

IN THE SUPREME COURT OF GUAM

PEOPLE OF GUAM,
Plaintiff-Appellee,

vs.

GABRIEL LAU,
Defendant-Appellant.

OPINION

Filed: July 2, 2007

Cite as: 2007 Guam 4

Supreme Court Case No.: CRA06-003
Superior Court Case No.: CF0287-02, CM0460-02, CM0157-02

Appeal from the Superior Court of Guam
Argued and submitted on February 14, 2007
Hagåtña, Guam

Appearing for Defendant-Appellant:
Stephen P. Hattori, *Esq.*
Public Defender Service Corp.
200 Judicial Center Annex
110 West O'Brien Dr.
Hagåtña, Guam 96910

Appearing for Plaintiff-Appellee:
Marianne Woloschuk, *Esq.*
Assistant Attorney General
Office of the Attorney General
General Crimes Division
287 West O'Brien Dr.
Hagåtña, Guam 96910

BEFORE: F. PHILIP CARBULLIDO, Chief Justice; ROBERT J. TORRES, JR., Associate Justice, J. BRADLEY KLEMM, Justice *Pro Tempore*.

CARBULLIDO, C.J.:

[1] Defendant-Appellant Gabriel Lau (“Lau”) appeals the Superior Court’s denial of an expungement motion. The Superior Court determined, as stated in its Decision and Order, that a person acquitted by reason of mental illness, disease or defect does not qualify as an acquitted individual who may compel expungement under 8 GCA § 11.10. We reverse the Superior Court’s denial of the expungement motion and remand this matter to the trial court for further proceedings consistent with this Opinion.

I.

[2] The Superior Court entered a Stipulated Judgment and Order adjudging Lau not guilty in three cases by reason of mental illness, disease, or defect pursuant to 9 GCA § 7.31. The Stipulated Judgment and Order released Lau under the supervision of the Department of Mental Health and Substance Abuse and the Probation Office of the Superior Court of Guam, in accordance with 9 GCA § 7.34(a)(2), which provides for supervised release under certain circumstances.¹ More than two years later, the Superior Court ordered for Lau to be discharged from the supervision of the court, and the Superior Court noted on this order that the People “stated no opposition to the request for discharge.” Appellant’s Excerpts of Record (“ER”), tab 5 (Order of Release from Supervision). Lau then filed a post-judgment motion within the criminal case to expunge under Guam’s general expungement statute, 8 GCA § 11.10. In a written decision and order, the Superior Court denied Lau’s expungement motion. Lau timely appealed from this decision and order denying the expungement motion.

¹ Title 9 GCA § 7.34 delineates when the Superior Court, after entry of a judgment of not guilty by reason of mental illness, disease or defect, may order commitment, release, or discharge.

II.

[3] Our jurisdiction in this case does not flow from a final judgment, because the final judgment of the Superior Court in the criminal matter occurred when Lau was ordered released under supervision by the Superior Court's Stipulated Judgment and Order. This final criminal judgment and order has never been appealed. We will, however, exercise interlocutory discretionary jurisdiction, pursuant to 7 GCA § 3108(b), to review the Superior Court's denial of the expungement motion filed within the criminal case and after the rendition of the final criminal judgment, because deciding this case clarifies an issue of general importance in the administration of justice and will clarify further proceedings in this matter. *See* 7 GCA § 3108 (b)(1) and (3) (2005). Had this matter been filed as a separate civil case in the court below, instead of as a post-judgment motion within the criminal case, Lau would have had an appeal of right from a final civil judgment in accordance with 7 GCA § 3108 (a).

[4] Generally, requesting expungement pursuant to a statute is considered a civil matter. *Baker v. State*, 877 So. 2d 639, 640-41 (Ala. Crim. App. 2003) (determining that the Court of Criminal Appeals did not have jurisdiction over an expungement case and transferring the case to the Court of Civil Appeals); *State v. Brasch*, 693 N.E.2d 1134, 1136 (Ohio Ct. App. 1997) (stating that "[e]xpungement is a civil remedy"); *Ex Parte Jackson*, 132 S.W.3d 713, 715 (Tex. Ct. App. 2004) ("Although section 55.01, the expunction statute, is included in the code of criminal procedure, an expunction proceeding is a civil proceeding; thus, the petitioner carries the burden of proving compliance with the statutory requirements."); *see State v. McMahon*, 959 P.2d 607, 609 n.1 (Okla. Civ. App. 1998) (determining that, though the expungement statute was codified in the Code of Criminal Procedure, the legislature clearly placed expungement within the general equitable power of the trial court and the Court of Civil Appeals upon assignment from the Oklahoma Supreme Court reviews equitable cognizance cases). Guam's general

expungement statute is codified in the criminal procedure section of the code, but, as other courts have found, this location in the criminal procedure code does not control, and expungement under 8 GCA § 11.10 is a civil matter.

[5] In federal court, expungement may be a criminal matter, a statutory measure, or even a separate civil matter ancillary to the criminal case. There is no general federal statute for expungement. *United States v. Crowell*, 374 F.3d 790, 793 (9th Cir. 2004) (“Congress has not expressly granted to the federal courts a general power to expunge criminal records.”). Expungement is a criminal matter in federal courts when the defendant in the criminal case moves for expungement, not under a statute, but under the trial court’s inherent ancillary jurisdiction to grant expungement in a criminal matter. *See United States v. Sumner*, 226 F.3d 1005, 1014 (9th Cir. 2000) (“We agree with our sister circuits that district courts possess ancillary jurisdiction to expunge criminal records.”). There are also other federal statutes that allow expungement in certain circumstances. *Crowell*, 374 F.3d at 792-795 (9th Cir. 2004) (highlighting that the Ninth Circuit has recognized two sources of expungement authority, statutes and inherent authority, and noting various federal statutes that allow expungement). In the United States Court of Appeals for the Second Circuit, a defendant may even file a separate civil matter for expungement which a district court may grant under the court’s inherent powers. *United States v. Schnitzer*, 567 F.2d 536, 538 (2d Cir. 1977) (explaining that a separate civil action for expungement could have been filed as ancillary to the criminal matter).

[6] We have not determined that the local courts of Guam possess any ancillary jurisdiction or inherent power that would allow a court to grant expungement.² We express no opinion on

² In one case, the Appellate Division of the District Court of Guam noted that other courts have determined that courts have an inherent power to expunge arrest records, but then determined that the Court did not need to analyze the balancing test under one of the recognized reasons for a court to exercise its inherent expungement power, because the case did not require this determination. *People v. Cook*, Crim. No. 77-04-A, 1978 WL 13496 at *2 (D. Guam App. Div. April 21, 1978) (unreported) (determining that the Superior Court could expunge arrest

whether or not the local courts of Guam possess any ancillary jurisdiction or inherent power to expunge, because this case does not require addressing that issue. In this case, Lau moved for expungement under 8 GCA § 11.10 as a post-final-judgment motion within a criminal matter. Lau's appeal, therefore, is a discretionary appeal, not of a final judgment but of a Superior Court's ruling on a post-final-judgment motion filed within a criminal matter. See 7 GCA § 3108 (a) and (b) (2005). In the future, when a party requests expungement pursuant to 8 GCA § 11.10, he or she should do so in a separate civil case.³ The expungement proceeding will be a civil matter governed by civil rules, and an appeal of right will be available from a final civil judgment by the Superior Court under 7 GCA 3108(a).

III.

[7] This case involves an issue of statutory construction, and this court reviews issues of statutory construction *de novo*. *People v. Quichocho*, 1997 Guam 13 ¶ 3.

IV.

[8] Title 8 GCA § 11.10 delineates when local courts are compelled to expunge records from a criminal action and states:

The official records of the court, Attorney General and the police reports in connection therewith dealing with a violation or attempted violation by an adult of territorial law or a regulation having the force and effect of law shall be expunged when the subject of the report is acquitted of the offense charged, when the prosecuting attorney decides not to prosecute the offense or when the time for commencing the criminal action as prescribed by Chapter X of this Title has passed.

8. GCA § 11.10 (2005).

records for a defendant whose charges were dismissed even though the statute used to expunge the record required a person to be found guilty in order to have their record expunged). *Cook* predates the current general expungement statute, 8 GCA §11.10, which was signed into law by the governor on March 10, 1982. Guam Pub. L. 16-68 (March 11, 1982).

³ We have exercised discretionary jurisdiction in this case partly because our ruling clarifies an issue of general importance in the administration of justice. However, following the ruling in this case, any future appeals from an expungement motion filed within a criminal case and not as a separate civil case will likely lack this reason for exercising discretionary jurisdiction.

[9] The People succinctly explained the law by stating, “section 11.10 mandates expungement of criminal records in three instances: (1) where a defendant has been acquitted, (2) where the People decline to prosecute, and (3) where the statute of limitations has expired.” Appellee’s Opposition Brief p. 2 (Nov. 15, 2006). We must determine whether or not being acquitted by reason of mental illness, disease or defect is a type of acquittal that compels expungement under 8 GCA § 11.10.

[10] The People in their brief provide multiple cases interpreting expungement statutes from other jurisdictions to support their argument that 8 GCA § 11.10 does not allow expungement for a person acquitted after successfully raising the defense of not guilty by reason of mental illness, disease or defect. These cases and statutes offered by the People were unpersuasive, because they involved statutes that are markedly different from Guam’s unique expungement statute.⁴

One case offered by the People involved a court determining that an expungement statute that

⁴ The People correctly note in their Brief in Opposition that “section 11.10 . . . makes expungement mandatory.” Appellee’s Opposition Brief p. 7 (Nov. 15, 2006). Guam is not alone in requiring mandatory expungement when individuals meet certain criteria. Hawaii mandates that the Attorney General expunge records for qualified individuals. Haw. Rev. Stat. Ann. § 831-3.2 (Westlaw current through 2006 legislation) (stating that the Attorney General “shall issue an expungement order” and excluding from expungement any “person acquitted by reason of a mental or physical defect . . .”). The Maryland Code also mandates that a court enter expungement if the individual is entitled and explicitly defines the limited circumstances when a court may determine that the person is not entitled. Md. Code Ann., Criminal Procedure § 10-105(e) (Westlaw current through 2007 Regular Session) (“If the court at the hearing finds that the person is entitled to expungement, the court shall order the expungement of all police records and court records about the charge.”). Other states have expungement statutes that allow more discretion for the courts. Del. Code Ann. tit. 11 § 4373(a) (Westlaw current through 76 Laws 2007, ch. 11.) (“If the Court finds that the continued existence and possible dissemination of information relating to the arrest of the petitioner causes, or may cause, circumstances which constitute a manifest injustice to the petitioner, it shall enter an order requiring the expungement of the police and court records relating to the charge. Otherwise, it shall deny the petition.”); Ohio Rev. Code Ann. § 2953.52 (B)(2)(d) (Current through the 127th General Assembly) (directing the court to “[w]eigh the interests of the person in having the official records pertaining to the case sealed against the legitimate needs, if any, of the government to maintain those records”). Pennsylvania courts can expunge without a statute and use certain factors in weighing the interests of the state in retaining the record against the individual’s interest in expungement. The weighing factors include but are not limited to “the strength of the Commonwealth’s case against the petitioner, the reasons the Commonwealth gives for wishing to retain the records, the petitioner’s age, criminal record, and employment history, the length of time that has elapsed between the arrest and the petition to expunge, and the specific adverse consequences the petitioner may endure should expunction be denied.” *Commonwealth v. W.P.*, 612 A.2d 438, 441 (Pa. Super. Ct. 1992). Other jurisdictions have excluded from expungement eligibility individuals acquitted after a successful plea of not guilty by reason of mental illness, disease or defect. Haw. Rev. Stat. Ann. § 831-3.2(a)(4) (Westlaw current through 2006 legislation); Minn. Stat. Ann. § 609A.02, Subd. 3 (Westlaw current with laws of the 2007 Regular Session); N.J. Stat. Ann. § 2C:52-6(c) (Westlaw current through 2007).

requires a defendant be “found to be innocent” does not include an individual who received a verdict of not guilty by reason of insanity. *State v. Salmon*, 306 S.E.2d 620, 621 (S.C. 1983). In another case, a court interpreted an expungement statute that required “a verdict of not guilty returned by a jury” as not covering a ruling by a judge in a bench trial that the defendant was not guilty by reason of insanity. *State v. Jennings*, 130 S.W.3d 43, 45-47 (Tenn. 2004). Another case cited by the People involved a determination by a court that the record of a defendant found not guilty by reason of insanity could not be expunged under an expungement statute that applied when “all pending actions or proceedings were ‘resolved in favor of the petitioner.’” *State v. Ambaye*, 616 N.W.2d 256, 257-260 (Minn. 2000) (quoting Minn. Stat. Ann. § 609A.02 (West 1998)). Title 8 GCA § 11.10 does not contain any phrases regarding “resolved in favor,” “found to be innocent,” or “a verdict of not guilty returned by a jury.” Therefore, these cases and statutes are inapplicable to our analyses of whether the term “acquitted” as used in Guam’s unique general expungement statute includes in its meaning an individual who successfully pleads the defense of not guilty by reason of mental illness, disease or defect.

[11] The People cited two cases that were somewhat more persuasive, because they interpreted the term acquitted in a statute. The two cases cited were *Agresti v. Department of Motor Vehicles*, 7 Cal. Rptr. 2d 353, 357-358 (Ct. App. 1992) (determining that, under a California statute that restores driving privileges, the term acquitted does not include a situation where the criminal charges were dismissed), and *People v. Wells*, 690 N.E.2d 645, 647 (Ill. App. Ct. 1998) (reasoning that an Illinois statute that required the state in a criminal case to prove the elements of the offense charged when the defendant claims insanity excludes from the term acquitted in the expungement statute persons found not guilty by reason of insanity). The reasoning in *Agresti* and *Wells*, however, can be limited to each state’s code, and, more importantly, these cases are unable to overcome the plain language contained in the Guam Code

that, as explained below, unambiguously states that a person who successfully pleads not guilty by reason of mental illness, disease or defect is acquitted. The People also argued that laws and cases covering what types of acquittals implicate double jeopardy should be applied to this case in order to determine what types of acquittals allow expungement. We do not need to resort to this analyses, because the plain meaning of the Code guides our determination that Lau is acquitted for the purposes of 8 GCA § 11.10.⁵

[12] The arguments offered by the People would require us to accept one or both of their two main contentions. The People's first main contention would exclude, from the meaning of the term acquitted in 8 GCA § 11.10, a successfully-raised defense of not guilty by reason of mental illness disease or defect. We reject this argument and hold that the plain meaning of the term acquitted in 8 GCA § 11.10 includes individuals in Lau's situation. The People's second main contention would require us to determine that the Legislature, by failing to list every style of defense that allows a defendant to be acquitted, actually intended to exclude from expungement under 8 GCA § 11.10 any individual acquitted after a successful plea of not guilty by reason of mental illness, disease or defect. The People argued that our Legislature's omission of the phrase "not guilty by reason of mental illness" from 8 GCA § 11.10 demonstrates that the Legislature intended to exclude this phrase and reason for acquittal from the expungement statute. Appellee's Opposition Brief p. 9 (Nov. 15, 2006). This argument, however, is unavailing, because it attempts to divine intent from a fictitious omission. Following the People's logic, what meaning would the term acquitted in 8 GCA § 11.10 possess? It would apparently not include any of the defenses that could lead to an individual being acquitted, because, according to the People, those defenses that could render a defendant acquitted would

⁵ Neither parties' rule of lenity arguments need to be addressed, because we determine that the statute is unambiguous. "The rule of lenity may apply only when a statute remains ambiguous after resort to canons of statutory construction." *United States v. Pearson*, 321 F.3d 790, 791 (9th Cir. 2003).

have to be listed in order for them to allow expungement under 8 GCA § 11.10. The only intent manifested by the Legislature in using the term acquitted was the intent to use in the statute the plain meaning of this term. The Legislature, by using the term acquitted, did not somehow intend to exclude from the expungement statute those individuals acquitted by a successful defense of not guilty by reason of mental illness, disease or defect.⁶

[13] The Superior Court erred in its determination that 9 GCA § 7.28 evidences a legislative intent to permanently disallow expungement for those acquitted by reason of mental illness, disease or defect. As explained below, the plain meaning of the statutes involved require a different determination.

[14] The statutes involved in this case are unambiguous, and the plain meaning of these statutes lead to the determination that an acquittal by reason of mental illness, disease or defect is covered by 8 GCA § 11.10 and, therefore, Lau's expungement motion must be granted. Statutory construction involves construing a statute to ascertain its meaning. *See Perez v. Guam Hous. & Urban Renewal Auth.*, 2000 Guam 33 ¶ 9. This ascertainment of meaning or interpretation starts with determining whether the statute is unambiguous. If a statute is unambiguous, then the judicial inquiry into the meaning of the statute is complete. *Quichocho*, 1997 Guam 13 ¶ 5. In order to determine whether a statute is ambiguous, the court examines the language of the statute and the structure of the law as a whole including its object and policy. *Id.* The inquiry into whether a statute is ambiguous begins with looking at the plain meaning of the language in question, and, when looking at the language, the court's task is to determine if the

⁶ Though they did not state this precise principle, the People may have been attempting to express an argument following the canon *expressio unius est exclusio alterius*. However, "the canon *expressio unius est exclusio alterius* does not apply to every statutory listing or grouping; it has force only when the items expressed are members of an 'associated group or series,' justifying the inference that items not mentioned were excluded by deliberate choice, not inadvertence." *Barnhart v. Peabody Coal Co.*, 537 U.S. 149, 168 (2003) (quoting *United States v. Vonn*, 535 U.S. 55, 65 (2002)).

language is plain and unambiguous. *Aguon v. Gutierrez*, 2002 Guam 14 ¶ 6. “The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole.” *Id.* (quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997)). In determining ambiguity, the language of the statute cannot be read in isolation and must be examined within its context. *Id.* ¶ 9. “A statute’s context includes looking at other provisions of the same statute and other related statutes.” *Id.*

[15] The related statutes in this case, 9 GCA §§ 7.28 and 7.31, explain the context of the term acquitted in 8 GCA § 11.10. The plain and unambiguous meaning of 9 GCA §§ 7.28 and 7.31 demonstrate that a person who has successfully plead not guilty by reason of mental illness, disease or defect is acquitted.⁷ Title 9 GCA § 7.28 states, “[i]n any case in which evidence of mental illness, disease or defect has been introduced pursuant to the provisions of § 7.19 and *in which the defendant is acquitted*, the court may order an evaluation of his condition and initiation of proceedings pursuant to the provisions of 10 GCA Chapter 82.” 9 GCA § 7.28 (2005) (emphasis added). Title 9 GCA § 7.31 states, “[w]henver a plea of not guilty by reason of mental illness, disease or defect is entered and *the defendant is acquitted* on the plea, the verdict or, if trial by jury has been waived, the finding of the court and the judgment shall so state.” 9 GCA § 7.31 (2005) (emphasis added). Reading the term acquitted from 8 GCA § 11.10 within the context of these two related statutes renders the term unambiguous. We conclude, therefore, that an individual who has successfully raised a defense of not guilty by reason of mental illness, disease or defect and has been discharged from the supervision of the court in accordance with 9

⁷ We decide today that an individual in Lau’s situation who has successfully raised a defense of not guilty by reason of mental illness, disease or defect and has been discharged pursuant to 9 GCA § 7.34 from the supervision of the court is acquitted. We do not, however, express an opinion on whether or not a person who successfully raises a defense of not guilty by reason of mental illness, disease or defect and remains under the supervision of the court pursuant to 9 GCA § 7.34 would be deemed acquitted for expungement purposes.

GCA § 7.34 is acquitted, and this acquitted individual may compel expungement under 8 GCA § 11.10.

V.

[16] We, therefore, **REVERSE** the Superior Court's denial of Lau's motion for expungement and **REMAND** this matter to the trial court for further proceedings consistent with this Opinion.