IN THE SUPREME COURT OF GUAM

THE PEOPLE OF GUAM,
Plaintiff-Appellant,

v.

WAI KAM HO (aka KENT),
Defendant-Appellee.

OPINION

Cite as: 2009 Guam 18

Supreme Court Case No.: CRA09-002
Superior Court Case No.: CM0834-00

Appeal from the Superior Court of Guam
Argued and submitted on August 26, 2009
Hagåtña, Guam

Appearing for Plaintiff-Appellant:
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Appearing for Defendant-Appellee:
Pro Se

BEFORE: ROBERT J. TORRES, Chief Justice; F. PHILIP CARBULLIDO, Associate Justice; KATHERINE A. MARAMAN, Associate Justice.

CARBULLIDO, J.:

[1] This appeal concerns whether the trial court has the inherent authority to expunge criminal records. Plaintiff-Appellant, the People of Guam ("Government"), appeals from a decision and order of the trial court expunging the criminal record of Defendant-Appellee Wai Kam Ho a.k.a. Kent ("Ho"). The underlying conviction resulted from a negotiated plea agreement that was accepted by the trial court. The trial court later expunged Ho's criminal record, which the Government argued the trial court lacked the inherent authority to do. The Government further argued that the trial court's expungement of Ho's conviction record was an abuse of discretion and in contravention of the Plea Agreement. For the reasons stated herein, we reverse.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] On November 11, 2000, Ho was charged with one misdemeanor count of gambling pursuant to 9 GCA § 64.10(a)(1) and another misdemeanor count of gambling pursuant to 9 GCA § 64.10(a)(2).[1] Appellant's Excerpts of Record ("ER"), tab 1 at 1 (Magistrate's Compl., Nov. 11, 2000). On January 16, 2003, Ho and the Government entered into a plea agreement ("Plea Agreement"), which the trial court accepted. Judgment at 1 (Apr. 15, 2003). Pursuant to the terms of the Plea Agreement, the trial court entered judgment against Ho for gambling under 9 GCA § 64.10(a)(1) and sentenced Ho to one (1) year of unsupervised probation, a fine of one thousand dollars ($1,000.00), and court costs. *Id.* at 2. Also pursuant to the Plea Agreement, the

[1] The Government's Opening Brief incorrectly states a third charge, possession of gambling devices (as a misdemeanor) pursuant to 9 GCA § 64.22. Appellant's Br. at 2 (May 11, 2009).

trial court dismissed all remaining charges against Ho. *Id.* Ho subsequently paid his $1,000.00 fine and court costs and completed his year of probation. Mem. P. & A. Supp. Mot. for Expungement of R. at 2 (May 20, 2008).

[3] On May 20, 2008, Ho filed a post-judgment motion to expunge his conviction record under the original criminal case and docket number in which he was convicted. ER, tab 4 at 1 (Dec. & Order on Def.'s Mot. for Expungement, Jan. 26, 2009). Ho sought expungement of his conviction record to avoid the possibility of deportation because he is not a United States citizen. Transcript ("Tr."), at 4 (Hr'g. Mot. to Expunge, July 9, 2008). The trial court granted Ho's Motion for Expungement in a post-judgment decision and order dated January 26, 2009, citing its inherent authority to expunge its own records as an extension of its power to control judicial functions and its agents. ER, tab 4 at 2 (Dec. & Order on Def.'s Mot. for Expungement).

[4] On February 25, 2009, the Government timely appealed. ER, tab 5 at 1 (Not. Appeal, Feb. 25, 2009).

II. JURISDICTION

[5] Because the trial court's Decision and Order on Defendant's Motion for Expungement is not the final judgment from Ho's criminal case, this court's exercise of jurisdiction is discretionary. Title 7 GCA § 3108(b) provides this court with the ability to grant interlocutory review of orders other than final judgments, which include decisions and orders on post-judgment motions like the one from which the Government appeals. Our opinion in *People v. Lau* requires that all petitions for expungement be filed as a separate civil action. 2007 Guam 4 ¶ 6. Ho's petition for expungement was not filed as a separate civil action, but rather as a post-judgment motion in Ho's underlying criminal case. However, we may exercise our interlocutory jurisdiction to resolve a question of law in order to "[c]larify issues of general importance in the

administration of justice." 7 GCA § 3108(b)(3) (2005). This case presents such a circumstance and we therefore exercise our jurisdiction despite the lack of a separate civil action by Ho.

III. STANDARD OF REVIEW

[6] Whether the trial court has inherent authority to expunge a conviction record is a conclusion of law and thus reviewed *de novo*. *Guam Econ. Dev. Auth. v. Island Equip., Inc.*, 1998 Guam 7 ¶ 4; *Craftworld Int., Inc. v. King Enter.*, 2000 Guam 17 ¶ 6. If this court finds that the trial court has inherent expungement power, whether the trial court properly exercised such power in this case is reviewed for an abuse of discretion. *See People v. Manibusan*, 1998 Guam 22. Whether the trial court participates in plea negotiations when it grants expungement, thereby altering or adding to the terms of a plea agreement post-conviction, is a matter of statutory interpretation, which is reviewed *de novo*. *People v. Quichocho*, 1997 Guam 13 ¶ 3.

IV. DISCUSSION

[7] The parties do not dispute that Ho is ineligible for expungement under Guam's offense-specific expungement statutes. 5 GCA § 63710 (2005); 9 GCA §§ 30.80.3, 67.412 (2005). Nor do the parties dispute that Ho is ineligible for expungement under Guam's general expungement statute, which allows for expungement where there has been an acquittal, a decision not to prosecute, or where the statute of limitations has passed. 8 GCA § 11.10 (2005). Therefore, the arguments raised, and this court's discussion, will focus on the inherent judicial authority to order records expunged rather than the statutory power to expunge.[2]

[2] Expungement, as defined by our legislature, is the "sealing of records to all persons outside of the law enforcement agencies of Guam and federal agencies entitled thereto and a refusal by such agencies to admit the existence of such records to persons not entitled to examine them." 8 GCA § 11.11 (2005). Yet case law from other jurisdictions presents expungement as the complete erasure of any record of involvement in the criminal process, where "the traces literally vanish and no indication is left behind that information has been removed." *V.C. v. Casady*, 634 N.W.2d 798, 809 (Neb. 2001) (citing to *Commonwealth v. Roberts*, 656 N.E.2d 1260 (Mass. Ct. App. 1995)). The trial court did not clarify what it meant to expunge in its decision. Local case law that has addressed expungement, *Lau* and *People v. Cook*, No. 77-04-A, 1978 WL 13496, (D. Guam App. Div. 1978) (unreported), suggest a

A. Doctrine of Inherent Authority

[8] The doctrine of inherent authority allows for a court to act on a matter for which the legislature has not provided, or not fully provided, since equity will not entertain jurisdiction where a statute provides an adequate remedy at law. *See, e.g., Ortwein v. Schwab,* 498 P.2d 757, 762 (Or. 1972). The judiciary's inherent authority is the "source of power to do those things necessary to perform the judicial function[s] for which the legislative branch has not provided, and, in rare instances, to act contrary to the dictates of the legislative branch." *State v. Plumb*, 87 P.3d 676, 680 (Or. Ct. App. 2004) (quoting *Ortwein*, 498 P.2d at 762). The judiciary must be able to "ensure its own survival . . . . To do so, courts possess inherent power, that is, authority not expressly provided for in the [state] constitution but which is derived from the creation of a separate branch of government and which may be exercised by the branch to protect itself in the execution of its constitutional duties." *In re Salary of Juvenile Dir.*, 552 P.2d 163, 171 (Wash. 1976). Though the judicial power is accepted and generally held to include more than merely deciding cases, such as incidental powers necessary to the effective performance of that primary function, the doctrine of inherent authority is still viewed as a limited source of power in matters where the legislative branch failed to fully provide. *Plumb*, 87 P.3d at 680. Furthermore, "[s]uch powers are strictly procedural in nature and do not confer any substantive authority nor increase the jurisdiction of the court." *State v. Gilkinson*, 790 P.2d 1247, 1249 (Wash. Ct. App. 1990) (citing to *Ladenburg v. Campbell*, 784 P.2d 1306 (Wash. Ct. App. 1990)).

preference for deciding related expungement issues based on statutory interpretation even if such questions may be entertained by discussing inherent authority. Thus, we will limit expungement to being the functional equivalent of sealing as opposed to the complete destruction of records. Considering that records will not be sealed to federal agencies entitled thereto, the utility of Ho's expungement request to avoid the possibility of deportation remains suspect.

[9] Case law supports the understanding that the inherent powers of a court are limited and procedural. For example, Washington state courts have been recognized as possessing the power to compel funding for judiciary equipment, facilities, and supporting personnel, to punish for contempt, to appoint counsel for indigent criminal defendants, to grant bail, to compel the attendance of witnesses and the production of evidence, to regulate the practice of law, and to control photography in court to ensure a fair trial. *In re Salary of Juvenile Dir.*, 552 P.2d at 171. Through such uses, the doctrine's purpose remains to "preserve the efficient and expeditious administration of Justice and protect it from being impaired or destroyed." *Id.* Though this court has recognized the doctrine of inherent authority as valid and stated that the supervisory power belonging to the trial court exists absent any codification and cannot be divested by any statute, this statement stemmed from a discussion of whether and when a trial judge may impose monetary sanctions against the prosecution in a criminal case. *See Manibusan*, 1998 Guam 22. Thus, whether the inherent authority of a court includes the power to expunge criminal records has not been specifically addressed by this court.

[10] Courts are recognized as having broad inherent authority over their records in that they have the power to keep them and control their form. *See Barash v. Kates*, 585 F. Supp. 2d 1347, 1364 (S.D Fla. 2006); s*ee also Commonwealth v. Landis*, 1973 WL 15347 at *24 (Pa. Com. Pl.); *Kakkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 379-80 (1994). Here, in the trial court's decision and order, the court supported its conclusion that it possessed inherent authority to expunge by citing 7 GCA § 7107(h), which is the court's power "to amend and control its process and orders so as to make them conformable to law and justice." 7 GCA § 7107(h) (2005); ER, tab 4 at 3 (Dec. & Order on Def.'s Mot. for Expungement). The trial court interpreted this provision as being the source of its expungement power because it specifically

addresses the records generated by the court. *Id.* While it is true that 7 GCA § 7107(h) is the most relevant section of the part entitled "Incidental Powers and Duties of Courts" in the Guam Code, whether the court can derive expungement power from these words alone remains unresolved.

B. Inherent Authority to Expunge

[11] This court has not previously expressed any opinion specifically on whether Guam's trial court possesses the inherent power to grant expungement. This is an issue of first impression in our jurisdiction.[3] Accordingly, we look to the providence of other jurisdictions for guidance. Jurisdictions that have decided the issue split into two main categories – those holding that courts do not have the power to expunge a criminal record unless a statute so provides, and those holding that, absent statutory authority, courts have some power to expunge a criminal record under certain circumstances.

[12] States holding that no court may expunge a criminal record without statutory authority reason that, although courts have inherent authority to create and maintain records, the inverse is not automatically true – i.e., the power to expunge records does not necessarily derive from the power to create and maintain records. *See Landis*, 1973 WL 15347 at *24; *Commonwealth v. Zimmerman*, 258 A.2d 695 (Pa. Super. Ct. 1969); *see generally* George Blum, J.D., et al., *Expungement of Criminal Records and Identification Material*, 21 A Am. Jur. 2d Criminal Law § 1220 (2009); Vitauts M. Gulbis, Annotation, *Judicial Expunction of Criminal Record of Convicted Adult,* 11 A.L.R.4th 956 § 2[a] (1982).

[3] In *People v. Lau*, 2007 Guam 4, the Supreme Court raised but did not fully discuss the issue because the petitioner moved for expungement under Guam's general expungement statute, 8 GCA § 11.10, and deciding the issue of inherent authority was not necessary to resolve the dispute.

[13] Some states hold that, even without statutory authority, courts possess inherent authority to expunge a criminal record under certain circumstances. *See generally Expungement of Criminal Records and Identification Material*, 21 A Am. Jur. 2d Criminal Law § 1220; *Judicial Expunction of Criminal Record of Convicted Adult,* 11 A.L.R.4th 956 § 3[b]. This group is further split into two subsets, one of which holds that expungement is appropriate upon a showing that either a constitutional right of the petitioner has been violated or there is an extreme need or exceptional circumstance that warrants expungement. *See e.g., State v. Motchnik,* 539 A.2d 548, 548 (Vt. 1987); *Toth v. Albuquerque Police Dep't,* 944 P.2d 285, 287 (N.M. Ct. App. 1997); *Journey v. State*, 850 P.2d 663, 666 (Alaska Ct. App. 1993); *Springer v. State*, 621 P.2d 1213, 1217 (Or. Ct. App. 1981); *see generally Expungement of Criminal Records and Identification Material*, 21 A Am. Jur. 2d Criminal Law § 1220; *Judicial Expunction of Criminal Record of Convicted Adult,* 11 A.L.R.4th 956 § 3[b].

[14] The other subset – the smallest and most lenient group of states – holds that courts can expunge a criminal record upon a showing of less than a constitutional error or an extreme necessity. These states, including Minnesota, whose case law the trial court cited as authority for granting Ho's request for expungement, employ their own balancing tests to determine whether expungement is appropriate. *See, e.g., State v. Chambers*, 533 P.2d 876, 878-79 (Utah 1975); *State v. Shultz*, 676 N.W.2d 337, 340-41 (Minn. Ct. App. 2004); *see generally Judicial Expunction of Criminal Record of Convicted Adult,* 11 A.L.R.4th 956 § 3[b].

[15] In the instant matter, while the trial court correctly found that states are split between those that view expungement as solely a matter of legislative discretion and those that view it as an extension of the court's authority to control judicial functions and agents of the court, the trial court failed to recognize that states subscribing to the latter view further split into distinct

subsets. ER, tab 4 at 2 (Dec. & Order on Def.'s Mot. for Expungement). Instead, when it applied a five-factor test adopted from Minnesota case law, the trial court mistakenly combined the differing jurisdictional approaches and emphasized the most lenient and least utilized approach of those states that recognize a court's inherent power to expunge. *Id.* at 4.

[16] The court now addresses in turn the two subsets of approaches to delimiting the inherent authority of courts to expunge a criminal record.

1. Stricter "Constitutional Violation" or "Extreme Necessity" Approach

[17] Apart from statutory authority, most states recognize that courts have inherent authority to expunge a criminal record to correct a constitutional error or provide a remedy for an extreme or exceptional situation. S*ee generally Judicial Expunction of Criminal Record of Convicted Adult,* 11 A.L.R.4th 956 § 3[b]. In the context of expunging records, violations of an individual's constitutional rights typically involve the individual being denied due process or the severe infringement of his right to be let alone. For example, in Colorado, requests for expungement have been granted in the following separate instances: (1) where there was improper dissemination of a person's criminal records, (2) where arrests have been deemed illegal, and (3) where the harm to an individual's right to privacy outweighed the public interest in the retention of such records. *Davidson v. Dill*, 503 P.2d 157, 161 (Colo. 1972). However, even though the need to avoid or remedy a constitutional violation, such as the misuse of such information, enables a court to expunge, no such order can be issued without proof that a constitutional violation had actually occurred or was threatened. *Journey,* 850 P.2d at 668. Furthermore, "even upon proof of a past or imminent constitutional violation, an order to expunge would be justified only upon a further showing that less drastic remedies - such as

limiting, regulating, or the enjoining misuse or improper dissemination of the disputed criminal records - could not cure or prevent the threatened harm." *Id.*

[18] Where there is no constitutional error alleged, extreme necessity or exceptional circumstances must be proven in order to warrant expungement because, while courts possess such power, it remains narrow and should be used sparingly. *Motchnik*, 539 A.2d at 548. What rises to the level of an extreme case is where the harm that results to the person from maintaining the records outweighs the need to maintain them. *Id.* at 549. Though this standard seems to offer very little guidance, its strictness is obvious in that most courts agree that "[t]he needs of the criminal justice system for maintenance of accurate records should ordinarily prevail even over the individual's right to privacy except for the most 'exceptional circumstances.'" *Toth*, 944 P.2d at 287 (citing *Journey*, 850 P.2d at 666). Additionally, no court has ever questioned the legitimacy or importance of the government's interest in keeping records regarding those individuals who pass through the criminal justice system. *Journey*, 850 P.2d at 666. Again, many of the courts subscribing to this approach prefer using expungement only as a last resort and recognize that there may not be compelling justification to expunge a record if procedural safeguards, such as confidentiality standards, limiting the use of criminal records, and implementing certain restrictions against job and licensing discrimination, would sufficiently protect the privacy interests of the individual. *Springer*, 621 P.2d 1213, 1216-17.

[19] Even if we were to adopt this approach followed by a large number of state courts, Ho made no allegations or showing of constitutional error or of exceptional circumstances that would warrant expungement. Federal precedent also does not support Ho's position. The majority of federal circuits likewise recognize that trial courts have the inherent but very narrow power to expunge criminal records.

[20] The trial court in this case correctly stated that the Ninth Circuit trial courts have inherent authority to expunge. However, the trial court stopped short of discussing that district courts cannot expunge valid arrest or conviction records solely on the basis of equity. *U.S. v. Crowell*, 374 F.3d 790, 793 (9th Cir. 2004) (citing to *U.S. v. Sumner*, 226 F.3d 1005, 1014 (9th Cir. 2000)). A conviction must be invalidated before a Ninth Circuit district court may even entertain the idea of expunging any record of it. *U.S. v. Smith*, 940 F.2d 395, 396 (9th Cir. 1991). Invalidation of a conviction itself does not guarantee that expungement is appropriate. Instead, a separate determination of whether there are extraordinary circumstances warranting expungement must further be made because although the petitioner may be eligible for expungement, he is not entitled to it. *Crowell*, 347 F.3d at 796. *Accord U.S. v. Pinto*, 1 F.3d 1069, 1070 (10th Cir. 1993) (holding that trial courts may expunge a federal conviction record only if the conviction has first been invalidated for some reason, such as the granting of *habeas corpus* relief or if the statute under which the individual had been convicted is later invalidated); *U.S. v. Rowlands*, 451 F.3d 173, 177 (3d Cir. 2006) (holding that trial courts have jurisdiction over petitions for expungement only where the predicate for expungement was a challenge to the validity of the arrest or conviction). Most of the federal circuits require (1) a conviction that was invalidated for some reason and (2) a showing of extraordinary circumstances where the harm to the petitioner outweighs the government's interests in keeping a record of the invalidated conviction. *See Rowlands,* 451 F. 3d at 177.

[21] Also reflective of federal jurisdictions' desire to contain expungement as a narrow and rarely used power is that both the Ninth and Seventh Circuits view most collateral civil consequences as insufficient to warrant expungement. *See Smith*, 940 F.2d at 396 (vacating the district court's order to expunge the petitioner's federal conviction record because the disabilities

alleged – disbarment and possible prohibition against reenlistment – were not unusual or unwarranted but were the natural and intended consequences of having been convicted); *U.S. v. Flowers*, 389 F.3d 737, 740 (7th Cir. 2004) (holding that only "if the dangers of unwarranted adverse consequences to the individual outweigh the public interest in maintenance of the records, then expun[gement] is appropriate.")

[22] In Ho's case, there has been no challenge to the validity of Ho's conviction via the Plea Agreement nor has there been any suggestion of abuse of power on the part of the Government in convicting Ho. Moreover, the possibility of deportation was both known to and discussed by the parties during plea negotiations such that the harm Ho claims to be suffering is neither unusual nor unwarranted. ER, tab 2 at 2 (Plea Agreement, Jan. 16, 2003).

2. More Lenient "Balancing Test" Approach

[23] A small number of states agree with most states that a violation of a constitutionally protected right justifies invoking inherent expungement power, but take it a step further and hold that expungement may be granted upon some lesser showing, employing their own balancing tests in making these determinations. Trial courts in Utah, for example, may expunge a defendant's criminal record if doing so is "compatible with the public interest," and the exercise of this power is allowed so as to encourage the reformation of wrongdoers. *Chambers*, 533 P.2d at 878-79. Utah courts, perhaps the most lenient regarding the expungement of criminal records, consider many intangibles, such as the character and personality traits of the defendant, his attitude and prior record, his performance under probation, and whether he has comported himself well with his societal duties. *Id.* at 879.

[24] Minnesota, also a more lenient jurisdiction, allows its trial courts to grant expungement if doing so will "yield a benefit to the petitioner commensurate with the disadvantages to the public

from the elimination of the record and the burden on the court in issuing, enforcing and monitoring an expungement order." *State v. Schultz*, 676 N.W.2d 337, 340-41 (Minn. Ct. App. 2004) (citing to *State v. Ambaye*, 616 N.W.2d 256, 258 (Minn. 2000)). If the petitioner can prove that the benefit of having his record expunged is at least equivalent to the overall denial of the public's access to or knowledge of such information and the efforts the court must make in administering expungement, then expunging the petitioner's criminal record is justifiable.

[25] The trial court in this case adopted Minnesota's approach in its decision and order, applying Minnesota's five-factor balancing test. ER, tab 4 at 4 (Dec. & Order on Def.'s Mot. for Expungement). Minnesota trial courts must consider: (1) the extent that the petitioner has demonstrated difficulties in securing employment or housing, (2) the seriousness and nature of the offense, (3) the potential risk that the petitioner poses and how this affects the public's right to access the records, (4) any additional offenses or rehabilitative efforts, and (5) other objective evidence of hardship under the circumstances when determining whether the benefit of expungement is commensurate with societal burdens. *State v. K.M.M.*, 721 N.W.2d 330, 335 (Minn. Ct. App. 2006) (citing to *State v. H.A.*, 716 N.W.2d 360, 364 (Minn. Ct. App. 2006)). In its application of this standard, the trial court found that Ho's misdemeanor gambling conviction is less serious than narcotics possession and domestic violence, both of which sometimes qualify for expungement under the offense-specific expungement statutes. *See* 9 GCA §§ 30.80.3, 67.412 (2005); ER, tab 4 at 4 (Dec. & Order on Def.'s Mot. for Expungement).

[26] The trial court also found that Ho poses only a financial risk to himself and his family, presumably as opposed to actual physical harm or harm to the community. *Id.* Moreover, the trial court emphasized that Ho had neither been arrested nor convicted for any other offense following his gambling conviction and that Ho successfully completed his probation. *Id.* at 5.

However, the trial court mentioned nothing about whether Ho has demonstrated difficulties in securing employment or housing.[4] In fact, the trial court only stated that the threat of deportation is an exceptional circumstance that also qualified Ho for expungement.[5] *Id.* at 4. Though one may presume that actual deportation would preclude Ho from securing employment or housing in the United States, no argument is made for it, nor is there any analysis of this premise.

[27] Similarly, there is no analysis as to whether the mere threat of deportation can be considered under the fifth factor as another hardship under the circumstances. Even if the threat of deportation would pass as an alternative hardship under the circumstances that would qualify Ho for expungement, there must be evidence[6] of the possibility that Ho will actually be deported as a result of his criminal conviction – or the assurance that Ho will not be deported if the expungement of his conviction record is granted. Applying the Minnesota rule, one of the most lenient of approaches and the approach the trial court elected to adopt, would still result in the conclusion that Ho was ineligible for expungement.

[28] The facts of this case do not require us to definitively resolve the inherent authority issue or to announce the test we would adopt for our jurisdiction if we found that the court possessed inherent authority to expunge. Even assuming that the trial court has inherent power to order criminal records expunged, this power was not properly exercised in Ho's case. We find that, whatever inherent authority to expunge criminal records the trial court might possess by virtue of

[4] The key difference between the approach followed by the majority subset and the Minnesota rule is that, under the majority rule, demonstrating a difficulty in securing employment is insufficient to justify expungement, while the same assertion may be justification enough to expunge a criminal record in Minnesota so long as the other criteria favor the petitioner.

[5] In its decision and order, the trial court analyzed Ho's eligibility for expungement under both the stricter "exceptional circumstance" standard and the Minnesota balancing test. ER, tab 4 at 4 (Dec. & Order on Def.'s Mot. for Expungement). This is presumably due to the trial court having misapprehended the divergent tests, meshing the two subsets of approaches in its analysis.

[6] The trial court did not hold an evidentiary hearing on the motion and there are no sworn statements in the record asserting a factual basis for the relief requested.

its power "to amend and control its process and orders so as to make them conformable to law and justice," 7 GCA § 7107(h), or from its duty to enforce constitutional guarantees or its power to control judicial functions and its agents, the invocation of that authority under the facts of this case amounted to an abuse of discretion.

C. Interference with Plea Negotiations

[29] The Government argues that any inherent authority to expunge criminal records allows the trial court to directly and substantially interfere with the law enforcement power of the executive branch and the lawmaking power of the legislature. Appellant's Br. at 7 (May 11, 2009). The Government asserts that its ability to offer expungement during plea negotiations is an extremely vital and integral tool in law enforcement, and one that gives the prosecution the type of leverage necessary to properly enforce the law. *Id.* While there is no doubt that the enforcement of our laws rests with the executive branch and its agencies, which includes the Office of the Attorney General, the purpose of the separation of powers doctrine is to "prevent one branch of government from exercising the complete power constitutionally vested in another; it is not intended to prohibit one branch from taking action properly within its sphere that has the incidental effect of duplicating a function or procedure delegated to another branch." *In re Rosenkrantz*, 59 P.3d 174, 208 (Cal. 2002) (quoting *Carmel Valley Fire Protection Dist. v. State of California*, 20 P.3d 533). The separation of powers doctrine is violated "only when the actions of a branch of government defeat or materially impair the inherent functions of another branch" and a branch of government does not necessarily violate the doctrine simply because it undertakes actions that affect such functions. *Id.*

[30] We find no merit to the Government's argument that the trial court's decision and order granting expungement impermissibly encroached upon the powers and responsibilities of the

executive or legislative branches in general, or that the decision violated 8 GCA § 60.80(a) in particular. The Government argues that the trial court violated the restrictions contained in 8 GCA § 60.80(a), which prohibits the trial court from participating in any way in the plea negotiations between the defendant and the prosecution by altering the terms of a plea agreement.[7] Appellant's Br. at 9.

[31] The Government itself asserts in its brief that 8 GCA § 60.80(a) "clearly states that the Superior Court shall not participate in the ongoing plea negotiations occurring between the parties." *Id.* at 10 (2005). Expungement five years after the conviction had already been secured and judgment entered can hardly be said to occur within the ongoing plea negotiations between the parties, as such negotiations would have certainly ended if there was a conviction of which to speak. Furthermore, the language in 8 GCA § 60.80(a), specifically the phrase "toward reaching an agreement," unambiguously refers to plea negotiations occurring prior to the disposition of a case. *Id.* Thus, when the trial court granted the expungement of Ho's record, the time for plea negotiations had already ended and 8 GCA § 60.80(a) therefore did not control. Because there is no ambiguity in the language used and the statute is clear on its face, no further inquiry about its meaning is necessary. *Quichocho*, 1997 Guam 13 ¶ 5 (citing to *Rubin v. U.S.*, 449 U.S. 424 (1981)). Consequently, the trial court did not violate 8 GCA § 60.80(a) when it granted Ho's expungement motion five years after Ho was convicted.

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[7] Title 8 GCA § 60.80(a) states

> The attorney for the government and the attorney for the defendant or the defendant when acting pro se may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty or nolo contendere to a charged offense or to a lesser or related offense, the attorney for the government will move for dismissal of the other charges, or will recommend or not oppose the imposition of a particular sentence, or will do both. The court shall not participate in any such discussions.

8 GCA § 60.80(a) (2005).

V. CONCLUSION

[32] The court herein clarifies and confirms that, pursuant to our opinion in *People v. Lau,* 2007 Guam 4, a request for expungement of a criminal record shall not be brought as a motion within the criminal case after the rendition of final judgment[8] of criminal conviction, but rather, must be brought as a separate civil action, the disposition of which would the give rise to an appeal of right from a final civil judgment pursuant to 7 GCA § 3108(a). This procedure applies to expungement requests based on statutory or inherent authority.

[33] Further, while we recognize the general schools of thought relative to whether a trial court possesses inherent authority to expunge – those that recognize no inherent authority, and those that recognize limited authority under certain circumstances – under the facts of this case, we need not adopt any test for the applicability and limitations of that power. Even if the trial court has the inherent authority to expunge, Ho has not demonstrated justification for expungement under any approach.

[34] Finally, we reject the Government's argument that the trial court violated 8 GCA § 60.80(a) and the doctrine of separation of powers, finding this contention wholly without merit.

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[8] Expungement orders may issue in a criminal case when no final judgment of criminal conviction has been entered. This includes cases where there is a deferred plea agreement in which the possibility of expungment is specifically negotiated and provided for in the plea agreement, as well as cases where diversion is ordered. Moreover, expungment motions may still be brought in criminal proceedings without the need to file a separate civil action in cases involving one of the offense-specific statutes that expressly provide for expungement – namely, 5 GCA § 63710, 9 GCA § 30.80.3, and 9 GCA § 67.412. *Id.* (2005).

[35] Accordingly, the Judgment of Expungement of the trial court is **REVERSED**.

Original Signed By: **F. Philip Carbullido**
F. PHILIP CARBULLIDO
Associate Justice

Original Signed By: **Katherine A. Maraman**
KATHERINE A. MARAMAN
Associate Justice

Original Signed By: **Robert J. Torres**
ROBERT J. TORRES
Chief Justice