

ARIZONA SUPERIOR COURT, PIMA COUNTY

HON. DANIELLE B. LIWSKI

CASE NO.

DATE: February 25, 2021

STATE OF ARIZONA

Plaintiff,

vs.

Mr. WD

Defendant.

ORDER

IN CHAMBERS RE: PETITION TO CLEAR RECORDS

Counsel for the Petitioner filed a Petition to Clear Records Pursuant to Arizona Revised Statutes Section 13-4051, dated January 8, 2021, received on January 25, 2021. On January 26, 2021, the Court issued an Order requesting the State's Response to the Petition, and subsequently received the State's Response on February 16, 2021. Moreover, the Court also received copies of the Police Reports relating to this case.

The Court has reviewed the Petition and the State's Response filed on February 16, 2021. The State responded informing the Court that the State defers to the Court on the Petition to Clear Records, but that the State believes the Superior Court may lack jurisdiction to grant the requested relief because the original case number is for the Pima County Consolidated Justice Court. Under A.R.S. §13-4051(A), any person who is wrongfully arrested, indicted or charged for any crime may petition the superior court for an order requiring notation on all court records, police records, and other related records indicating that the person has been cleared. Therefore, pursuant to A.R.S. §13-4051(A), this Court does have jurisdiction and it is unclear why the State believes this Court does not have jurisdiction to issue a ruling on the Petition.

The Petition to Clear Records stems from the Petitioner's arrest on February 3, 2016 for one count of Assault, Domestic Violence. The arrest occurred when the Petitioner arrived at his dormitory room, found that his dormitory room had been destroyed by his roommate and was confronted by his roommate, escalating when the roommate assaulted the Petitioner by pushing him and the Petitioner physically shook off his roommate. Law Enforcement arrived and arrested both men, resulting in the charge of Assault, Domestic Violence in Justice Court case CR16----- . Consequently, the charges against the Petitioner were dismissed by the Pima County Attorney under docket number CR16----- . Having considered the Petition and the record in

Michelle Bland
Law Clerk

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this matter, the record supports the finding that the Petitioner was wrongfully arrested. As established in *State v. Franco*, where a Petitioner was wrongfully arrested or charged, the legislature “intended A.R.S. §13-4051 to apply in cases where the court finds that Petitioner was wrongfully charged with a crime in that either there was no legal basis for the arrest, or no legal or factual basis for the charge, or where the parties stipulate.” See *State v. Franco*, 153 Ariz. 424, 737 P.2d 200 (App. 1987). Here, the Petitioner was arrested although it is uncontested that he was defending himself, that he was not the aggressor and did not initiate contact during the altercation, and based on police reports, the Petitioner was arrested because he did not retreat when he was threatened by his roommate. Additionally, the charges against the Petitioner were ultimately dismissed by the Pima County Attorney’s Office, supporting the conclusion that the Petitioner was wrongfully charged.

Furthermore, the Petitioner moves this Court to seal the arrest records in accordance with A.R.S. §13-4051 in the interest of justice. Per A.R.S. §13-4051(B), if the Court believes that justice will be served by clearance of records, the Court shall issue an order requiring entry that the person’s record has been cleared and shall order that all law enforcement agencies and courts not release or provide access to such records except on order of the court. The Court finds that justice will be served in this case by clearing Petitioner’s record for several reasons. First, justice will be served by clearance of records because the arrest and charges lack legal and factual basis. The police reports and arrest record do not present the Petitioner as involved in any criminal conduct that warranted the arrest. Second, justice will be served by the clearance of records because it will allow the Petitioner to pursue more productive professional opportunities, as noted by Counsel in their Motion. Therefore, having considered the Petition, the State’s Response indicating no objection, and the record in this matter, the Court will grant the Petition to Clear Records.

IT IS ORDERED the Petition to Clear Records is **GRANTED**.

IT IS ORDERED that all law enforcement agencies and courts shall not release copies of or provide access to such records to any person except on order of the Court in Justice Court case CR16-----, incident case number 16-----.


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cc: Hon. Danelle B. Liwski
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