

SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

**In Re: Petition for Expungement of
Criminal Record concerning**

TIMYTHIE O. CHARLES,

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)
) **CASE NO. ST-17-MC-65**
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ORDER

Petitioner Timythie Orlando Charles filed a Petition for Expungement on August 6, 2017, seeking expungement of records related to his arrest on March 31, 2012, that resulted in Case No. ST-12-CR-186. On Wednesday, May 15, 2013, Charles entered a plea of guilty to Count II of the Information, which charged him with unauthorized possession of a firearm in violation of 14 V.I. C. 2253(a); and on June 6, 2013, Charles was sentenced to a term of imprisonment in the Bureau of Corrections for one year, with all but four days suspended, with credit for four days already served, and placed on supervised probation for a period of one year upon various conditions, memorialized in a Judgment entered July 2, 2013. Through an Order entered August 6, 2015, Charles was satisfactorily discharged from probation. In order to consider the merits of the Petition, all of the procedural requirements of 5 V.I.C. § 3735¹ must be satisfied.

¹ 5 V.I.C. § 3735 provides that:

- (a) The Petition for expungement must include the following:
 - (1) The name of the Petitioner;
 - (2) The offense for which the Petitioner was arrested; and
 - (3) A certified copy of the arrest, complaint or information.
- (b) The Petition must also include the following:
 - (1) A copy of the Petitioner's criminal record; and
 - (2) A sworn statement by the Petitioner that there are no charges pending against him.
- (c) The Petitioner shall serve the Department of Justice, which has 30 days to respond. If the Department of Justice objects to the expungement, the Superior Court of the Virgin Islands shall set the matter on for a hearing. If the Department of Justice elects not to

In additional, and Super. Ct. R. 400.2² must be satisfied.

Charles having satisfied these requirements, and the Virgin Islands Department of Justice having elected not to file an opposition to the Petition within the time limit imposed by law, the Petition is ripe for consideration.³

In his Petition for Expungement, Charles indicates that since the arrest he has been “very respectful of the law[,],...gainfully employed[,],...a change[d] person[,],...a law abiding citizen and...looking forward to a bright future.”

The Court commends Petitioner for his successful completion of probation and the subsequent change in his conduct. Unfortunately for Petitioner, no provision of the Virgin Islands Code provides for expungement of a felony conviction. Charles does not fall within circumstances described in either 5 V.I.C. § 3733, under which expungement is mandatory, or 5 V.I.C. § 3732, under which expungement may be granted in the discretion of the Court. Nor is Charles eligible for expungement under 5 V.I.C. § 3734, which only authorizes the Court to expunge the record of a misdemeanor conviction.

file an opposition to the Petition for Expungement, or does not file a timely objection, the Court may grant the Petition for Expungement.

- (d) The Superior Court may schedule a hearing for expungement despite the lack of opposition or response from the Department of Justice, if the Petitioner is seeking to have more than one record of misdemeanor conviction expunged.

² Super. Ct. R. 400.2 provides that:

- (b) “A petition for expungement shall be signed under oath by the petitioner and shall include the following:

- (1) Petitioner’s full name and all other legal names or aliases by which the petitioner has been known at any time;
- (2) Petitioner’s place and date of birth;
- (3) Petitioner’s current address and address at the time of the offense or alleged offense;
- (4) The offense for which the petitioner was arrested and date of such arrest;
- (5) A certified copy of the arrest, report, complaint or information;
- (6) A certified copy of the petitioner’s criminal record; and
- (7) A sworn statement by the petitioner that there are no charges pending against him or her.

- (c) The Petitioner must serve the petition upon the Attorney General...and shall have the burden of proving delivery and/or receipt of the petition”

³ The V.I. Department of Justice was served with a copy of Charles’s Petition for Expungement on August 28, 2017, but failed to respond within thirty (30) days of service. 5 V.I.C. § 3735(c); Super. Ct. R. 400.2(c).

Courts have found extraordinary circumstances were present to warrant the expungement of criminal records in cases where the petitioner is factually innocent, where the records were generated through ‘flagrant violations to the Constitution,’ ” or “when an arrest or conviction is constitutionally infirm.”⁴ Charles has not demonstrated that such circumstances are present here. In contrast, this Court has found extraordinary circumstances are not present when the petitioner seeks expungement solely because he plans to join the National Guard or merely because the criminal record negatively impacts the petitioner’s future job prospects.⁵

That Charles’ has lived as a law abiding citizen since his conviction is not, in and of itself, an extraordinary circumstance warranting expungement. Charles does not contend or offer any evidence that suggests that he was factually innocent, that his Constitutional rights were violated during his arrest, or that there was not probable cause for his arrest. As a result, the Court finds the requisite extraordinary circumstances are not present to overcome the presumption in favor of the government maintaining arrest records so as to warrant the expungement of Charles’ criminal record.⁶ Accordingly, it is

⁴ *Santiago v. People of the Virgin Islands*, 51 V.I. 283, 295 (V.I.:2009) (citing *Doe v. Webster*, 196 U.S. App. D.C. 319, 606 F.2d 1226, 1230 (D.C. Cir. 1979); *United States v. Noonan*, 906 F.2d 952, 956 (3d Cir. 1990)).

⁵ See *People of the V.I. v. Creque*, 2010 V.I. LEXIS 9 (V.I. Super. Ct. 2010); *In re Flavius*, 2015 V.I. LEXIS 114, at *25; *Government of the Virgin Islands v. Robinson*, 2010 V.I. LEXIS 20, *6 (V.I. Super. Ct. Mar. 26, 2010) (“[E]xpungement petitions based on ‘economic and employment losses’ claims do not present a ‘harsh or unique situation sufficient to justify expungement’”) (citations omitted).

⁶ In *In re Flavius*, 2015 V.I. LEXIS 114, at *20, the Court reiterated the standard applicable to discretionary expungements, as follows:

The policy of the Virgin Islands regarding expungements arises out of the Territory’s interest in “[r]etaining and preserving arrest records[, which] serves the important function of promoting effective law enforcement. Such records help to meet the ‘compelling public need for an effective and workable criminal identification procedure.’” *People of the V.I. v. Creque*, 2010 V.I. LEXIS 9, *3 (V.I. Super. Ct. 2010) (citing *Gov’t of V.I. v. Richardson*, 45 V.I. 326, 328 (Terr. Ct. 2004) (quoting *United States v. Schnitzer*, 567 F.2d 536, 539 (2d Cir. 1977)). Therefore, when determining whether to expunge criminal records, “[t]he government’s need to maintain arrest records must be balanced against the harm that the maintenance of arrest records can cause citizens.” *Id.* “As a result, there is a presumption in favor of the government maintaining arrest records and the petitioner seeking expungement must overcome this presumption.” *Id.* at *4 (citing *Sealed Appellant v. Sealed Appellee*, 130 F.3d 695 (5th Cir. 1997) (other citations omitted).

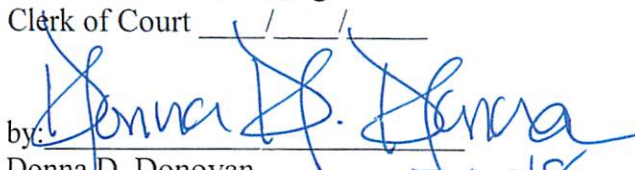
ORDERED that Timythie O. Charles's Petition for Expungement is **DENIED** and is
DISMISSED WITHOUT PREJUDICE; and it is

ORDERED that this file shall be closed; and it is

ORDERED that copies of this Order shall be directed to Petitioner Timythie O. Charles,
pro se, the V.I. Department of Justice, the V.I. Police Department Records Division, and the IT
Division of the Superior Court of the Virgin Islands.

Dated: January 24, 2018.

ATTEST: Estrella George
Clerk of Court

by: 
Donna D. Donovan
Court Clerk Supervisor


HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

A CERTIFIED TRUE COPY
DATE 01/26/18
ESTRELLA H. GEORGE
CLERK OF THE COURT
BY: 
LATOYA A. CAMACHO
COURT CLERK II