

TRUMP, Justice, dissenting:

FILED
November 13, 2025

released at 3:00 p.m.
C. CASEY FORBES, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

I respectfully dissent from the majority’s decision, for one simple reason: the dismissal of the petitioner’s possession charge was entirely contingent upon his satisfaction of the pretrial diversion agreement, not his guilty plea to the improper registration charge. The majority asserts that its decision is based on the “common, ordinary, and accepted meaning” of the language in West Virginia Code § 61-11-25(a) (2012), without resort to statutory interpretation. Yet, to reach its conclusion, the majority has relied upon an overly complicated interpretation of this code provision.

The petitioner was indicted in 2013 for three criminal offenses: (1) one felony count of possession with intent to deliver a controlled substance (“possession charge”); (2) one misdemeanor count of carrying a deadly weapon (“weapons charge”); and (3) one misdemeanor count of improper vehicle registration (“improper registration charge”). As described in the majority’s opinion, the petitioner reached a plea agreement with the State that involved a “three-part resolution” to his charges: “First, the petitioner agreed to plead guilty to the [possession] and improper registration [charges]; second, the State agreed to defer prosecution of the [possession] charge and dismiss it *if the petitioner complied with the terms and conditions of the pretrial diversion agreement*; and third, the State agreed to move to dismiss the [weapons charge].” (Emphasis added). On May 12, 2014, the circuit court conducted a plea hearing, where it approved the plea agreement. Consequently, the

petitioner signed the plea agreement and entered contemporaneous guilty pleas to the possession charge and the improper registration charge. The court then dismissed the deadly weapons charge and sentenced the petitioner for his improper registration conviction,¹ but diverted the possession charge from the court’s active docket for two years pursuant to a separate pretrial diversion agreement between the petitioner and the State. In the pretrial diversion agreement, the State agreed to defer prosecution of the possession charge and dismiss the charge in two years if, and only if, the petitioner satisfied its terms for the entirety of that period. Critically, when the petitioner entered a guilty plea to the improper registration charge, there was no guarantee that his possession charge would be dismissed—the dismissal was entirely contingent upon him satisfying the terms of the pre-trial diversion agreement during the next two years. Ultimately, the petitioner complied with the pre-trial diversion agreement and, effective May 12, 2016, his possession charge was dismissed.

West Virginia Code § 61-11-25(a) (2012) permits “any person who has been charged with a criminal offense . . . against whom charges have been dismissed, *and not in exchange for a guilty plea to another offense*,” to petition the circuit court for expungement of records relating to that charge.² (Emphasis added). Because this statutory language is

¹ The petitioner waived his right to a Pre-Sentence Investigation Report, requesting that the circuit court proceed immediately to sentencing with regard to the improper registration conviction.

² The statute contains additional limitations on the persons and charges that are eligible for expungement; however, those limitations are not at issue in this case.

clear and unambiguous, this Court must give full force and effect to the common and ordinary meaning of the language when applying it to the facts of this case. *See* Syl. Pt. 2, *State v. Epperly*, 135 W. Va. 877, 65 S.E.2d 488 (1951) (“A statutory provision which is clear and unambiguous and plainly expresses the legislative intent will not be interpreted by the courts but will be given full force and effect.”); *State v. Cole*, 160 W. Va. 804, 806, 238 S.E.2d 849, 851 (1977) (“As a general rule, words in statutes are taken to have been used in their ordinary sense and acceptation.”).³ The ordinary meaning of the term “exchange,” is “the act of giving or taking one thing in return for another,” “the act or process of substituting one thing for another,” or “reciprocal giving and receiving.” *Exchange*, Merriam-Webster, <<https://www.merriam-webster.com/dictionary/exchange>> (last visited November 11, 2025). Here, the petitioner did not enter (“give”) his guilty plea to the improper registration charge “in return” for the State’s dismissal of his possession charge, since he entered (“gave”) guilty pleas to both of those charges simultaneously. Unlike the majority, I find the timing of these events to be relevant on a pragmatic level. When the petitioner entered his contemporaneous guilty pleas to the improper registration and possession charges in 2014, it was still entirely possible that the petitioner would be convicted on the basis of the possession charge notwithstanding his guilty plea to the improper registration charge. The petitioner had yet to satisfy the terms of his pretrial

³ *See also Ransom v. Guardian Rehabilitation Services, Inc.*, 248 W.Va. 390, 397 888 S.E.2d 890, 897 (2023) (“[W]here the language of a statute is clear, courts must apply the relevant law according to its unvarnished meaning, without any judicial embroidery.”) (footnote and internal quotation omitted).

diversion agreement for a two-year period, a condition precedent to the dismissal of the possession charge. When the petitioner's possession charge was ultimately dismissed, effective May 12, 2016, it was the result of his satisfaction of the terms of the pretrial diversion agreement, and not because he had pled guilty to the improper registration charge two years prior.

The majority views the “the plea agreement and conjunctive pretrial diversion agreement together” as a single transaction, to conclude that the petitioner's possession charge was dismissed in exchange for his guilty plea to the improper registration charge. To take the majority's approach, one must read additional, contractual terminology into the plain language of the statute, to wit: “any person who has been charged with a criminal offense . . . against whom charges have been dismissed, and not in exchange for a guilty plea to another offense [*and not as part of a contingent, contractual consideration under a plea agreement involving another offense to which he also entered a plea of guilty,*]” may petition the circuit court for expungement of records relating to that charge. Accordingly, the majority treats the petitioner's plea agreement and pre-trial diversion agreement as one indivisible contract, under which every term to which the petitioner agreed constitutes “contractual consideration” for every term to which the State agreed and vice versa, regardless of the timing or contingencies of each term. The majority implies that the pre-trial diversion agreement was incorporated into the plea agreement by reference, since the two agreements were “executed contemporaneously and in conjunction with” one another, and the pre-trial diversion agreement, among other things, required the

petitioner to abide by the terms of his sentence for the improper registration charge.⁴ While this reasoning might make sense in the context of a commercial contract dispute, or even in a dispute over an alleged plea agreement breach,⁵ there is simply no basis for reading contract law principles into the plain language of our state’s expungement laws. “It is not for this Court arbitrarily to read into a statute that which it does not say.” Syl. Pt. 11, in part, *Brooke B. v. Ray*, 230 W. Va. 355, 738 S.E.2d 21 (2013). The majority states that the language of West Virginia Code § 61-11-25(a) (2012) is clear and unambiguous and that its ordinary meaning should be “given full force and effect,” but then does the opposite, by engaging in an overly complicated interpretation of the statute, to arrive at an impractical and statutorily unjustified result.

When giving effect to the ordinary meaning of the language in West Virginia Code § 61-11-25(a) (2012), it becomes obvious that the May 12, 2016, dismissal of the

⁴ The terms of the pretrial diversion agreement generally required the petitioner to conduct himself in a law-abiding manner during the two-year period of the agreement. The terms included requirements that the petitioner: abide by all state, federal, and municipal laws; maintain contact with his counsel and keep his counsel informed of his whereabouts; maintain or actively seek employment, when not a student; and not possess or consume any alcoholic beverage or nonprescribed controlled substance.

⁵ This Court has invoked contract law principles when reviewing cases involving a plea agreement breach. Even in that context, the Court has explained that the analogy between a contract and a plea agreement is an imperfect one, which is primarily invoked for the benefit of the defendant. *See State v. Myers*, 204 W. Va. 449, 458 n. 7, 513 S.E.2d 676, 685 n. 7 (1998) (“Traditional principles of contract law are not strictly applicable to plea agreement. . . . [but are] generally invoked to hold the government to its obligations under a plea agreement so that defendant will not suffer prejudice as result of his or her reliance on it.”) (internal citation omitted).

petitioner's possession charge was "in exchange for" satisfaction of his pretrial diversion agreement as of that date, rather than his guilty plea to the improper registration charge on May 12, 2014. As the petitioner points out in his brief, at the time he pled guilty to the improper registration charge "either the Petitioner would successfully complete the pretrial diversion agreement, and the [possession] charge would be dismissed, or he would fail to complete it, and the Court would adjudicate the Petitioner to be guilty of [the possession charge]." In other words, at the time he pled guilty to the misdemeanor improper registration charge, the State did not agree to dismiss the felony possession charge; it only agreed to put the possibility of dismissal – years in the future – in the petitioner's hands. Once D.K. fulfilled his responsibilities under the pre-trial diversion agreement and his possession charge was dismissed as a result, he was eligible for expungement.

For the foregoing reasons, I would have reversed the ICA's decision and the circuit court's August 12, 2022, order, and remanded the case with directions to the circuit court to fully consider D.K.'s petition for expungement. Thus, I respectfully dissent.