

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

IN RE: PETITION FOR EXPUNGEMENT OF
CRIMINAL RECORD

CONCERNING:

DEAN ALONZO MOLLOY

Misc. Civil No. **SX-18-MC-67**

Criminal No. **SX-89-CR-146**

MEMORANDUM OPINION and ORDER DENYING EXPUNGEMENT

Petitioner Dean Alonzo Molloy filed a Verified Petition for Expungement on August 13, 2018 and demonstrates that he served a true and correct copy on the same date on the Office of the Attorney General. Petitioner seeks to expunge all records in Criminal No. SX-89-CR-146, related to his May 10, 1990 conviction for Murder in the Second Degree in violation of 14 V.I.C. § 922(b) and Possession of a Dangerous Weapon in violation of 14 V.I.C. § 2251(a). The Department of Justice has not responded to the Petition.¹ No provision of the Virgin Islands Code provides for expungement of felony convictions and thus the Petition will be denied.

Petitioner does not fall within circumstances described in either 5 V.I.C. §§ 3732 or 3733, under which expungement is mandatory, nor is Petitioner eligible for expungement under 5 V.I.C. § 3734, which authorizes the Court to expunge the record of a misdemeanor conviction where the Department of Justice fails to show by clear and convincing evidence that expungement should not be granted.

Despite the non-applicability of any section of Chapter 314 of Title 5 of the Virgin Islands Code (Expungement), Petitioner argues that he is entitled to expungement on the basis that he was the beneficiary of an executive pardon. In support of his Petition, Petitioner submitted a photocopy of "Executive Pardon for Dean A. Molloy," dated December 30, 2006, signed by Governor Charles W. Turnbull.

¹ "... (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 file an opposition to the Petition for Expungement, or does not file a timely objection, the Court may grant the Petition for Expungement." 5 V.I.C. § 3735.

Petitioner cites *In re: Jaime Roebuck*, Misc. Civ. No. SX-15-MC-11 (V.I. Super. Ct. Sept. 16, 2015) (unpublished) in support of his entitlement to the relief sought. In that action, Petitioner Jaime Roebuck was granted the expungement of records relating to several crimes of which he had been convicted, including felonies, following a gubernatorial pardon. The *Roebuck* court determined that expungement was appropriate “in accordance with the V.I.C. Rev. Org. Act of 1954 § 11 which absolves an offender who is granted a pardon from all guilt.”² The quoted language is not found in Section 11 of the Revised Organic Act, which states simply with reference to the Governor’s executive authority to pardon that: “He may grant pardons and reprieves and may remit fines and forfeitures for offenses against local laws.” Rather, the language quoted in *Roebuck* appears in an annotation in the bound volume of the Virgin Islands Code, preceding Title 1, relating to a September 23, 1939 letter opinion of District Attorney James A. Bough, responding to an inquiry of Government Secretary Robert M. Lovett regarding an individual’s application for pardon. Therein, Attorney Bough stated that “a pardon differs from a commutation of sentence in that a pardon absolves the offender from all guilt, whereas a commutation of sentence continues the established guilt of the offender but reduces the punishment imposed by the Court.” Opinion No. 1939-14, 1 Virgin Islands Attorney General Reports and Opinions (1939).³ Opinions of the Attorney General constitute merely persuasive authority in the courts of the Virgin Islands.⁴

The majority of jurisdictions that have addressed the issue have held contrary to the *Roebuck* court’s determination that the receipt of an executive pardon by a convicted offender absolves him of all guilt and entitles him to expungement of his criminal records. Rather, the law

² Order for Expungement, at 5; *In re: Roebuck*, Misc. Civ. No. SX-15-MC-11; (V.I. Super. Ct. September 15, 2015) (unpublished).

³ “The Organic Act [of the Virgin Islands of the United States § 26 (1936)] provided for the appointment of... ‘a district attorney for the District Court of the Virgin Islands...’ It further provided that ‘The Governor may call upon the district attorney to *advise* him upon any legal questions concerning the administration of the Government of the Virgin Islands.’” *Government v. Gordon, et al.*, 3 V.I. 623, 627 (3d Cir. 1957) (emphasis in original). By the Revised Organic Act of 1954, “Reorganization of government” § 16 (a), the title “district attorney” was revised to “attorney general.” “The head of the department of law shall be known as the attorney general of the Virgin Islands.”

⁴ “[T]his Court has already expressly rejected – on separation of powers grounds – granting any deference whatsoever to an opinion issued by the Attorney General: ‘[T]he opinion of the Virgin Islands Attorney General – an officer of the Executive Branch – as to how Virgin Islands law should be interpreted is in absolutely no way binding on this Court or the Superior Court, since statutory interpretation is unquestionably a judicial power of which this Court is the final arbiter.’” *Bryan v. Fawkes*, 61 V.I. 416, 458 n.21 (V.I. 2014), quoting *Galloway v. People*, 57 V.I. 693, 703 (V.I. 2012) (citing 4 V.I.C. § 21).

in most jurisdictions that have addressed the issue is to the effect that pardoned individuals are not entitled to records expunction unless mandated by statute.⁵

An executive pardon and judicial expungement of criminal records pursuant to statute are two different remedies that serve two distinct purposes. The U.S. Supreme Court has noted that “the granting of a pardon is in no sense an overturning of a judgment of conviction by some other tribunal; it is an executive action that mitigates or sets aside punishment for a crime.” *Nixon v. United States*, 506 U.S. 224, 232 (1993). The Supreme Court of Florida addressed the notion of a pardon as relief from punishment, intended to have the “effect of removing punishment and disabilities and restoring civil rights.” But the Court held that “the denial of records expunction does not constitute a punishment” and “eligibility for records expunction is not a civil right restored by the grant of a gubernatorial pardon.” *R.J.L. v. State*, 887 So. 2d 1268, 1280 (Fla. 2004). “Pardon power allows the governor to affect the punishment an individual is subjected to. The clemency power does not allow the governor to affect the underlying conviction. This is so because a pardon, and other forms of clemency, forgive only the penalty and do not allow the courts to ‘forget either the crime or the conviction;’ a pardon implies guilt and does not obliterate the fact of the commission of the crime and the conviction.” *Vandyke v. State*, 538 S.W.3d 561, 574 (Tex. Crim. App. 2017).

While the Governor possess the power to pardon under Section 11 of the Revised Organic Act of 1954, the power to grant or deny a petition for expungement is vested in the courts alone. 5 V.I.C. §§ 3731-3741. The importance of this distinction between executive and judicial authority was echoed by the Third Circuit in *United States v. Noonan*, which described the pardon power as “an executive prerogative of mercy, not of judicial record-keeping” and determined that the notion that the executive has the ability to tamper with judicial records “flies in the face of the separation of powers doctrine.” *United States v. Noonan*, 906 F.2d 952, 956 (3d Cir. 1990).

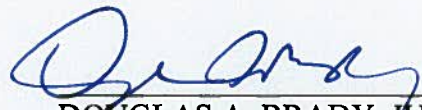
⁵ See *R.J.L. v. State*, 887 So. 2d 1268, 1279 (Fla. 2004); *Harscher v. Commonwealth*, 327 S.W.3d 519, 523 (Ky. Ct. App. 2010); *State v. Skinner*, 632 A.2d 82, 87 (Del. 1993); *People v. Glisson*, 69 Ill. 2d 502, 372 N.E.2d 669, 671, 14 Ill. Dec. 473 (Ill. 1978); *Commonwealth v. Vickey*, 381 Mass. 762, 412 N.E.2d 877, 883 (Mass. 1980); *State v. Bachman*, 675 S.W.2d 41, 52 (Mo. Ct. App. 1984); *State v. Blanchard*, 100 S.W.3d 226, 228 (Tenn. Crim. App. 2002); *State v. Aguirre*, 73 Wn. App. 682, 871 P.2d 616, 620 (Wash. Ct. App. 1994). But see *State v. Bergman*, 558 N.E.2d 1111, 1114 (Ind. Ct. App. 1990); *State v. Cope*, 111 Ohio App. 3d 309, 676 N.E.2d 141, 143 (Ohio Ct. App. 1996).

Here, the gubernatorial pardon alone does not entitle Petitioner to expungement. Without appropriate authorizing legislation, the Court is without authority to expunge records of a felony conviction. *See Virgin Islands v. Nugent*, 48 V.I. 257, 259 (V.I. Super. 2007).⁶ Accordingly, expungement is not available to Petitioner with regard to the convictions entered in Criminal No. SX-89-CR-146.

On the basis of the foregoing, it is hereby

ORDERED that Petitioner Dean Alonzo Molloy's Petition for Expungement is DENIED, and this action is DISMISSED and CLOSED.

Dated: December 19, 2018.


DOUGLAS A. BRADY, JUDGE

ATTEST:

ESTRELLA GORGE
Clerk of the Court

By: 
Court Clerk Supervisor

⁶ Statutory authorization does exist for the expungement of DNA records only following a criminal conviction and pardon, pursuant to Chapter 345 of Title 5 of the Virgin Islands Code. Such relief is not sought by Petitioner and is not considered here. Any such relief that might be available under this chapter would be limited to the destruction or return to Petitioner of any DNA record and samples, analyses and documents related to DNA testing, but would not result in the expungement of Petitioner's criminal conviction and other related records. *See* 5 V.I. § 4209(c).