IN THE SUPREME COURT OF GUAM

CHRISTOPHER ALLEN,
Plaintiff-Appellant/Cross-Appellee,

v.

IAN C. RICHARDSON, in his individual capacity,
Defendant-Appellee/Cross-Appellant,

and

JOHN YOUNG, in his individual capacity,
Defendant-Appellee.

Supreme Court Case No.: CVA16-012
Superior Court Case No.: CV0191-09

OPINION

Cite as: 2018 Guam 2

Appeal from the Superior Court of Guam
Argued and submitted on August 28, 2017
Hagåtña, Guam

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

CARBULLIDO, J.:

[1] This court granted Plaintiff-Appellant/Cross-Appellee Christopher Allen's petition and Defendant-Appellee/Cross-Appellant Ian C. Richardson's cross-petition seeking interlocutory review of the trial court's Decision and Order (Under Seal), dated May 10, 2016. In the Decision and Order (Under Seal), the trial court permitted the use of certain previously-expunged criminal records at trial, but limited the use of these materials solely for impeachment purposes, among other restrictions. Allen argues that his use of these expunged records should be unfettered and it was inappropriate for the trial court to restrict their use at trial. Defendant-Appellee John Young opposes Allen's appeal, asserting that the restrictions put in place by the trial court were appropriate and not an abuse of discretion. Richardson both opposes and cross-appeals, asserting that the trial court erred in allowing the use of expunged records for any purpose.

[2] For the reasons set forth below, we reverse and remand for further proceedings not inconsistent with this Opinion.

I. FACTUAL AND PROCEDURAL BACKGROUND

[3] This case arises from events occurring at Guam Memorial Hospital on February 7, 2007. As a result of these events, Allen was indicted—and ultimately acquitted—on four counts, including the charges of aggravated assault, assault, reckless conduct, and impersonation of a public officer. Because Allen was acquitted, the records of his criminal prosecution were expunged pursuant to 8 GCA § 11.10.

[4] Allen filed a Second Amended Complaint in this civil action asserting various causes of action relating to the same events that served as the basis of his criminal prosecution.

Defendants jointly moved to dismiss the Second Amended Complaint or, in the alternative, for an order granting access to the expunged records from Allen's criminal prosecution. Allen opposed this motion.

[5] The trial court refused to dismiss the Second Amended Complaint, but granted that portion of Defendants' motion that sought access to Allen's expunged criminal records. The court held:

> As to the subject of the sealed records, Defendants should have access to all discoverable evidence relevant to the disposition of this case. Yet, the criminal case referenced has been rightly sealed in order to protect the Plaintiff and those similarly acquitted of alleged crimes. As [is] always the case, there must be a balance of the needs of discovery against the needs of confidentiality. Here, *Plaintiff has used evidence of acquittal to his benefit and appears to impliedly allow consideration of the sealed and expunged criminal case. The Court finds that Defendants should be equally allowed access to essential information and its use at trial*. The law favors the use of all relevant and probative evidence as long as not in violation of any evidence code statute. Here, no statute would prohibit the use of the sealed documents and the Court finds good cause exists as information contained in the sealed documents is highly probative of the issues this present case is based on. *This Court will order that the records be temporarily and partially opened to the parties of this matter for the sole purpose of preparation for trial and proceedings of this case*.

Record on Appeal ("RA"), tab 149 at 4-5 (Dec. & Order, Nov. 16, 2011) (emphases added) (footnote and citations omitted). In granting this motion, the court noted in a footnote that "Plaintiff has referenced his acquittal several times in an effort to discredit Defendants' arguments and even Defendants' request to the Governor of Guam to allow the Office of the Attorney General [("OAG")] to represent the Defendants." *Id.* at 5 n.2.

[6] Roughly a year and a half later, Defendants moved to "clarify" this prior order, stating that "defendant[s] seek[] access to records and evidence which were expunged under Guam law as a result of plaintiff's acquittal of the criminal charges." RA, tab 166 at 2 (Defs.' Mot. for Order Clarifying Ct.'s Dec. & Order, June 13, 2013). In seeking clarification, Defendants

asserted that "defendant[s'] attorney sought access to the records of the Prosecution Division of the [OAG] related to the criminal prosecution of plaintiff," but the OAG refused to comply "due to the vagueness of the court's ruling." *Id.* Allen filed a "conditional opposition," in which he stated that he "is not opposed to full disclosure of all evidence compiled in People of Guam v. Allen, CF0375-07 . . . ." RA, tab 180 at 1 (Conditional Opp'n to Defs.' Mot. to Clarify Ct.'s Dec. & Order, July 11, 2013). The trial court subsequently issued an order permitting "[t]he parties and their representatives" to "inspect and copy expunged official records" held by the "court" and "the Guam Police." RA, tab 206 at 1-2 (Order, Feb. 20, 2014). The court further ordered that "[t]he foregoing authorization to inspect and copy the above described expunged official records terminates upon final disposition of" this litigation. *Id.* at 2.

[7] In the lead-up to trial, despite seeking and obtaining the production of Allen's expunged records during discovery, Richardson moved *in limine* to exclude their admission during trial. Richardson argued only that "[e]xpunged records are sealed and inadmissible under Guam law" and that "it is a criminal offense to reveal expunged records." RA, tab 377 at 2 (Richardson Mots. *in Limine*, Sept. 16, 2015) (citations omitted). Allen did not file a written opposition. Allen, however, argued that these documents had already been "unsealed by this court" and, as a result, the documents used at deposition were "out there." Transcript ("Tr.") at 13 (Pre-trial Conference, Oct. 2, 2015). In other words, Allen "disagree[d] that [the records] are expunged" because "[t]hey've been unsealed." *Id.* at 21-22; *see also id.* at 24. Furthermore, Allen argued that, at least "conceptually," these documents were needed for impeachment purposes. *See id.* at 17.

[8] The Superior Court issued the Decision and Order (Under Seal) resolving Richardson's motion *in limine*. The trial court framed the issue as "whether Plaintiff may utilize documents from his expunged criminal record as evidence for impeachment purposes in the upcoming civil

jury trial." RA, tab 405 at 2 (Dec. & Order, May 10, 2016). In a footnote, the court found that "Plaintiff's reference to his acquittal numerous times both in filed documents and in open court proceedings impliedly authorizes the disclosure of his expunged criminal record." *Id.* at 3 n.3. Although the court ultimately rejected Richardson's motion, it did place various restrictions on the use of the expunged records. In particular, the court stated that it would "permit Plaintiff to use those records in trial for the purposes of impeachment, only." *Id.* at 5. Moreover, the court stated that "as a precaution to ensure that there is no reveal of expunged records to unentitled members of the public the Court will seal the courtroom whenever the expunged records are to be mentioned." *Id.* at 5-6.

[9] Following this ruling, Allen petitioned this court for permission to file an interlocutory appeal to review the restrictions placed upon the use of the expunged records, including limiting the use of these records solely for purposes of impeachment and closing portions of the trial to the public. Richardson cross-petitioned the court for permission to file an interlocutory appeal, arguing that the trial court erred in failing to exclude the admission of Allen's expunged records in their entirety. This court granted both the Petition and Cross-Petition.

II. JURISDICTION

[10] This court has jurisdiction over interlocutory appeals pursuant to 48 U.S.C.A. § 1424-1(a) (Westlaw through Pub. L. 115-132 (2018)) and 7 GCA § 3108(b) (2005). *See Pineda v. Pineda*, 2005 Guam 10 ¶ 6 (citations omitted).

III. STANDARD OF REVIEW

[11] This court decides issues of statutory interpretation and other questions of law *de novo*. *See Guam Fed'n of Teachers v. Gov't of Guam*, 2013 Guam 14 ¶ 24. Young argues that the court should apply an abuse of discretion standard to the issues presented in this appeal, framing

the question in terms of the lower court's discretion on evidentiary rulings. *See* Young Opp'n Br. at 5 (Dec. 28, 2016) (citing *J.J. Moving Servs., Inc. v. Sanko Bussan (Guam) Co.*, 1998 Guam 19). As we stated in our order granting interlocutory review, "[a] threshold question" in determining whether interlocutory review is appropriate is "whether the issue on appeal will be a question of law." Allen v. Richardson, CVA16-012 (Order at 3 (Aug. 4, 2016)) (citation omitted). Despite the fact that this court generally reviews evidentiary rulings for an abuse of discretion, "[a] trial court abuses its discretion when its decision is based on an erroneous conclusion of law . . . ." *Town House Dep't Stores, Inc. v. Ahn*, 2003 Guam 6 ¶ 27 (quoting *Brown v. Eastman Kodak Co.*, 2000 Guam 30 ¶ 11). Thus, even though "a reviewing court considers a trial court's ultimate ruling . . . under an abuse-of-discretion standard, . . . where the issues present purely legal questions, the standard of review is *de novo*." *People v. Rios*, 2008 Guam 22 ¶ 8 (citations omitted); *cf. People v. Ho*, 2009 Guam 18 ¶ 6 ("If this court finds [under *de novo* review] 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."). As our prior order stated, "[i]n this case, the issues presented for appeal are purely one of law." Allen v. Richardson, CVA16-012 (Order at 3 (Aug. 4, 2016)). We review them *de novo*.

IV. ANALYSIS

[12] The main issue presented in both the appeal and cross-appeal is to what extent an acquitted criminal defendant may waive the protections of expungement afforded by 8 GCA § 11.10(a). Each defendant argues that waiver may be limited to varying degrees, up to and including a complete prohibition on waiver. Allen, on the other hand, argues that waiver is entirely within the hands of the acquitted defendant and may not be limited for any reason. We agree with Allen in this case. Accordingly, we hold: (1) a former-criminal defendant is entitled

to waive the protections of expungement under 8 GCA § 11.10; (2) a waiver may be express or implied, and an order dissolving or modifying the original order of expungement is not necessary to effect the waiver; and (3) the Defendants have not identified any interest protected by 8 GCA § 11.10 applicable to this case that may serve as a basis to restrict the use of un-expunged criminal records at trial or otherwise limit the effectiveness of a waiver. We further find that the myriad other issues set forth in the parties' briefing were not properly raised in this limited interlocutory appeal, and we decline to address them.

A. Guam's Expungement Statute Permits Those Entitled to Its Benefits to Waive the Protections Afforded by Expungement

[13] The first issue presented by the parties' competing petitions is whether a former criminal defendant is entitled to waive the protections of an expungement order. "Expunction is not a right; it is a statutory privilege." *In re State Bar of Tex.*, 440 S.W.3d 621, 624 (Tex. 2014) (citation omitted). *But cf. Ho*, 2009 Guam 18 ¶ 33 (stating that issue of whether Guam courts have inherent authority to expunge records remains an open question). An "expunction statute is an exception to the established principle that court proceedings and records should be open to the public" and is "designed to protect wrongfully-accused people from inquiries about their arrests." *State Bar of Tex.*, 440 S.W.3d at 624 (citations omitted). Expungement is not intended "to eradicate all evidence of wrongful conduct." *Id.* at 626 (citations omitted); *see also Ho*, 2009 Guam 18 ¶ 7 n.2 (expungement is "limit[ed] . . . to being the functional equivalent of sealing as opposed to the complete destruction of records.").

[14] Guam's expungement statute provides that "[t]he official records of the court, the Attorney General, and the police reports in connection" with a criminal prosecution "*shall* be expunged when the subject of the report is acquitted of the offense charged . . . ." 8 GCA §

11.10(a) (amended by P.L. 31-023:2, Apr. 18, 2011). "*[E]xpungement* means 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).

[15] Courts in other jurisdictions have held that, even in the absence of specific statutory safe harbors, a criminal defendant is entitled to waive the protections of an expungement statute where doing so would be in his or her best interests. *See, e.g.*, *State Bar of Tex.*, 440 S.W.3d at 626 (holding that defendant "has the right to voluntarily waive his expunction rights"). In New Jersey, for example, expungement "can be waived whenever it is in [the defendant's] best interest that disclosure of the expunged records be made, even though the statute makes no express provision therefor" because expungement "was designed for [the defendant's] benefit . . . ." *Ulinsky v. Avignone*, 372 A.2d 620, 623 (N.J. Super. Ct. App. Div. 1977); *see also In re J.D.*, 970 A.2d 1092, 1098 (N.J. Super. Ct. Law Div. 2009) ("The holder of the [expungement] privilege has discretion to determine whether to waive it."). We agree with these decisions.

[16] In a recently decided and partially unsealed attorney discipline matter, we held that the protections of expungement under section 11.10 may be waived. *See* In re: Confidential Investigation, ADC16-004 (Order at 1 (Nov. 23, 2016)); *see also* In re: Confidential Investigation, ADC16-004 (Order at 1 (Feb. 14, 2017)) (partially unsealing order). Specifically, we held in an unsealed portion of that order that "8 GCA § 11.11 does not preclude a valid waiver by the defendant entitled to the benefit of the automatic expungement provided under 8 GCA § 11.10." In re: Confidential Investigation, ADC16-004 at 1 (Order, Nov. 23, 2016). We

again make clear today that a former criminal defendant is entitled to waive the protections of expungement under 8 GCA § 11.10 that was made for his or her benefit.

B. A Person Waives His Right to the Protections of Expungement when He Places the Prior Prosecution at Issue in Subsequent or Collateral Litigation, and a Valid Waiver Does Not Require a Separate Order Dissolving or Modifying the Original Expungement Order

[17] We must next address what actions are required to effect waiver of expungement protections when a person places the prior expunged records at issue in collateral litigation. Allen argues that he both impliedly and expressly waived the protections of the expungement statute. Appellant's Br. at 11-13 (Oct. 28, 2016). Young argues that "there is no true waiver in this case." Young's Br. at 6 (Dec. 8, 2016). Richardson goes further and asserts that there has been no waiver because the court never set aside, modified, or vacated the prior expungement order. Richardson's Br. at 26 (Jan. 9, 2017).

[18] A criminal defendant whose records have been expunged may waive the protections of expungement, and "[a] person can, in effect, 'unexpunge' his records by putting those records at issue in another proceeding." *State Bar of Tex.*, 440 S.W.3d at 626 (citations omitted). Because expungement is a creature of statute, there is no requirement that waiver of rights under 8 GCA § 11.10 meet the same threshold for waiver of constitutional rights. *See, e.g.*, *Quinata v. Superior Court (People)*, 2010 Guam 8 ¶ 27 (citing *People v. Johnson*, 606 P.2d 738, 744 (Cal. 1980) (en banc)) (noting distinction between "a constitutional right, the waiver of which must be voluntary, knowing, and intelligent and could only be made by the defendant personally, and a statutory right, for which the defendant's consent [to waiver] could be implied"). Rather, a voluntary waiver of rights under 8 GCA § 11.10 can be implied from the right-holder's conduct. In cases where a criminal defendant waived his or her right to expungement, courts have held that the

acquitted defendant had done so simply by putting those records at issue in a collateral litigation. *See, e.g., Wright v. Snow*, 175 A.D.2d 451, 452 (N.Y. App. Div. 1991) ("[W]here an individual commences a civil action and affirmatively places the information protected by [New York's expungement statute] into issue, the privilege is effectively waived.").

[19] Here, Allen put his previously expunged criminal records in issue on multiple occasions. Most notably, Allen put his prior acquittal in issue when Defendants jointly moved for summary judgment. As part of this motion, Defendants submitted a Declaration signed by Richardson in which he testified that Allen assaulted him on the date in question. *See* RA, tab 130 ¶¶ 5-6 (Decl. Ian Richardson, Aug. 24, 2011). Defendants further argued that they were legally authorized to use force to detain Allen, as they reasonably believed he was committing a crime, and that they needed to use reasonable force in self-defense. *See* RA, tab 131 at 7-12 (Defs.' Mot. Summ. J., Aug. 24, 2011). In response, Allen—appearing at that time *pro se*—asserted that he had been acquitted of any prior criminal charges and that the question of whether he had committed any crimes "ha[d] been settled" and was not subject to re-litigation. RA, tab 138 at 7 (Pl.'s Opp'n to Defs.' Mot. Summ. J., Sept. 6, 2011). In support, Allen attached the judgment of acquittal, which also contained the order of expungement, from his criminal case. *See id.*, Ex. E.

[20] In addition, prior to the court's ruling granting access to Allen's expunged records, Allen moved to disqualify the OAG from representing either of the Defendants in the present litigation. Allen argued that he was previously tried and acquitted of criminal charges by the People, who were represented by the OAG, *see* RA, tab 83 at 9 (Pl.'s Mem. Supp. Mot. Compel, Mot. Disqualify, Feb. 11, 2011), and as a result "he will not receive a fair trial," RA, tab 83 at 11. Moreover, Allen argued that the OAG had an irreconcilable conflict because "Plaintiff intends to

call . . . employees of the [OAG] as witnesses in this case"—witnesses whose testimony would presumably support Allen's civil claims. *Id.* at 12 (emphasis omitted). Allen again attached the judgment of acquittal from his criminal case to his reply brief. *See* RA, tab 142, Ex. B (Pl.'s Reply Mem. Further Supp. Mot. Disqualify, Sept. 13, 2011).

[21] Based upon these references made by Allen personally during litigation, the trial court found in its November 16, 2011 Decision and Order that Allen had "impliedly" waived his rights under 8 GCA § 11.10 by "referenc[ing] his acquittal several times in an effort to discredit Defendants' arguments . . . ." *See* RA, tab 149 at 5 n.2 (Dec. & Order, Nov. 16, 2011).

[22] Even after this finding—which has not been challenged on appeal—Allen continued to put his expunged records at issue or otherwise purport to waive the protections of expungement. First, Allen argued in conditionally opposing Defendants' motion to clarify the November 16, 2011 Order that he "is not opposed to full disclosure of all evidence compiled in People of Guam v. Allen, CF0375-07." RA, tab 180 at 1 (Conditional Opp'n to Defs.' Mot. to Clarify Ct.'s Dec. & Order). Second, Allen submitted to the court a trial transcript from his criminal proceeding containing the testimony of Richardson and Young. *See* RA, tab 249 (Decl. Cecile Flores, Oct. 7, 2014). Third, Allen filed an exhibit list (with copies of the proposed exhibits), which contained multiple official records from his criminal prosecution, including each of the parties' official statements to the Guam Police Department and Richardson's grand jury testimony. *See* RA, tab 380 (Pl.'s Ex. List, Sept. 16, 2015). Fourth, in opposing Richardson's motion *in limine*, Allen argued that the documents had already been "unsealed by this court" and, as a result, the documents were used at deposition and were "out there." Tr. at 13 (Pre-trial Conference, Oct. 2, 2015); *see also id.* at 21-22 (Allen "disagree[d] that [the records] are expunged" because

"[t]hey've been unsealed"). On this record, we have little trouble finding that Allen adequately waived the protections of the expungement statute in this case as a matter of law.

[23] A waiver of expungement protections does not require a separate court order to effectuate the waiver. Although Richardson argues in favor of a separate order requirement, *see* Richardson's Br. at 15, 26, several courts have rejected similar arguments and found that the issue can be addressed in ordinary discovery motions, *see Lehman v. Kornblau*, 206 F.R.D. 345, 348 (E.D.N.Y. 2001) ("This court finds that because the documents have been sought in a discovery demand to the party District Attorney, and they are apparently in that party's possession, the plaintiff need not apply to state court to have the documents unsealed. Issues of the documents' discoverability are properly before this court, and those issues will be considered."); *Bertuglia v. City of New York*, No. 11 Civ. 2141(JGK), 2014 WL 626848, at *1-2 (S.D.N.Y. Feb. 18, 2014) (same); *see also Carter v. Gestalt Inst. of Cleveland, Inc.*, No. 99738, 2013 WL 6858123, at *4-5 (Ohio Ct. App. Dec. 26, 2013) (rejecting "the parties wrongful[] characteriz[ation]" of the trial court's order as "'unsealing' [plaintiff's] criminal record" because the order concerned only a discovery issue). Courts have consistently held that simply filing litigation that puts expunged records at issue can result in the "un-expungement" of those records. *See, e.g.*, *State Bar of Tex.*, 440 S.W.3d at 626; *Kalogris v. Roberts*, 185 A.D.2d 335, 336 (N.Y. App. Div. 1992) (filing malicious prosecution claim "waived the privilege conferred by" New York's sealing statute).

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[24] For all of these reasons, we hold that a waiver may be express or implied, and no additional order dissolving or modifying the original expungement is necessary for the protections of Guam's expungement statutes to be waived.[1]

C. Defendants Have Not Identified Any Interest Protected by 8 GCA § 11.10 that the Trial Court May Properly Weigh Against Plaintiff's Interest in Waiving His Statutory Protections

[25] The next question presented in this appeal is to what extent a trial court can place limits, under 8 GCA § 11.10, on the use of expunged records subject to a valid waiver. Young argues that the court may place appropriate restrictions on an acquitted criminal defendant's right to waive the protections of expungement and that the trial court did so in this case. Young's Br. at 6-8. Allen counters that a court may not qualify a defendant's waiver of the protections of expungement. Appellant's Br. at 23-25.

[26] In *Ulinsky*, the Appellate Division of the New Jersey Superior Court found that "expungement is a privilege accorded *only* at the request of the person seeking it . . . ." *Ulinsky*, 372 A.2d at 623 (emphasis added) (citation omitted).[2] "Since it was designed for his benefit, its protection can be waived whenever it is in his best interest that disclosure of the expunged records be made, even though the statute makes no express provision therefor." *Id.* (citation

[1] The court is aware of the concerns the OAG, court personnel, the Guam Police Department, and other persons holding expunged records may have in light of the potential criminal ramifications of 9 GCA § 70.44 where a waiver occurs without seeking a dissolution or modification of the original expungement order. While we hold that the original expungement order does not need to be dissolved or modified to affect an express or implied waiver, the person releasing protected records should be satisfied that an express or implied waiver has been adequately obtained. That appears to have occurred in this case. The prosecution division of the OAG initially refused to comply with the court's order permitting discovery of the formerly-expunged records because the order was, in the OAG's view, unclear. *See* RA, tab 166 at 2 (Defs.' Mot. for Order Clarifying Ct.'s Dec. & Order, June 13, 2013). This provides a good example of how record holders may choose to react to future requests for formerly-expunged documents in light of this opinion. However, once a waiver of the protections of expungement does occur—whether expressly or impliedly—there is no risk of criminal liability under 9 GCA § 70.44.

[2] In a recent non-precedential order, we found that a request for expungement was not necessary under 8 GCA § 11.10; such expungements are "automatic." *See* In re: Confidential Investigation, ADC16-004 at 1 (Order, Nov. 23, 2016).

omitted). Similarly, in *Zhao v. City of New York*, defendants attempted to limit the disclosure of previously sealed records on the basis of New York's equivalent to 8 GCA § 11.10, where plaintiff—the party whose records were placed under seal—was seeking the records' release. No. 07 Civ. 3636(LAK)(MHD), 2007 WL 4358470, at *5 (S.D.N.Y. Dec. 5, 2007). The trial court rejected defendant's attempt to limit the plaintiff's waiver:

> Finally, we note that defendants' invocation of the provisions of the New York sealing statute, N.Y. Crim. Proc. L. § 160.50, is misguided because those provisions do not apply here. That statute requires sealing of "all official records and papers, including judgments and orders of a court . . . relating to the arrest or prosecution" of an individual when the criminal proceeding has terminated in his favor. *This does not afford defendants a means of objecting to the production of the documents at issue in this case*.
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> . . . .
>
> *[T]he sealing statute is unavailable to defendants because it is intended to protect the exonerated defendant, in this case the plaintiff, who is in fact seeking the documents*. Indeed, by filing suit plaintiff waives the protection of the sealing provision.

Id. (emphases added) (citation omitted); *see also Best v. 2170 5th Ave. Corp.*, 60 A.D.3d 405, 405 (N.Y. App. Div. 2009) ("Where an individual, who has records that would otherwise be kept sealed under Criminal Procedure Law § 160.50, affirmatively places the underlying conduct at issue by bringing a civil suit, the statutory protection afforded by section 160.50 is waived, as the privilege, which is intended to protect the accused, may not be used as 'a sword to gain an advantage in a civil action.'" (quoting *Green v. Montgomery*, 746 N.E.2d 1036, 1041-42 (N.Y. 2001))).

[27] In support of his argument, Young attempts to draw an analogy to the Sixth Amendment's presumption of counsel of choice and a court's ability to limit the waiver of conflicts of interest, as exemplified by *Wheat v. United States*, 486 U.S. 153 (1988). *See*

Young's Br. at 6-8. Young's reliance on *Wheat*, however, is unpersuasive. The United States Supreme Court in *Wheat* held that a "district court must be allowed substantial latitude in refusing waivers of conflicts of interest . . . ." 486 U.S. at 163. The Court reached this decision based on the fact that the right to counsel of choice is "circumscribed in several important respects," *id.* at 159, and other competing interests are at play, including "an independent interest in ensuring that criminal trials are conducted within the ethical standards of the profession and that legal proceedings appear fair to all who observe them," *id.* at 160. These competing interests and restrictions create an environment in which a "trial court[] confronted with multiple representations face[s] the prospect of being 'whip-sawed' by assertions of error no matter which way they rule." *Id.* at 161. Courts have a broader interest in ensuring that "[n]ot only the interest of a criminal defendant but the institutional interest in the rendition of just verdicts in criminal cases" are each adequately protected against "unregulated multiple representation." *Id.* at 160.

[28] Young fails to identify any interests on the facts of this case that can be appropriately weighed against the interests of the acquitted defendant whose records are expunged. Courts have consistently held that only the party whose records were expunged has a protectable interest in enforcing an expungement statute or order. In *State Bar of Texas*, for example, the court rejected a prosecutor's attempt to limit the use of an expunged record where the criminal defendant who benefitted from the expungement waived his right to expungement. 440 S.W.3d at 625. The court agreed with appellants that the lower court abused its discretion in applying the expungement statute because it, among other things, "ignore[d] the acquitted defendant's wishes" and "contravene[d] the statute's primary purpose." *Id.*

[29] In *State Bar of Texas*, the acquitted defendant had waived the protections of expungement by "making his arrest and prosecution a matter of public record[] by filing a

federal lawsuit . . . based on his arrest and prosecution" and, separately, by "voluntarily waiv[ing] his expunction rights for" purposes of the disciplinary proceeding. *Id.* at 626. Moreover, in defending against that civil lawsuit, the prosecutor made certain records "publicly available on the Internet" by "fil[ing] the full transcript of [defendant's] trial as a summary judgment exhibit . . . ." *Id.* Accordingly, "the court abused its discretion in disregarding the acquitted defendant's voluntary waiver" and "construe[ing] the expunction statute at odds with the acquitted defendant's interests." *See id.* In other words, "[a] process intended to protect acquitted defendants ha[d] been used as a shield against charges of prosecutorial misconduct." *Id.*

[30] We are not prepared today to say that there can *never* be any restrictions placed upon a former criminal defendant's waiver of expungement under the terms of 8 GCA § 11.10(a). But here, the Defendants have failed to identify any competing interest that could appropriately be weighed against Allen's right to waive the protections of expungement under 8 GCA § 11.10. Un-expunged records may be ruled inadmissible for various reasons found in law, such as the prohibition against hearsay, *see* Guam R. Evid. 802, a lack of relevance, *see* Guam R. Evid. 402, the danger of unfair prejudice, *see* Guam R. Evid. 403, as a sanction for failure to turn documents over during discovery, *see* Guam R. Civ. P. 37, or any other reason consistent with the Guam Rules of Evidence or the Guam Rules of Civil Procedure. Rules such as these, however, did not serve as the basis for the trial court's limitations on Allen's waiver. We see nothing in the relevant statutes granting the trial court open-ended authority to restrict a defendant's waiver of his or her expungement rights. It was therefore legal error for the trial court to restrict Allen's use of his formerly-expunged records solely for purposes of impeachment. So too was it error for the trial court to find that sealing of the court would be an appropriate prophylactic measure, as the Constitution's "presumption of openness may be

overcome only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest." *Press-Enter. Co. v. Superior Court*, 464 U.S. 501, 510 (1984). In light of Allen's waiver, there is no "higher value" to be preserved in this case.

V. CONCLUSION

[31] For the reasons discussed above, the Decision and Order (Under Seal) dated May 10, 2016, is **REVERSED**, and we **REMAND** this case for further proceedings not inconsistent with this Opinion.

/s/
F. PHILIP CARBULLIDO
Associate Justice

/s/
ROBERT J. TORRES
Associate Justice

/s/
KATHERINE A. MARAMAN
Chief Justice