

## Appeals of Expunction Decisions

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A short opinion issued recently by the Court of Appeals, [State v. J.C.](#), \_\_\_ N.C. App. \_\_\_ (Sept. 19, 2017), concerns two open questions about appellate review of a trial judge's expunction decision. How can a party obtain appellate review? And, how can the person who petitions for an expunction make sure that the records of the appellate proceeding remain confidential? The Court's opinion does not expressly address those issues, but the case provides guidance on both.

**Appeal or Certiorari?** In *J.C.*, the State appealed a superior court judge's order granting an expunction of a conviction and a dismissal. The Court of Appeals recognized that unless authorized by statute, a party does not have the right to appeal—in other words, the right to have a higher court review the case. The Court held that G.S. 15A-1445 governs the State's right to appeal, and it "does not include any reference to a right of the State to appeal from an order of expunction." Slip Op. at 2.

The Court's reliance on G.S. 15A-1445 implicitly addresses a key question about expunctions—whether they are criminal or civil matters. At least for purposes of appeal, the Court's decision treats expunctions as criminal and therefore governed by criminal appeal statutes, in this instance by G.S. 15A-1445.

The Court noted that in previous cases it has reviewed expunction orders at the State's request pursuant to a petition for writ of certiorari, suggesting that a cert. petition would be an appropriate way for the State to seek review. Unlike an appeal, review by writ of certiorari is in the court's discretion. Because the State did not file a cert. petition, the Court of Appeals concluded that it did not have jurisdiction to proceed and granted the petitioner's motion to dismiss the State's appeal.

How does *J.C.* affect appellate review when a trial court *denies* an expunction petition? Under *J.C.*, an appeal by the petitioner in an expunction case would likewise appear to be a criminal matter, governed by criminal statutes. Because no decisions appear to have addressed a petitioner's statutory right to appeal the denial of expunction relief, to be safe a petitioner may want to file a notice of appeal *and* a petition for a writ of certiorari.

In cases in which a district court denies relief, the petitioner would head to superior court if expunctions are considered criminal. In district court criminal cases, G.S. 15A-1431 provides for appeals by criminal defendants to superior court. G.S. 15A-1444(f) provides generally for review by writ of certiorari without specifying the court of review, but Rule 19 of the General Rules of Practice for the Superior and District Courts gives superior courts the authority to issue a writ of certiorari to review district court decisions. *See State v. Hamrick*, 110 N.C. App. 60 (1993) (applying rule). In contrast, in civil cases, a party appealing a district court decision must go to the Court of Appeals. *See* G.S. 7A-27(b)(2).

**Assuring Confidentiality of Appellate Records.** The opinion in *J.C.* does not address how the petitioner can protect the confidentiality of the proceedings, but the Court of Appeals took steps to do so. Such steps are necessary because it isn't clear how or whether an expunction order applies to appellate court records. If it does apply, by the time the appellate court rules, the filings and other information about the case will already have become public, undermining any relief that the appellate court orders.

The most obvious step taken by the Court of Appeals in *J.C.* was to use the pseudonym J.C. for the petitioner in the caption and opinion. In some cases, pseudonyms in appellate proceedings are required by rule, as in abuse, neglect, dependency, and termination of parental rights appeals. See N.C. R. App. P. 3.1(b). In criminal cases, the appellate courts have used pseudonyms to protect the privacy of people involved in the case, such as minor victims and witnesses. See, e.g., *State v. Watkins*, \_\_\_ N.C. App. \_\_\_, 785 S.E.2d 175, 176 n.1 (2016); *State v. Pierce*, 238 N.C. App. 537, 539 n.1 (2014). Because the appellate rules and case law do not establish a requirement or regular practice of pseudonyms in expunction cases, counsel for the petitioner (whether the appellant or respondent on appeal) should make a motion to the appellate court. The motion should specify any potential identifying information that should be omitted or redacted. Thus, in addition to using a pseudonym, the *J.C.* opinion does not refer to the trial court case number.

Another notable step taken by the Court in *J.C.* was to restrict access to the underlying records in the case, effectively sealing them. Thus, the [electronic filing site](#) for the appellate courts shows that the case records are restricted and not available online. Again, counsel for the petitioner should make a specific motion to the appellate court to that effect.

Counsel for petitioners should make these motions as early in the appeals process as possible, which will minimize the need for additional requests to remove or redact materials that were already filed and that contain identifying information. Counsel also needs to be vigilant about monitoring the record of the proceedings. Because few expunction cases are appealed, the appellate courts may not be as accustomed to taking the steps taken in other cases to protect the confidentiality of the proceedings.