

**IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

**IN RE: EXPUNGEMENT OF JUVENILE RECORDS AND VACATUR OF
LUZERNE COUNTY JUVENILE COURT CONSENT DECREES OR
ADJUDICATIONS FROM 2003-2008**

RELATED TO:

**IN RE: J.V.R.; H.T., A MINOR THROUGH: No. 81 MM 2008
HER MOTHER, L.T.; ON BEHALF OF :
THEMSELVES AND SIMILARLY :
SITUATED YOUTH :**

ORDER

PER CURIAM

AND NOW, this 22nd day of July 2009, this Order acknowledges the Court's receipt of the Special Master's Second Interim Report and Recommendations in the above captioned matter. A copy of the Second Interim Report and Recommendations is attached to this Order.

Upon consideration of the Second Interim Report and Recommendations, this Court **ADOPTS AND APPROVES** the Master's Second Interim Recommendations. Furthermore, this Court specifically grants the Special Master the authority to act in accordance with the recommendations set forth in the Second Interim Report and Recommendations.

Jurisdiction is retained.

**IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

**IN RE: EXPUNGEMENT OF JUVENILE RECORDS AND VACATUR OF LUZERNE COUNTY JUVENILE
COURT CONSENT DECREES OR ADJUDICATIONS FROM 2003-2008**

RELATED TO:

In re: J.V.R.; H.T., a Minor	:	No. 81 MM 2008
through her Mother, L.T., on behalf	:	
of themselves and similarly situated	:	(Arthur E. Grim, S.J.,
youth	:	Special Master)

**SECOND INTERIM REPORT AND RECOMMENDATIONS
OF THE SPECIAL MASTER**

**TO: THE HONORABLE CHIEF JUSTICE AND JUSTICES OF THE SUPREME
COURT OF PENNSYLVANIA:**

The undersigned Special Master respectfully submits this Second Interim Report and Recommendations, pursuant to the authority and directives set forth in the Court's Order dated February 11, 2009.

A. BACKGROUND.

1. On March 12, 2009, I submitted my First Interim Report and Recommendations in the above-captioned matter, which recommended for a certain group of juveniles accused

of relatively minor crimes who appeared before Judge Mark A. Ciavarella, Jr. in Luzerne County Juvenile Court, that all consent decrees and adjudications of delinquency in their cases be vacated, and that their records be expunged. The First Interim Report and Recommendations also noted that some juveniles might wish to delay the expungement of their records until they could obtain copies of records and information needed to proceed with civil actions they had already filed.

2. By Order of March 26, 2009, your Honorable Court adopted and approved the First Interim Report and Recommendations, with the following qualification:

The Special Master has noted that some of the affected juveniles or their counsel may wish to delay expungement until they can collect records and information for use in pending civil lawsuits. This Court's primary concern remains with identifying and correcting miscarriages of justice in the underlying criminal consent decrees and adjudications as quickly as possible. Accordingly, once appropriate cases are identified according to the criteria the Special Master has set forth, orders of vacatur and expungement shall be entered promptly. This directive in no way shall affect the discretion of the Special Master to provide reasonable advance notice to affected juveniles, and to entertain specific, supported requests to delay the effect of the expungement aspect of such orders.

3. On May 4, 2009, your Honorable Court entered a "Notice" which provided that any juvenile who was eligible to have his or her record expunged pursuant to your Honorable Court's March 26, 2009 Order could submit a written request to me, postmarked by June 1, 2009, to obtain copies of his or her records from the Luzerne County Juvenile Court Clerk's Office and the Luzerne County Juvenile Probation Office. Such a request would delay the expungement and destruction of the juvenile's records only until the juvenile was provided with copies of the records requested.

4. Largely in response to your Honorable Court's May 4, 2009 Notice, all the Defendants in the Federal cases consolidated under the captions *Wallace v. Powell*, Civil Action No. 09-cv-286 (U.S.D.C., M.D. Pa.), and *H.T. v. Mark A. Ciavarella, Jr.*, Civil Action No. 09-cv-357 (U.S.D.C., M.D. Pa.), filed a Motion for Preservation Order Directed to Third Parties. This motion was not opposed by any of the Federal court Plaintiffs. This motion requested that the Federal court issue an Order prohibiting the destruction, until the Federal litigation is concluded, of all documents and records related to any juvenile who appeared in the Luzerne County Juvenile Court. The motion specifically requested that the prohibition be directed to, among others, the Administrative Office of Pennsylvania Courts, the undersigned Special Master, the Clerk of Courts and Prothonotary of Luzerne County, the Clerk of Courts and Prothonotary of the Juvenile Court of Luzerne County, the Luzerne County Court Reporter's Office, the Luzerne County Juvenile Probation Office, the Luzerne County Adult Probation Office, the Luzerne County Domestic Relations Office, the Luzerne County District Attorney's Office, the Luzerne County Public Defenders' Office, all police departments in Luzerne County, and the Pennsylvania State Police. The Federal court Defendants who filed the Motion for Preservation were concerned that the expungement of juvenile records might hinder their ability to defend against the claims brought against them.
5. Of particular note, paragraph 9 of the Motion for Preservation states,
 9. The Defendants desire to have all relevant documents relating to the juvenile proceedings in the Court of Common Pleas of Luzerne County preserved while these actions are pending. *The Defendants request, at a minimum, that all relevant documents relating to the juveniles and/or their guardians who seek damages in these cases should be preserved.* [Emphasis added.]

I interpret the just-quoted italicized language to mean that, at a minimum, the Defendants are seeking to preserve records relating to the *named* Plaintiffs in the Federal actions, as opposed to records for both named and unnamed Plaintiffs.

6. Marsha Levick, Esquire, of the Juvenile Law Center, is counsel for the Petitioners in the above-captioned state court action and is also counsel for the Plaintiffs in the Federal court action captioned *H.T. v. Mark A. Ciavarella, Jr. H.T. v. Mark A. Ciavarella, Jr.* has dozens of named plaintiffs. In correspondence to me dated July 1, 2009 related to this state court proceeding, Ms. Levick described the total universe of documents she was requesting be preserved as follows: "Accordingly, we ask that this Court order either the Clerk of Court or LC-JPO [Luzerne County Juvenile Probation Office] to make one copy of each eligible juvenile's record and place it under seal for use in the federal litigation prior to completing the process of expungement."

7. On June 25, 2009, at the direction of the Supreme Court of Pennsylvania, Zygmunt A. Pines, Esquire, the Court Administrator of Pennsylvania, wrote to U.S. District Judge A. Richard Caputo to outline the Supreme Court's objections to the Motion for Preservation. Mr. Pines wrote,

... I wish to emphasize that it cannot be presumed that the interests sought to be advanced by the parties involved in the litigation before your Court necessarily coincide with the interests that are at stake in the Supreme Court's remedial efforts in Luzerne County. This is particularly true to the extent that the parties to the federal litigation seek to prevent expungement of records of juveniles who are not actual parties to the federal litigation.

The May orders [of the Pennsylvania Supreme Court] reflect the [Supreme] Court's paramount concern to ensure that tainted convictions of affected juveniles in Luzerne County be undone as expeditiously as possible to remedy the immediate harm to the juveniles and to restore confidence in the integrity of the county's

juvenile justice system. To the extent that identified juveniles do not want such relief at the present time, they may come forward to object. One cannot assume, however, that those individuals who do not object to the existing procedures would agree that expungement of their records should be delayed, or that juveniles who do not come forward share the interest of the specific clients represented by the JLC and the other plaintiffs' lawyers

8. By Memorandum Order dated July 2, 2009, Judge Caputo denied the Motion for Preservation. Referring to the June 25, 2009 letter from the Court Administrator of Pennsylvania, Judge Caputo wrote,

For this Court, by order of preservation for discovery purposes in a civil suit, to directly interfere with the Supreme Court's determination to expunge, erase and leave no trace would reverse appropriate priorities in the relief addressing the fundamental issue of integrity in the system, and would otherwise thereby disrupt the delicate balance necessitated in our system of federalism. . . . Further, the fate of the Pennsylvania Court's remedy and the question of juvenile records preservation is best left to the Pennsylvania Courts. . . . The issue of preservation of individual records in the context of an order of expungement is thus available for the determination of the court ordering the expungement.

9. The Defendants in the Federal court cases apparently are willing to accept preservation of records and documents for only the named Federal Plaintiffs. Your Honorable Court has recognized, as expressed in Mr. Pines's June 25th letter, that juveniles who are named Plaintiffs in the Federal lawsuits may have a legitimate interest in having their juvenile records preserved, despite being eligible for expungement.

10. It is my strong opinion that for those identified juveniles who have requested that their juvenile court and juvenile probation records be preserved, under seal, for the

duration of the Federal court litigation, your Honorable Court should accede to this request. While the juvenile court and juvenile probation records for these named juveniles would be preserved under seal, the larger benefits of expungement would still inure to these named juveniles: (i) they would have orders of expungement in their possession, so they could properly respond to any inquiry of an employer, school, or military branch that they had no juvenile record; (ii) these juveniles' names, identifying data, and other documents would be removed from the records and electronic databases of the Pennsylvania State Police, local police, and other state and Federal criminal databases, so that any employer, school, or military inquiry would reveal no records for these juveniles; and (iii) any search of juvenile records in Luzerne County would result in no records being found.

11. It is my opinion that it is permissible under Pennsylvania law to order expungement of juvenile delinquency case records while also preserving the juvenile court and juvenile probation files under seal. *See* 18 Pa. C.S. Section 9102 (definition of "expunge"); Rule of Juvenile Court Procedure 172 ("Any order to expunge *or* destroy the juvenile court file, docket entries, law enforcement records, *or* fingerprints and photographs shall include the following information" (emphasis added)).

For the foregoing reasons, I make the following recommendations:

B. SECOND INTERIM RECOMMENDATIONS.

All of the following recommendations concern those juveniles and cases eligible for vacatur and expungement pursuant to the Supreme Court's March 26, 2009 Order. (Said juveniles and cases shall hereinafter be referred to as the "March 26th-eligible juveniles".)

1. For those March 26th-eligible juveniles who have neither requested a delay in expungement pursuant to the Supreme Court's May 4, 2009 Notice, nor are named plaintiffs in *Wallace v. Powell* (U.S.D.C., M.D. Pa.) or one of the companion Federal cases, I propose entering orders of vacatur and expungement forthwith.

2. For those March 26th-eligible juveniles who have requested a delay in expungement pursuant to the Supreme Court's May 4, 2009 Notice, and are also named plaintiffs in *Wallace v. Powell*, (U.S.D.C., M.D. Pa.) or one of the companion Federal cases, I recommend the following:

2.1. That the juveniles be provided with copies of the records they have requested. However, neither the Juvenile Probation Office nor the Office of the Clerk of Court shall be required to provide to the juvenile copies of work product or other reports that are privileged in nature which are in the official file(s).

2.2. That I be authorized to enter orders of vacatur and expungement after the requested copies are provided, which orders would provide as follows:

2.2.1. The Juvenile Probation Office shall put its actual official case file under seal in the custody of the Office Director. Said files shall be kept in alphabetical order. All other records – paper, electronic, or otherwise-- wherever kept in the Juvenile Probation Office, shall be expunged in accordance with the standard office expungement policy.

2.2.2. The Office of the Clerk of Court, or other official custodian of the Juvenile Court's files, shall (a) place the actual official case file under seal, and (b) otherwise carry out its expungement procedures with regard to the case/file at issue. Said case files placed under seal shall be kept in alphabetical order.

2.2.3. The Luzerne County Court Reporters' Office shall place all records and untranscribed notes of testimony for the specified juvenile under seal.

2.2.4. Files and records in the custody of the Luzerne County Juvenile Probation Office, the Luzerne County Clerk of Court Office, and the Luzerne County Court Reporters' Office which have been placed under seal pursuant to Paragraphs 2.2.1, 2.2.2, and 2.2.3 shall not be accessed by any individual, except upon written authorization by the Special Master or by order of a court of competent jurisdiction.

2.2.5. Files and records in the custody of the Luzerne County Juvenile Probation Office and the Luzerne County Clerk of Court Office which have been placed under seal pursuant to Paragraphs 2.2.1 and 2.2.2, and to the extent reasonably feasible, files and records in the custody of the Luzerne County Court Reporters' Office which have been placed under seal pursuant to Paragraph 2.2.3, shall be destroyed or expunged, after thirty (30) days notice to counsel in the instant case and counsel in the Federal cases listed below, upon conclusion of the trial, or termination of the actions

by dispositive motion or agreement, in *Wallace v. Powell* (U.S.D.C. M.D. Pa., Docket No. 09-cv-0286), and its companion cases.

3. For those March 26th-eligible juveniles who have requested a delay in expungement pursuant to the Supreme Court's May 4, 2009 Notice, but are not named plaintiffs in *Wallace v. Powell* (U.S.D.C., M.D. Pa.) or one of the companion Federal cases, I recommend the following:

3.1. That the juveniles be provided with copies of the records they have requested. However, neither the Juvenile Probation Office nor the Office of the Clerk of Court shall be required to provide to the juvenile copies of work product or other reports that are privileged in nature which are in the official file(s).

3.2. That, after the requested copies are provided, I be authorized to enter standard orders of vacatur and expungement for these juveniles.

Respectfully submitted,

Date: July 22, 2009

/s/

Arthur E. Grim, S.J.
Special Master