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Criminal expungements: When available and how to obtain them?

People often ask me about the possibility of expunging or sealing their criminal prosecution records. Expunging or sealing removes the record from public access, but not automatically from court and law enforcement access. Moreover, some people are better off not expunging or sealing their prosecution records, so as to have official dismissal records immediately available for security clearance applications, immigration benefit applications, and various other applications that may necessitate access to the prosecution records. Expungements are generally unavailable for federal cases. In Maryland, Virginia, and Washington, DC, expungement first necessitates a dismissal or acquittal of a criminal case. In Maryland, successfully completed stets and probations before judgment also are eligible for expungement. Of the foregoing three jurisdictions, Maryland is the easiest place to obtain an expungement after going through any necessary waiting periods, and filing the necessary brief applications with a \$30 application fee. Expunging a case entered nolle prosequi requires a three-year waiting period unless the defendant completes a form waiving the right to file a lawsuit relating to the prosecution. Expungements are not available for probations before judgment for drunk driving cases. Expungements ordinarily are granted within a few weeks after the ripe filing of a properly-completed expungement application. The District of Columbia is the hardest of the three jurisdictions for obtaining an expungement (called "sealing" in the District of Columbia), where the defendant is obligated either to show clear and convincing evidence that the defendant was not guilty in the first place, or else to show manifest injustice to deny the sealing. Months can pass before the assigned judge decides whether to grant or deny a motion to seal. Virginia falls between Maryland and the District of Columbia for the difficulty level in obtaining an expungement. In Virginia, the defendant must file a separate civil lawsuit in the Circuit Court seeking an expungement, and get a police record check performed as part of the process. What to do when only some charges in a criminal charging document result in guilty verdicts, and the remaining charges do not? For Maryland, at least, the Court of Appeals recently held that charges from separate and distinct events are not precluded from expungement merely by being on the same charging document as counts that result in guilty verdicts. *Stoddard v. Maryland*, No. 24, Sept. Term 2006, ___ Md. __ (2006). Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00