalty phase of a capital case and making clear that defendants of 34 or 42 years of age cannot offer their age as a mitigating factor); Persia, 673 A.2d at 971 (concluding that the appellant's age of 48 did not militate in favor of granting his petition to expunge).

Appellee's criminal history reveals a total of ten arrests, one of which apparently occurred while he was in prison and five of which occurred after his release. In 1985, prior to his arrest for the rape of L.Y., he was convicted of criminal trespass, simple assault, possession of an instrument of crime, and criminal conspiracy. In 1993, he pled guilty to receiving stolen property. As Appellee correctly points out, all of the charges he has incurred since his release, except for one, have ultimately been withdrawn or nolle prossed. The only post-release charge that resulted in a conviction was for defiant trespass, to which he pled guilty in 1998. While Appellee's criminal history includes no other charges as serious as rape, it is hardly an unblemished record.

With regard to employment history, Appellee presented no evidence. Defense counsel at the expungement hearing represented in opening argument only that Appellee was currently unemployed and was "on disability," although prior to being disabled, he "tried to obtain gainful employment." N.T., Expungement Hearing, 3/5/08, at 14.

At the time of Appellee's expungement hearing, 22 years had passed since his arrest for the rape of L.Y., and 14 years had passed since he was released from prison. This is certainly a substantial amount of time over which to consider Appellee's activities, including his criminal record and employment history. See Wexler at 882 (noting that four years had passed since the arrest of the petitioner for expungement, and that during this time she had not been involved in any further criminal activity and was employed as a cashier).

The final Wexler factor is the "specific adverse consequences the petitioner may endure should expunction be denied." Wexler, supra at 879 (citation omitted). We acknowledge, as we did in Wexler, the "serious harm" that an individual may suffer as a result of retention of his or her arrest record. Id. Appellee relies on the self-evident harm and stigma of an arrest record for a serious crime such as rape. Appellee further states that his "record continues to improperly suggest his guilt relating to crimes for which he should now be presumed innocent in the eyes of both the law *and the public*." Appellee's Brief at 37 (emphasis in original). Here, Appellee exaggerates the significance of the judicial determination as to the DNA results for the purposes of an expungement petition. The court did **not** conclude that he was exonerated, but rather granted him a new trial. See text, supra.

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denial of Appellee's petition to expunge, and we now reverse the order of the Superior Court.

Messrs. Justice Eakin and Baer and Madame Justice Todd join the opinion.

Mr. Justice Saylor files a dissenting opinion in which Mr. Chief Justice Castille and Madame Justice Orie Melvin join.

(…continued)
Having reviewed the record as to each of the Wexler factors not explicitly discussed by the trial court, we cannot accept Appellee's assertion that they uniformly and strongly support expungement. The record reveals a reality that is more complex, where any support for expungement is subtle and must be balanced with more negative aspects of Appellee's history and circumstances. Appellee's assertion that the trial court abused its discretion by not ordering expungement in light of the above-discussed factors is meritless.