

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA
Appeal No. 24-ICA-496

ICA EFiled: Mar 11 2025
11:59AM EDT
Transaction ID 75813437

**IN RE: EXPUNGEMENT OF
RECORD OF M.W.**

JOINT BRIEF OF RESPONDENTS

Appeal from the November 11, 2024, Order
Circuit Court of Randolph County (Judge David H. Wilmoth)
Civil Action No. CC-42-2024-P-86

JOHN B. MCCUSKEY
ATTORNEY GENERAL

Holly M. Mestemacher (WV Bar # 7996)
Assistant Attorney General
State Capitol Complex
Building 6, Suite 406
Charleston, WV 25305-0220
Email: hmemestemacher@wvago.gov
Telephone: (304) 558-5830
Facsimile: (304) 558-5833
Counsel for Respondent State of West Virginia

Anthony D. Eates II (WV Bar #7708)
Deputy Attorney General
Adriana Marshall (WV Bar #10710)
Assistant Attorney General
State Capitol Complex
Building 6, Suite 402
Charleston, WV 25305-0220
Email: Anthony.D.Eates@wvago.gov
Telephone: (304) 558-8989
Facsimile: (304) 558-4509
Counsel for Respondent State Police

TABLE OF CONTENTS

	Page
Table of Contents	i
Table of Authorities	ii
Introduction.....	1
Assignment of Error.....	1
Statement of the Case.....	2
Summary of the Argument.....	5
Statement Regarding Oral Argument and Decision.....	5
Standard of Review.....	6
Argument	6
The Circuit Court of Randolph County properly determined that West Virginia Code § 61-11-26(c)(5) Excludes Petitioner’s Eligibility for Expungement based on his Municipal Court Conviction for Battery of his former wife.	
Conclusion	13

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>In re A.N.T.</i> , 238 W. Va. 701, 798 S.E.2d 623 (2017).....	6
<i>Bartles v. Hinkle</i> , 196 W. Va. 381, 472 S.E.2d 827 (1996).....	6
<i>In re C.M.H.</i> , No. 22-0339, 2023 WL 3478955 (W. Va. Supreme Court, May 16, 2023) (memorandum decision)	9
<i>Chrystal R.M. v. Charlie A.L.</i> , 194 W. Va. 138, 459 S.E.2d 415 (1995).....	6
<i>Click v. Click</i> , 98 W. Va. 419, 127 S.E. 194 (1925).....	12
<i>Conseco Fin. Serv'g Corp. v. Myers</i> , 211 W. Va. 631, 567 S.E.2d 641 (2002).....	12
<i>Cox v. State</i> , 194 W. Va. 210, 460 S.E.2d 25 (1995).....	6
<i>Gentry v. Mangum</i> , 195 W. Va. 512, 466 S.E.2d 171 (1995).....	6
<i>Jordan v. Jenkins</i> , 245 W. Va. 532, 859 S.E.2d 700 (2021).....	7
<i>Newhart v. Pennybacker</i> , 120 W. Va. 774, 200 S.E. 350 (1938).....	4
<i>State v. A.D.</i> , 242 W. Va. 536, 836 S.E.2d 503 (2019).....	6
<i>State v. Hoyle</i> , 242 W. Va. 599, 836 S.E.2d 817 (2019).....	9
<i>State v. Myers</i> , 229 W. Va. 238, 728 S.E.2d 122 (2012).....	6
<i>State v. Saunders</i> , 219 W. Va. 570, 638 S.E.2d 173 (2006).....	10

<i>United States v. Graham</i> , 711 F.3d 445 (4th Cir. 2013)	6
<i>Vanderpool v. Hunt</i> , 241 W. Va. 254, 823 S.E.2d 526 (2019)	12
<i>Wal-Mart Stores East, L.P. v. Ankrom</i> , 244 W. Va. 437, 854 S.E.2d 257 (2020)	6
Statutes	
Elkins Code of Ordinances § 130.002	4, 7, 8
Elkins Code of Ordinances § 130.999	8
West Virginia Code § 61-2-9	1, 3, 4, 5, 7, 8, 9, 11, 12
West Virginia Code § 61-11-26	1, 2, 3, 4, 5, 6, 8, 10, 11, 12, 13
West Virginia Code § 61-2-28	3, 5, 9
Rules	
West Virginia Rule of Appellate Procedure 18	6
West Virginia Rule of Appellate Procedure 40	1
Other Authority	
<i>Offense</i> , BLACK'S LAW DICTIONARY (12th ed. 2024)	8

INTRODUCTION

The Circuit Court of Randolph County properly denied Petitioner M.W.’s¹ *Petition to Expunge Record* on the basis that the battery committed against his former wife was an offense excluded from expungement under West Virginia Code § 61-11-26(c)(5). Although Petitioner asserts that the statutory exclusion to expungement does not apply to him because he was not charged with a crime under the State Code, West Virginia Code § 61-11-26(c)(5) encompasses “any offense” containing the elements of battery as set forth in West Virginia Code § 61-2-9(c). It is undisputed that the elements of battery under the State Code and Elkins Code of Ordinances, under which Petitioner was convicted, are identical. Because West Virginia Code § 61-11-26(h)(4) requires expungements to be consistent with the public welfare, it would lead to an absurd result to interpret West Virginia Code § 61-11-26(c)(5) to disallow expungement under the State Code provision for battery, and permit expungement for a municipal ordinance involving battery with identical elements. To do so would allow the forum of the criminal proceeding to dictate eligibility for expungement rather than the conduct of the defendant. Accordingly, the Circuit Court of Randolph County’s decision to deny Petitioner’s *Petition to Expunge Record* was proper and should be affirmed.

ASSIGNMENT OF ERROR

The sole issue for this Court to consider on appeal is whether the Circuit Court of Randolph County properly denied Petitioner’s *Petition to Expunge Record* based on its determination that Petitioner was excluded from seeking an expungement for his municipal court conviction of battery of his ex-wife under West Virginia Code § 61-11-26(c)(5). *See* Pet’r’s Br. 1; App. 5-7.

¹ Pursuant to Rule 40(e)(1) of the Rules of Appellate Procedure and this Court’s scheduling order entered on December 20, 2024, portions of this case are confidential. Because this matter involves an expungement, Petitioner’s initials are used instead of the Petitioner’s full name as personal identifiers are restricted.

STATEMENT OF THE CASE

In 2006, Petitioner M.W. was charged with one count of domestic battery of his ex-wife in the Municipal Court of Elkins, West Virginia. (App. 7-8). On November 6, 2006, the domestic battery charge was dismissed, and Petitioner plead guilty to the lesser misdemeanor offense of battery. (App. 8). Petitioner paid \$100.00 in fines and \$70.00 in costs. (App. 8). The record of the underlying battery conviction consists of a one-page docket notice. (App. 8).

On August 4, 2024, Petitioner filed a *Petition to Expunge Record* pursuant to West Virginia Code § 61-11-26 in the Circuit Court of Randolph County (Expungement Case No. 24-P-86). (App. 5-7). On August 5, 2024, the Circuit Court of Randolph County directed the Prosecutor's Office to investigate and file a report regarding whether Petitioner satisfied the eligibility requirements for expungement and whether any of the limitations on Petitioner's eligibility for expungement under West Virginia Code § 61-11-26 applied. (App. 11).

In the *Report of Prosecuting Attorney* filed on August 16, 2024, the Assistant Prosecuting Attorney conducted a review of the *Petition*, performed a background check, and reviewed West Virginia Code § 61-11-26 in light of his investigation into Petitioner's conviction. The Assistant Prosecuting Attorney indicated that he requested records of the Petitioner's underlying case, but the municipal court did not have any records other than that which was already attached to the *Petition to Expunge Record*. (App. 13 ¶ 3). The Assistant Prosecuting Attorney further indicated that no other pertinent information was revealed in the background check, and Petitioner had no other criminal convictions. (App. 13 ¶¶ 4 and 5). The Assistant Prosecuting Attorney concluded in his *Report* that "[b]ecause the State is unable to make a determination regarding eligibility due to lack of clarity in the records of the municipal court regarding the conviction, the State does not

object to the petition and does not request a hearing in this matter.” (App. 14 ¶ 7).² The Prosecutor’s Office mailed a copy of the *Petition* to the victim, but no response from the victim was filed. (App. 1, 14).

On August 30, 2024, Respondent State Police filed a *Notice of Opposition to Petition for Expungement*.³ (App. 19-21). In its *Notice of Opposition*, the State Police asserted that West Virginia Code § 61-11-26(c)(5) prohibits expungement of records related to Petitioner’s conviction because West Virginia Code § 61-11-26(c)(5) bars from expungement “[a]ny violation of [Section] 61-2-28 of this code, or any offense which violates [Section] 61-2-9(b) [relating to assault] or [Section] 61-2-9(c) [relating to battery] of this code in which the victim was a spouse, a person with whom the person seeking expungement had a child in common, or with whom the person seeking expungement ever cohabitated prior to the offense or a violation of [Section] 61-2-28(c) of this code.” (App. 19 ¶ 4). Petitioner’s victim was his former wife at the time of the crime, and he presumably cohabitated with her during the marriage.⁴ (App. 20 ¶ 7; App. 7 ¶ 14).

The State Police further assert that the “clear intent of the legislature in codifying West Virginia Code [§] 61-11-26(c)(5) was to prevent the expungement of records related to convictions in which a person battered a current or former spouse, the parent of his/her children, and anyone who ever cohabitated with the offender.” (App. 20 ¶ 9). The State Police emphasized in their *Notice of Opposition* that “[i]t is nonsensical to think that the Legislature intended to allow expungement

² Despite the Assistant Prosecuting Attorney’s conclusion in his *Report*, the State, upon its review of the record and West Virginia Code § 61-11-26 for this appeal, believes that the court correctly determined that Petitioner’s offense was ineligible for expungement under the statute. It is important to note that at the hearing the Assistant Prosecuting Attorney specifically deferred to the State Police’s position. App. 31.

³ The State Police’s *Notice of Opposition* was filed pursuant to West Virginia Code § 61-11-26(g)(1).

⁴ Petitioner does not dispute that he cohabitated with his former wife. *See* Pet’r’s Br. *generally*.

for this same conduct when the offender was charged under a municipal ordinance, as opposed to State Code.” (App. 20 ¶ 9). The State Police further recognized that the Supreme Court of Appeals of West Virginia has long held that “[w]here a particular construction of a statute would result in an absurdity, some other reasonable construction, which will not produce such absurdity, will be made.” Syl. pt. 2, *Newhart v. Pennybacker*, 120 W. Va. 774, 200 S.E. 350 (1938). The State Police emphasized that “[i]t would be an absurd result to read West Virginia Code § 61-11-26(c)(5) to allow expungement of the records related to Petitioner’s battery city court conviction, when a conviction for the very same conduct is clearly barred from expungement if he was charged in magistrate court.” (App. 20-21 ¶ 9).

On September 9, 2024, Petitioner filed a *Reply to West Virginia State Police’s Notice of Opposition of Expungement*. (App. 23-25). Petitioner conceded that the language in Elkins Code of Ordinances § 130.002 “is largely similar” to West Virginia Code § 61-2-9(c). (App. 23). Petitioner asserted that, under West Virginia Code § 61-11-26, if the Legislature intended for all batteries to be inexpungeable, it would have “said so in plain language, in the same manner as other crimes within the same code section.” (App. 24-25).

The Circuit Court of Randolph County set the matter for hearing on October 22, 2024. (App. 26). Following the hearing, and by order entered on November 11, 2024, the circuit court denied the petition for expungement, finding that “[a]lthough Petitioner was not charged under State Code, Plaintiff was nonetheless convicted of an ‘offense which violates . . . [Section] 61-2-9(c)’ because the essential elements of battery under the State Code and the Elkins Code of Ordinances are identical.” (App. 28). The circuit court further found that construing the statute to allow for expungement when the offender was charged under a municipal ordinance, as opposed to State Code, would lead to an absurd result as both the State Code and the Elkins Code of Ordinances involve the same conduct. (App. 28).

SUMMARY OF ARGUMENT

West Virginia Code § 61-11-26(c)(5) precludes Petitioner from seeking an expungement of his municipal battery charge because his municipal conviction contains the same elements as a battery offense under West Virginia Code § 61-2-9(c). The language in West Virginia Code § 61-11-26(c)(5) provides that a person is not eligible for expungement for “*any offense* which violates . . . [Section] 61-2-9(c) of this code,” which relates to battery offenses, “in which the victim was a spouse, a person with whom the person seeking expungement had a child in common, or with whom the person seeking expungement ever cohabitated prior to the offense or a violation of [Section] 61-2-28(c) of this code.” If this Court were to adopt Petitioner’s interpretation that a municipal code section involving battery is not precluded from seeking expungement, it would render the “any offense” language in West Virginia Code § 61-11-26(c)(5) superfluous. Had the Legislature intended to limit the scope of the violation to the particular code sections as Petitioner advocates, it would have used the “any violation” language in the code section, not “any offense” language, as it did elsewhere in the statute. If this Court were to adopt Petitioner’s interpretation of the expungement statute, then the forum that the defendant was convicted would be of greater consequence than the elements of the offense committed, which would lead to an absurd result. Further, West Virginia Code § 61-11-26(h)(4) provides that the Petitioner must prove by clear and convincing evidence that expungement is consistent with the public welfare. It is contrary to the public welfare to allow for expungement of a municipal offense for battery when the elements of the offense are identical to a battery committed under the State Code.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Oral argument is unnecessary in this case as the facts and legal arguments are adequately presented in the briefs and record on appeal, and the decisional process would not be significantly

aided by oral argument. Consequently, this case is suitable for disposition by memorandum decision. W. Va. R. App. P. 18(a)(4).

STANDARD OF REVIEW

A circuit court's order denying expungement of criminal records is reviewed for an abuse of discretion. Syl. pt. 1, *State v. A.D.*, 242 W. Va. 536, 836 S.E.2d 503 (2019) (quoting syl. pt. 1, *In re A.N.T.*, 238 W. Va. 701, 798 S.E.2d 623 (2017)). "[A]n abuse of discretion occurs when a material factor deserving significant weight is ignored, when an improper factor is relied upon, or when all proper and no improper factors are assessed but the circuit court makes a serious mistake in weighing them." *Wal-Mart Stores East, L.P. v. Ankrom.*, 244 W. Va. 437, 454, 854 S.E.2d 257, 274 (2020) (quoting *Gentry v. Mangum*, 195 W. Va. 512, 520 n.6, 466 S.E.2d 171, 179 n.6 (1995)). Put simply, a trial court "abuses its discretion if its ruling is based on an erroneous assessment of the evidence or the law." *Bartles v. Hinkle*, 196 W. Va. 381, 389, 472 S.E.2d 827, 835 (1996) (citing *Cox v. State*, 194 W. Va. 210, 218 n.3, 460 S.E.2d 25, 33 n.3 (1995) (Cleckley, J., concurring)). "The abuse of discretion standard is highly deferential, and a reviewing court should not reverse unless the ruling is 'manifestly erroneous.'" *United States v. Graham*, 711 F.3d 445, 453 (4th Cir. 2013) (internal citations omitted). In addition, "where the issue on appeal from the circuit court is clearly a question of law," the reviewing court "appl[ies] a *de novo* standard of review." *State v. Myers*, 229 W. Va. 238, 244, 728 S.E.2d 122, 128 (2012) (quoting syl. pt. 1, *Chrystal R.M. v. Charlie A.L.*, 194 W. Va. 138, 459 S.E.2d 415 (1995)).

ARGUMENT

The Circuit Court of Randolph County properly determined that West Virginia Code § 61-11-26(c)(5) excludes Petitioner's eligibility for expungement based on his municipal court conviction for battery of his former wife.

Petitioner bore the burden of demonstrating by clear and convincing evidence that he met the requirements for expungement set forth in West Virginia Code § 61-11-26(h)(1)-(6). "[C]lear

and convincing [evidence]” is the measure or degree of proof that will produce in the mind of the factfinder a firm belief or conviction as to the allegations sought to be established. It should be the highest possible standard of civil proof.” *Jordan v. Jenkins*, 245 W. Va. 532, 555 n.27, 859 S.E.2d 700, 723 n.27 (2021) (internal citations omitted). Petitioner did not satisfy this high burden below. The Circuit Court of Randolph County correctly applied the statute and did not abuse its discretion in denying the expungement.

To begin, West Virginia Code § 61-2-9(c) and the Elkins City Ordinance of which Petitioner stands convicted share the same elements, verbatim. West Virginia Code § 61-2-9(c) provides as follows:

Battery. — Any person who unlawfully and intentionally makes physical contact of an insulting or provoking nature to the person of another or unlawfully and intentionally causes physical harm to another person is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than twelve months or fined not more than \$500, or both fined and confined.

Elkins City Ordinance § 130.002 provides as follows:

(B) Battery. If any person unlawfully and intentionally makes physical contact of an insulting or provoking nature with the person of another or unlawfully and intentionally causes physical harm to another person, he or she shall be guilty of a misdemeanor.

Although Petitioner concedes that the relevant Elkins municipal ordinance under which he was convicted, Elkins City Code § 130.002(B), has the same elements as West Virginia Code § 61-2-9(c), he attempts to circumvent the inescapable conclusion that this conviction constitutes “an[] offense which violates . . . [West Virginia Code] § 61-2-9(c),” by pointing to irrelevant matters. Petitioner argues that his battery conviction is distinct from a violation under the State Code because it carries a much lesser punishment than a battery conviction under the State Code,

he was not facing jail time in municipal court,⁵ he was not entitled to counsel, and there is no charging document available. (Pet’r’s Br. 9-10). But not only does he fail to point to any supporting authority, the plain language of West Virginia Code § 61-11-26(c)(5) requires no such parallel. The relevant part of Subsection (c)(5) turns strictly on whether an *offense* violates West Virginia Code § 61-2-9(c). And an “offense” is not defined by punitive, procedural, or administrative matters; rather an “offense” is defined as “[a] violation of the law.” *Offense*, BLACK’S LAW DICTIONARY (12th ed. 2024). That is, an offense is the *conduct* that violates the law. The punishment, the paperwork, the potential entitlement to counsel, and procedural complexity of a prosecution simply do not bear on whether “any offense [] violates . . . [Section] 61-2-9(c).” It is undisputed that elements required for Petitioner’s conviction of battery under Elkins City Code § 130.002(B) mirror the elements required for a conviction of battery under West Virginia Code § 61-2-9(c), and the circuit court, therefore, was correct that Petitioner’s conviction of battery constitutes as an offense which violates West Virginia Code § 61-2-9(c).

Furthermore, and notwithstanding these assertions by Petitioner, Petitioner failed to establish that West Virginia Code § 61-11-26(c)(5) anchors ineligibility specifically to West Virginia Code § 61-2-9(c). West Virginia Code § 61-11-26(c)(5) provides that a person is not eligible for expungement for certain convictions:

⁵ Elkins City Ordinance § 130.999(A) provides as follows:

Whenever, in the codified ordinances or in any ordinance of the city, any act is prohibited or is made or declared to be unlawful or an offense, or whenever the doing of an act is required or the failure to do any act is declared to be unlawful, where no specific penalty is otherwise provided, whoever violates any such provision shall be fined an amount set forth by Council from time to time. Each day any such violation continues shall constitute a separate offense. All other fines, penalties, or punishments for offenses against, or violations of, the codified ordinances of the city or any ordinances of the city shall remain in full force and effect.

(c) *Limitations on eligibility for expungement.* — A person is not eligible for expungement pursuant to subsection (a) of this section for convictions of the following offenses:

...

(5) Any violation of [Section] 61-2-28 of this code, or *any offense which violates [Section] 61-2-9(b) or [Section] 61-2-9(c) of this code* in which the victim was a spouse, a person with whom the person seeking expungement had a child in common, or with whom the person seeking expungement ever cohabited prior to the offense or a violation of [Section] 61-2-28(c) of this code;

(Emphasis added). Petitioner’s reading of the statute might be accurate if the statute provided as follows:

~~Any~~ violation of [Section] 61-2-28 of this code, or ~~any offense which violates~~ [Section] 61-2-9(b) or [Section] 61-2-9(c) of this code in which the victim was a spouse, a person with whom the person seeking expungement had a child in common, or with whom the person seeking expungement ever cohabited prior to the offense or a violation of [Section] 61-2-28(c) of this code.

“In the absence of any specific indication to the contrary, words used in a statute will be given their common, ordinary, and accepted meanings.” *In re C.M.H.*, No. 22-0339, 2023 WL 3478955 (W. Va. Supreme Court, May 16, 2023) (memorandum decision) (internal citations and quotation marks omitted). By including the word “any” the Legislature intended to cover *any* assault offenses with elements that mirrored West Virginia Code § 61-2-9(b) and *any* battery offenses with elements that mirrored West Virginia Code § 61-2-9(c). *See, e.g., State v. Hoyle*, 242 W. Va. 599, 608, 836 S.E.2d 817, 826 (2019) (noting that the Legislature’s use of the word “any” is “a broad requirement, but it is not ambiguous”). If the Legislature did not intend the statute to include other related assault and battery offenses regardless of whether the offenses were charged as violations of Section 61-2-9(c), the word “any” serves no purpose. Bearing in mind that the Court is “required to operate under the presumption that the Legislature attaches specific meaning to every word and

clause set forth in a statute,” *State v. Saunders*, 219 W. Va. 570, 576-577, 638 S.E.2d 173, 179-180 (2006), Petitioner’s analysis renders the word “any” superfluous.

Petitioner argues that the Legislature did not intend to preclude eligibility for all conduct because there is similar language in the code section that doesn’t tie the conduct to a specific code section. (Pet’r’s Br. 11). There are indeed certain offenses that are not linked to a particular code section in West Virginia Code § 61-11-26, such as West Virginia Code § 61-11-26(c)(1) (excluding from expungement “[a]ny felony offense of violence against the person . . . or any misdemeanor offense involving the intentional infliction of physical injury to a minor or law-enforcement officer); West Virginia Code § 61-11-26(c)(4) (excluding from expungement “[a]ny offense in which the petitioner used or exhibited a deadly weapon or dangerous instrument”); West Virginia Code § 61-11-26(c)(7) (“[a]ny offense of driving under the influence of alcohol or a controlled substance”); and West Virginia Code § 61-11-26(c)(13) (“[a]ny conviction for which the sentencing judge made a written finding that the offense was sexually motivated”). The Legislature plainly barred expungement of any offense where any of these factors are present irrespective of whether the factor(s) is an actual element of the offense. But this does not preclude the Legislature from also limiting eligibility for expungement based on the conduct or elements of “any offense which violates” a particular code section. In other words, excluding offenses from eligibility for expungement in one manner does not preclude the Legislature from also excluding offenses from eligibility in another manner.

The Legislature crafted essentially three ‘categories’ of limitations on eligibility for expungement. First, the most restrictive category narrowly excludes eligibility for “any violation of” a specific code section. *See, e.g.*, W. Va. Code § 61-11-26(c)(3) (“[a]ny violation of [Section] 61-8B-1 et seq. of this code”); W. Va. Code § 61-11-26(c)(6) (“[a]ny violation of

[Section]61-2-29 of this code”); W. Va. Code § 61-11-26(c)(10) (“[a]ny violation of [Section]61-2-9a of this code”).

Next, the Legislature expanded ineligibility beyond the violation of a specific code section to include “any offense,” *i.e.* any violation of law, “which violates” a particular code section. That is, the conduct, the elements of an offense are determinative of (in)eligibility for expungement rather than the numerical statute. *See, e.g.*, W. Va. Code § 61-11-26(c)(8) (“[a]ny offense which violates [Section]17B-4-3 of this code”); W. Va. Code § 61-11-26(c)(9) (“[a]ny offense which violates [Section] 61-8-12”). The present case falls in this category, as Petitioner was convicted of “an[] offense which violates . . . [West Virginia Code] § 61-2-9(c).”

Lastly, the Legislature broadly excluded from eligibility any offense where certain conduct was involved or certain people were the victim. *See, e.g.*, W. Va. Code § 61-11-26(c)(1) (“[a]ny misdemeanor offense involving the intentional infliction of physical injury to a minor or law-enforcement officer”); W. Va. Code § 61-11-26(c)(2) (“[a]ny felony offense in which the victim of the crime was a minor”); W. Va. Code § 61-11-26(c)(4) (“[a]ny offense in which the petitioner used or exhibited a deadly weapon or dangerous instrument”). The Legislature thoughtfully crafted the statute in a manner reflective of its intent, and the existence of one ‘category’ limiting eligibility for expungement simply does not preclude the existence of others.

Petitioner asserts that the “Court does not sit as a super[]legislature” and cannot “write language into the statute that does not exist.” (*See* Pet’r’s Br. 12). That is true and, here, the Court need not write anything in; it merely needs to give effect to the carefully crafted statute rendering “*any offense* which violates” West Virginia Code § 61-2-9(c) ineligible for expungement, just as the circuit court did. Had the Legislature intended to limit the scope of the violation of the particular code sections as Petitioner advocates, it would have used the “any violation” language in the code section, not the “any offense which violates” language, as it did elsewhere in the statute.

Petitioner bore the burden below to demonstrate that he met the requirements for expungement set forth in West Virginia Code § 61-11-26(h)(1)-(6). These requirements include proving by clear and convincing evidence that his “expungement is consistent with the public welfare.” W. Va. Code § 61-11-26(h)(4). Petitioner did not meet this burden. As the lower court properly concluded, “the forum of the criminal proceeding does not dictate eligibility for expungement, rather, eligibility is dictated by the conduct of the defendant.” (App. 28). Here, the conduct—battery of his former spouse and cohabitant—is explicitly excluded from eligibility for expungement. “Where a particular construction of a statute would result in absurdity, some other reasonable construction, which will not produce such absurdity, will be made.” Syl. pt. 2, *Newhart*, 120 W. Va. 774, 200 S.E. 350. To adopt Petitioner’s interpretation would disregard the plain statutory language excluding “any offense which violates . . . [Section] 61-2-9(c)” from eligibility and produce an absurd result elevating the forum of a conviction the Legislature intended to exclude from expungement over the elements of the conviction.

Additionally, “[i]t is the duty of a court to construe a statute according to its true intent, and give to it such construction as will uphold the law and further justice.” Syl. pt. 8, *Vanderpool v. Hunt*, 241 W. Va. 254, 823 S.E.2d 526 (2019) (quoting syl. pt. 2, *Click v. Click*, 98 W. Va. 419, 127 S.E. 194 (1925); syl. pt. 2, *Conseco Fin. Serv’g Corp. v. Myers*, 211 W. Va. 631, 567 S.E.2d 641 (2002)). The statute does not need to be “construed” because the Legislature identified the statute’s purpose in its title, “[e]xpungement of *certain* criminal convictions,” and made clear that those “*certain* criminal convictions” do not include “any offense which violates . . . [Section] 61-2-9(c).” W. Va. Code § 61-11-26 (emphasis added). Although Petitioner notes the remedial nature of expungement and asserts that it “should be construed broadly in favor of its stated purpose,” Pet’r’s Br. 12, this Court has never held that a statute should be construed beyond its plain meaning. To do so here would allow Petitioner to escape the statute’s preclusive effect over his conviction

of battery against his former wife and cohabitant. The circuit court properly determined that “[i]t would be an absurd result to read West Virginia Code § 61-11-26(c)(5) to allow expungement of the records related to Petitioner’s battery municipal city conviction, when a conviction for the very same conduct is clearly barred from expungement if he was charged in magistrate court.” (App. 20-21 ¶ 9).

CONCLUSION

For the foregoing reasons, this Court should affirm the circuit court’s order.

Respectfully submitted,

JOHN B. MCCUSKEY
ATTORNEY GENERAL

/s/ Holly M. Mestemacher

Holly M. Mestemacher (WV Bar # 7996)

Assistant Attorney General

State Capitol Complex

Building 6, Suite 406

Charleston, WV 25305-0220

Email: hmestemacher@wvago.gov

Telephone: (304) 558-5830

Facsimile: (304) 558-5833

Counsel for Respondent State of West Virginia

/s/ Anthony D. Eates II

Anthony D. Eates II (WV Bar #7708)

Deputy Attorney General

Adriana Marshall (WV Bar #10710)

Assistant Attorney General

State Capitol Complex

Building 6, Suite 402

Charleston, WV 25305-0220

Email: Anthony.D.Eates@wvago.gov

Telephone: (304) 558-8989

Facsimile: (304) 558-4509

Counsel for Respondent State Police

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA
Appeal No. 24-ICA-496

**IN RE: EXPUNGEMENT OF
RECORD OF M.W.**

CERTIFICATE OF SERVICE

I, Holly M. Mestemacher, do hereby certify that the foregoing **Joint Brief of Respondents**
is being served on counsel of record by File & ServeXpress this 11th day of March, 2025.

Jeremy B. Cooper, Esq.
Blackwater Law PLLC
P.O. Box 14837
Pittsburgh, PA 15234

/s/ Holly M. Mestemacher
Holly M. Mestemacher (WV Bar # 7996)
Assistant Attorney General
Anthony D. Eates, II (WV Bar # 7708)
Deputy Attorney General