

1988

Jane Doe v. Utah Department of Public Safety, et al., Case No. 860138: Unknown

Utah Supreme Court

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BRIEF

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November 21, 1988

Geoffrey J. Butler
Clerk of Utah Supreme Court
332 State Capitol
Salt Lake City, Utah 84114

Re: Jane Doe v. Utah Department of Public Safety,
et al., Case No. 860138

Dear Geoff:

Pursuant to Utah Supreme Court Rule 24(j), I offer as supplemental authorities on behalf of appellants, Utah Department of Public Safety, et al., the fact that effective April 25, 1988, Utah Code Ann. § 67-15-10.5(2) (Supp. 1988) was amended in pertinent part to read:

(2)(a) notwithstanding Section 77-18-2 regarding expungements, or a similar statute or rule of any other jurisdiction, any conviction obtained in the state or other jurisdiction may be considered for purposes of this section.

(b) In this section, "conviction" includes a conviction which has been expunged, dismissed, or treated in a similar manner to either of these procedures.

(c) This provision applies to convictions entered both before and after the effective date of this section.

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Clerk, Supreme Court, Utah

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Also, effective April 27, 1988, Utah Code Ann. §77-18-2 was amended in pertinent part to read as follows:

(3) The person who has received expungement and sealing of an arrest or conviction may answer an inquiring employer as though the arrest or conviction did not occur.

(4) Inspection of the sealed records may be permitted by the court only upon petition by the person who is the subject of those records and only to the persons named in the petition.

(5)(a) The Utah Bureau of Criminal Identification shall keep, index, and maintain all expunged and sealed records of arrests and convictions. Any agency or its employee who receives an expungement order may not divulge any information in the sealed expunged records. Employees of the Bureau of Criminal Identification may not divulge any information contained in its index to any person or agency without a court order, except for certification of an applicant for peace officer status, or for use by the Board of Pardons.

(b) For judicial sentencing, a court may order any records sealed under this section to be opened and admitted into evidence. The records are confidential and are available for inspection only by the court, parties, counsel for the parties, and any other person who is authorized by the court to inspect them. At the end of the action or proceeding, the court shall order the records sealed again.

(Emphasis added.)

These statutory changes provide sufficient ground for this Court to summarily reverse the order of the lower court granting summary judgment in favor of respondent. The sole issue on appeal is whether the Peace Officer Standards and Training

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Council (P.O.S.T.) may consider convictions expunged under section 77-18-2 in deciding whether to grant or deny certification under section 67-15-10.5. The statutory changes now make clear that it may.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Earl F. Dorius".

EARL F. DORIUS
Assistant Attorney General

EFD:bks

cc: L. Zane Gill
Clyde M. Palmer
William F. Flink