1	COUNTY COURT OF THE STATE OF NEW YORK
2	COUNTY OF ONONDAGA: CRIMINAL TERM: PART IV
3	
4	THE PEOPLE OF THE STATE OF NEW YORK,
5	I-89
6	-against- <u>MOTION</u>
7	VINCENT .
8	
9	Defendant.
10	Criminal Courts Building 505 South State Street Syracuse, New York 13202
11	March 1, 2010
12	Before:
13	
14	HONORABLE ANTHONY F. ALOI,
15	Judge, without a jury.
16	Appearances:
17	WILLIAM J. FITZPATRICK, ESQ. District Attorney, Onondaga County BY: MICHAEL E. FERRANTE, ESQ.
18	Assistant District Attorney
.19	
20	PATRICIA J. WARTH, ESQ.
21	Attorney for Defendant Center for Community Alternatives
22	115 East Jefferson Street - Suite 300 Syracuse, NY 13202
23	
24	THE DEFENDANT - Present in Person
25	

THE CLERK: Good morning, your Honor. MS. WARTH: THE COURT: Morning. MS. WARTH: Patricia Warth and I'm here with Mr. THE COURT: All right, Counsel, now this is a motion and -- Counsel, you represent MS. WARTH: That's correct, your Honor. THE COURT: And this is I here with 10 you today? MS. WARTH: Yes, it is. 11 12 THE COURT: Now, this is a motion made pursuant to CPL 160.58 requesting that this Court issue a 13 conditional sealing order of Mr. 's record. 14 15 What would you like to tell me? I have your motion and your reply brief but, for the record, I want 17 you to state your position again. 18 MS. WARTH: Your Honor, when we were here last 19 time, I think we really refined the issue. Everybody 20 agreed that Mr. ____s conviction was such that it 21 rendered him eligible for conditional sealing, and this Court expressed the statement that Mr. downwould be 22 deserving of conditional sealing. I think the only issue 23 24 before this Court was the issue of whether Mr. 's drug treatment program, which was ordered by this Court

back in 1991 as part of a condition of his probation, a certified accredited treatment program that included supervision, whether that fulfilled the requirements of the statute, specifically, whether it was a judicially sanctioned program of similar duration, requirements, and level of supervision to Drug Court programs or judicial diversion programs.

The prosecution opposed the motion on that ground saying that that program didn't meet the criteria under the statute. This Court expressed some reservations about that, which is why I submitted an additional memorandum briefing the issue.

I think that in discerning the Legislative intent, which was this Court's concern, did the Legislature intend that somebody who completed a judicially sanctioned program as part of a sentence of probation was such a person eligible for conditional sealing. The best indicator of Legislative intent is, of course, the statute's plain language. I think if we parse the stature apart, it's very clear that the Legislature certainly did contemplate the very type of program that Mr. completed.

If we look carefully at the type of programs that render a person eligible for conditional sealing, the statute lays out three types of programs. The first,

I quote, "A judicial diversion program under Criminal Procedure Law Article 216," that would be the new judicial diversion program. The second laid out by the statute is, "or one of the programs heretofore known as drug treatment alternative to prison." As the District Attorney acknowledged in their answering affirmation, that includes drug -- the traditional Drug Court, or traditional drug treatment programs here in Onondaga County, that would be the Drug Treatment Court that was started in 1997. The third type is the type that we say that Mr. s program falls within, which is, "or another judicially sanctioned drug treatment program of similar duration, requirements, and level of supervision." It's very clear from that clause in the statute, that the Legislature intended to expand conditional sealing beyond just completion of judicial diversion, and beyond completion of drug -- traditional Drug Treatment Court.

Why? Why would the Legislature want to do that? That's because the Legislature knew in enacting the conditional sealing statute that Drug Treatment Courts are somewhat a recent phenomenon starting in the 1990's, that they've been created in New York in an ad hoc fashion, depending on a jurisdiction's resources and the political climate. Some started in the early 1990's,

some in the mid-1990's, Syracuse's in the late 1990's.

As late as 2000, many communities still did not have Drug

Treatment Courts. The Legislature did not want

conditional sealing to be dependent on the chronology and

geography of somebody instead of the substantive merits

of whether or not the person is truly deserving. So

that's why the Legislature added that more expansive

clause, to try to sweep in things or programs that are

similar to Drug Treatment Courts, similar in duration,

requirements, and level of supervision.

To read the statute as only contemplating conditional sealing for completion of judicial diversion or traditional Drug Treatment Court would be to render or result in fundamental unfairness because somebody could be denied conditional sealing not because of the substance of what they've done, not because they failed to complete treatment or whatever, but merely because they lived in the wrong jurisdiction at the wrong time and Drug Court wasn't available and that is what would happen to Mr. here today, your Honor.

At the time that he was charged and convicted of Grand Larceny in the Fourth Degree, there was no Drug

Treatment Court. There was, however, the program that he completed as part of probation. This program was ordered by the Court as part of a condition of his

Janice Marozzi-Brown, CSR, RPR, Senior Court Reporter

probation.

In addition to the plain language of the statute in discerning Legislative intent, it is also important to look at the purpose of the underlying Legislative purpose of the statute, and both with regard to the 2009 Drug Law Reform Act, in general, and with regard to the conditional sealing statute, in particular, it's clear that a reading of that language that goes beyond just completion of Drug Treatment Court is important to further the purpose of the statute.

As you well know, the 2009 Drug Law Reform Act was enacted to ameliorate the harsh punitive sentences of the Rockefeller Drug Laws. Conditional sealing, in particular, was part of the therapeutic approach that the Legislature had enacted as part of the 2009 Drug Law Reform Act, and by therapeutic approach I mean a more lenient less harsh approach that takes into account a person's attempt at rehabilitation. We see that with regard to many aspects of the 2009 Drug Law Reform Act, most notably, judicial diversion, expanded shock orders, expanded access to Willard, and expanded sentencing, including community based sentences such as probation and local sentences. All of that is part of a more therapeutic, more lenient response to nonviolent drug offenses.

Conditional sealing recognizes that drug

treatment is the first step in somebody's rehabilitation.

The second, and just as important step, is full community

reintegration, access to employment, access to stable

housing, access to education. That is a necessary part

of somebody's complete rehabilitation, and the

conditional sealing statute recognizes that because of

the myriad of collateral consequences that are attached

to a criminal conviction, the best way to alleviate

somebody of those collateral consequences is to seal a

conviction. Indeed, that's something that's been

happening in New York for years as part of Drug Treatment

Court and part of the District Attorney's sponsored

programs.

So this is an important part, conditional sealing is an important part of the whole of the 2009

Drug Law Reform Act, and the Legislature certainly did not intend a restrictive reading of the conditional sealing statute because to further the Legislature's intent would be to take into account the whole statute and in every phase of the statute and not to read the statute in such a way as to render one phrase of it meaningless, as the prosecution proposes.

When we were here last time, this Court did refer to the Preiser commentaries, and in their answering

affirmation, the prosecution brought up commentaries by Barry Kamin as a reason to read this statute in a limited While I think we all would agree that practice fashion. commentaries and Bar Journal articles are not mandatory for this Court, they can be persuasive if they're based on a good analysis of the statute, the Legislative intent of the statute, and any case law that may exist. this case though, both of these commentaries are really intended only to be an overview of the statute, not a comprehensive analysis of the statute. Neither of those commentaries address the language that we're looking at, that is a judicially sanctioned program of similar duration, requirements, and level of supervision, and because both of those commentaries ignore that critical language and really are intended just to be an overview of the statute, in this particular instance those commentaries are not helpful and certainly not persuasive.

Finally, this Court did express some reservations again about completion of a program as part of a probationary sentence. When you look at that issue, and the issue of drug treatment as part of probation, there is really nothing that makes it substantively different from drug treatment as a part of judicial diversion or drug treatment as part of a Drug

24

Treatment Court. All three have a same level of supervision, some are by Court, sometimes the Courts use probation, indeed, in enacting the 2009 Drug Law Reform the Legislature envisioned that Drug Treatment Courts and judicial diversion courts may want to use probation to conduct the supervision and expanded interim probation from one year to two years to allow Courts to do that.

There is no distinction in whether a person does the treatment pre-plea or post-plea because, in fact, most Drug Treatment Courts and the judicial diversion statute does require a person, in most instances, to enter a quilty plea before doing the treatment, nor isn't it meaningful that it's a probationary sentence, or that the treatment is done as part of a sentence. The reason for that is because probation is a revokable sentence. Again, if you go back and look at how Drug Treatment Courts work, how judicial diversion works, these all work on the concepts that a person can be motivated to do treatment knowing that there is a threat of incarceration hanging over their heads, and that that threat of incarceration exists to motivate a person to fully comply with treatment and to fully engage and complete Well, that threat is there when the sentence treatment. is probation or when the drug treatment is done as part of a probationary sentence because, as you know,

probation is a revokable sentence.

~

La de

was in the same position as anybody who is in a Drug Treatment Court. He knew that if he didn't comply with the level of supervision, if he didn't comply with the treatment requirements, if he failed to participate in the required aftercare, he could go to prison. That was made very clear to him. That puts him in the same position as somebody who completes a program as part of Drug Treatment Court, or a program that's completed as part of judicial diversion.

So substantively the program that Mr. completed is no different from a program that is completed as part of Drug Treatment Court or judicial diversion. That is why the Legislature added more expansive language, knowing that if they didn't do so, that there would be some really fundamentally unfair results, as Mr. 's case really illustrates:

THE COURT: Thank you, very much. Thank you for your excellent reply memorandum.

Mr. Ferrante, what do you say about all of that?

Well, first, do you really have an opposition to this

with Mr. Love? I mean, looking at Mr. and Mr.

-- what he has done with his life?

MR. FERRANTE: Well, Mr. has been gainfully employed, even though he does have a felony

PEOPLE v.

~

conviction. I have to go by looking at the statute. I think there is a big difference between a probationary sentence, where you're getting treatment, and Drug Court and judicial diversion.

THE COURT: Does it matter what we call it if, in fact, the drug treatment program that he went through or anybody goes through is effective? Does it matter? Especially in an older case like this.

MR. FERRANTE: No, but I don't think the Legislature intended on going back twenty-five years or thirty years for those groups of people. I think it's clear by -- if you look at the language -- they were talking about people who have completed Drug Court or judicial diversion.

Now, if you take this another step forward, say a person like the woman you had here earlier who was rejected by judicial diversion, she comes in, now you sentence her to probation, is her case now going to be applicable to be sealed because she went through probation? I don't think that's what the Legislature intended.

THE COURT: Well, you don't know, depending on what she went through.

MR. FERRANTE: But I don't think that's what the Legislature intended and there is a big difference

between the supervision you get at judicial diversion and in Drug Court. Number one, you have to come and meet with the Judge at least once a week and then two times a month, or whatever it is, and you meet with their counsellors. Over here, a probationary sentence, everything is done over at probation. The Court only gets involved if they don't want to do what probation tells them to do. Okay. I think that is a big difference in the supervision and everything else.

If you were then -- now, the next thing that we'll be expanding is, okay, you get sentenced to State Prison and you completed the CASAT program, is that going to be sealed, you know, because that's an in-house program that is part of the sentence. I don't think that's what the Legislature intended.

THE COURT: Let me ask you this, then I'll get into the merits of this, but one of the things that we're supposedly concerned with, and the Legislature is concerned with, one, is that the Defendants — that we're no longer going to put everybody who has drug offense convictions in jail, that we have found that doesn't necessarily meet the goals that we need to meet to avoid incarceration, as well as to save millions of dollars of taxpayers' money, quite frankly, on incarceration as opposed to treatment, but it is clear that the

24

Legislature has said in this legislation, and we all being involved in the criminal justice system know that there is two components, there is the treatment that the Defendant needs to successfully complete, that's one component, and that for someone who has shown his earnest desire to address his drug problems in treatment and has accomplished that, that the next component is that we have seen that there is obstacles to the next step, his assimilation into society because the employers know that he has a drug conviction, he has a drug record. That next step somehow he is committed to the treatment, and now he can't get a job, and then we have not accomplished their goals. I think what the Legislature has said is that by 160.58, that we have to look to the sealing as the next component.

I want to make it perfectly clear, this is conditional sealing of records. This is not vacating the Judgment of Conviction. Mr. until the day he dies will have a conviction for a felony. He's a felon. All right. And the conditional sealing doesn't mean that these records are not available to Courts, that they're not available to law enforcement, that they're not available to your office, and they're available in a very narrow sense to employers who are hiring police and peace officers. So this is sealing of records so an

Janice Marozzi-Brown, CSR, RPR, Senior Court Reporter

2

r-

6

1

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

employer won't preclude someone from getting employment.

No one is vacating Mr. s record. So this is not like -- I mean, no one is vacating his Judgment of Conviction.

Looking at this application, every case has to be decided on a case by case basis. In this case here, now is fifty-six or fifty-seven years old. conviction was back when he was thirty-four years old, in That was his first and only brush with the law. 1989. As a result of his drug addictions, he stole money as a result of signing checks that he was not authorized to sign, but at that time he had a Bachelors Degree, and he's an accountant, and so in 1989 that was his first brush with the law. He was sentenced to five years probation. As a result of the probationary term, he was involved in intensive A-Tip, I'm very familiar with A-Tip, an intensive drug and alcohol treatment program that required, I believe, that he have a six month inpatient component, then there was a six month outpatient component. He was involved in The Rescue He was involved in the intensive supervision Mission. of the Probation Department. He completed all of that. He served his five years probation, and he went through an intensive treatment and supervision program and it's He did that. articulated in the motion papers.

Inpatient, outpatient, therapy, screenings, supervision, and he remained clean. I know this from the papers, October 15th, I believe, 1990, is a critical day in your life, is that correct, Mr.

THE DEFENDANT: Yes, it is, your Honor.

THE COURT: I mean that date is critical, Mr.

Love has been drug and alcohol free since that date. I

can't, as a Judge, not look at the person I'm dealing

with. I know you have, Mr. Ferrante, and I can

appreciate your position, you have a larger role to play

in terms of what I may say in this case, how it might

impact on others, I can say this, for the record, this

decision is in this case and I will look at every case on

a case by case basis.

Now we have the statute and the statute says that a Judge is authorized to conditionally seal convictions for 220 and 221 convictions, as well as any offenses enumerated in 41091 the parole supervision offenses. This happens to be one of them. They go on to say, has successfully completed a judicial diversion program, someone is eligible for this sealing, well, he hasn't completed a judicial diversion program, we know that, that's just been in effect since October, and/or one of the programs heretofore known as Drug Court Treatment Alternative to Prison and we know he hasn't

24

done that because that wasn't in effect in 1989, but then the Legislature says, or has successfully completed another judicially sanctioned drug treatment program of similar duration, requirements, and level of supervision, and has completed the sentence imposed for the offense. So I have to -- the plain meaning of that, or another judicially sanctioned drug treatment program, certainly A-Tip and those kind of programs, and there is an order signed by this Court as a condition of the probation that he participate in intensive supervision program administered by the Probation Department, I'm not going to minimize the requirements of those programs because if I did, I wouldn't be ordering people to comply with those programs at all, but I don't and I do and I think they're every bit -- they meet every bit of the requirement in the level of supervision that any drug treatment program happens and occurs.

I look at what the Legislature said, I think, and we don't know because this statute is contained in a budgetary statute, we don't have all of the Legislative history and arguments that we really have in the normal statute, but another judicially sanctioned drug treatment program of similar duration, requirements, and level of supervision and has completed the sentence imposed. I would have to completely disregard what they have said

10

12

13

14

15

17

18

19

20

21

22

23

24

7. CERTIFICATION

for me to automatically say that A-Tip and programs administered after -- in probation are not encompassed by that, because I think what the spirit of this is, if there is a judicial sanctioned drug treatment program and they can tell me what it is and show me what he has done and how successful or not successful he has been, then the Legislature said, well, you can look at that too, Judge, we're going to make this broad enough so you cannot preclude someone from the benefits of sealing their criminal record for employment purposes and that is what this is all about. This isn't -- I mean, if they said, Judge, you're going to vacate his Judgment, there's none of that, we're talking about a limited benefit, a limited benefit, but I think it's a great benefit for someone who has taken the treatment, has successfully completed the treatment programs, and now wants to get They removed that obstacle from that further employed. employment by allowing the sealing.

Again, those records are still available to prosecutors like yourself, they're available to the Court, they're available to police departments, they're available to any law enforcement agencies that want or ask. It is a limited benefit.

So they then -- the Legislature then says, well, if he is eligible for sealing pursuant to 160.58, I say

11

12

14

15

18

19

20

21

22

23

24

that he is eligible, that he has another judicially sanctioned drug treatment program of similar duration, I think under the circumstances of this case, that -- this case, not any other, I'll have to look at other cases, but is he eligible as opposed to being precluded from this request? It doesn't mean even if I say he's eligible that doesn't mean I have to grant this. Now we get to the merits. I think Mr. is eligible. think that he has completed a judicially sanctioned drug treatment program and that those programs are similar in duration, requirements, and level of supervision clearly. Now the question is, is he entitled to sealing? What are the facts that relate to Mr.

What are the facts that relate to Mr. ? Mr. , as I said, fifty-six, fifty-seven year old man now. He is a well-respected professional in this community. He is a well-respected and valued employee of the Cicero-North Syracuse School District, that's clear from the papers. He is also a member of this community in good standing. He devotes a lot of his time to a lot of causes that benefit this community and he should be given credit for that.

So the statute says, look at any relevant factors including but not limited to the circumstances and seriousness of the offense. This was a Grand Larceny offense back in 1989, he was placed on probation,

restitution was paid-in-full. He participated and completed his drug treatment programs and he's been drug and alcohol free since 1990. He has not been involved in any further crimes. He has been employed, as I said, with the CNS since, I believe, about 1993 and he's still employed and still a valued employee. So the circumstances and seriousness of the offense, I don't want to minimize Grand Larceny but it was his one and only, there was no violence involved, it was as a result of his drug addiction at that time in his life. He has successfully accepted treatment, drug and alcohol free. He is a professional college graduate and performing his work.

The character of the Defendant, including completion of the -- well, the character of the Defendant, I have to say this, you know, when I ran for election the first time ten years ago I used to say a person -- there's an old saying, you are what you eat. You eat fattening food, you get fat. I also say, you are what your reputation is, your character. His reputation in this community is a fine one. He is a well-respected professional, not only in his work but in the community as well.

So -- I also say that he has clearly completed this judicial treatment program as a result of probation.

I

-1 FT

He's completed that and he's so completed it he went on and has not been involved in any other brushes with the law. As I say, the criminal history is negligible, it's this one time, thank God, as a result of the treatment programs he's received and probationary supervision, that was it. He's been a fine member of this community.

The impact of sealing the Defendant's record upon his or her rehabilitation and successful and productive re-entry and reintegration into society and public safety, I think that sentence can sum up the Legislative intent and purpose behind sealing. It is meant to help people who have taken the cure and have completed their sentence to take the next step to integrate, to be successful, to be productive. Mr. has done all of that. Certainly society -- I think that the public and our society, if you would, would -- this decision to seal these records in this case would promote confidence in the criminal justice system rather than detract.

So having said that, again, this is a conditional sealing order. If Mr. is arrested again, I guess for anything pretty much, that I can unseal the record and then all of a sudden now he wants to seek further employment, that record now is open to anybody and everybody. Again, I say to you, this is a

limited order sealing the records from employers. In

Mr. case, he has an opportunity to even further
his professional career, if you will, and that he
believes, and his attorneys believe that this may help
that. I don't see any reason in the world why, in this
case, why I or our criminal justice system should stand
in the way of any further advancement that he could
receive.

Having said all of that, I'm going to grant the
order sealing these records are available to you. Mr. Farmers

Having said all of that, I'm going to grant the order sealing these records in accordance with 160.58.

Again, these records are available to you, Mr. Ferrante, to law enforcement, to the Courts, to law enforcement -
I mean other law enforcement agencies. The purpose is to give the benefit of someone like Mr. who has successfully completed the treatment, giving him the benefit of the next step of re-entry, reintegration to society without being prevented from gaining employment because of that record.

So that's the decision and order of the Court.

I will prepare a sealing order.

MS. WARTH: Your Honor, if I may --

THE COURT: Unless you have one prepared?

MS. WARTH: I do.

THE COURT: Let me take a look at that.

MS. WARTH: It pretty much follows or tracks

the language of 160.58. THE COURT: I think that is in order. Today is the 1st day of March. Let me make a copy for -- can we have a couple copies, one for the attorney -- how about three. good job. THE DEFENDANT: Thank you. THE COURT: You were well represented. MS. WARTH: Thank you, your Honor. 10 THE COURT: So were the People of the State of New York but -- you batted five hundred today, that's not bad. I know it's not batting averages but I thank Mr. 13 Ferrante for his input as well. 14 Okay, we'll get you copies of that order. MS. WARTH: Thank you, your Honor. THE COURT: Good luck. (Conclusion of proceedings.)

CERTIFICATE STATE OF NEW YORK COUNTY OF ONONDAGA CITY OF SYRACUSE I, JANICE MAROZZI-BROWN, CSR-RPR, Senior Court Reporter, in and for the Fifth Judicial District, State of New York, do hereby certify that I attended the foregoing proceeding and took a stenotype report of the same and the foregoing is a true and accurate transcript of the same and of the whole thereof, to the best of my ability. 10 13 DATED: 3-2-10 14 15 JANICE MAROZZI-BROWN, CSR-RPR Senior Court Reporter